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Master's Thesis  
Academic Year 2023

*Guidely:*  
Resolving Copyright Exception Discrepancies  
between Rights Holders and Content Creators



Keio University  
Graduate School of Media Design

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A Master's Thesis  
submitted to Keio University Graduate School of Media Design  
in partial fulfillment of the requirements for the degree of  
Master of Media Design

Audrey V Guerra

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Abstract of Master's Thesis of Academic Year 2023

*Guidely:*

Resolving Copyright Exception Discrepancies between  
Rights Holders and Content Creators

Category: Design / Social Science

Summary

For content creators who make a living off of YouTube and other social media platforms, the idea of copyright seemingly poses a threat to their ability to continue their careers online, rather than protecting their own creations. Unquestionably, with the added complications of national laws and jurisdictions encroaching on a borderless internet, creation online can be a complicated matter.

This clash between creation and intellectual property rights is apparent in Japanese IPR holders conflicts with foreign YouTubers over practices like fair use. In such, the scholarship calls for an "innovative new business model" that can accommodate and uncomplicate copyright exceptions and facilitate creativity.

In this paper, the proposed design takes advantage of soft law applications, like guidelines, to clarify and assert how creators can express themselves while also providing benefit to those who own the rights to the IP being referenced through a badge system reminiscent of Creative Commons. Through this remixed design, it is evaluated that the proposed badges would have positive effects on the current copyright regime.

Keywords:

copyright, fair use, content creators, YouTube, intellectual property management

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# Chapter 1

## Introduction

### 1.1. Background

With over a billion hours of content consumed every day, YouTube is one of the world's most premier social media websites. [1] According to recent trends, over half of Gen Z viewers on YouTube gravitate towards content that people in their personal lives are indifferent towards. For Gen Z viewers, directly applicable content to their lives and interests has grown more important than culturally trendy or popular videos on YouTube. In fact, increasing demand for videos tailored to one's personal interest has led to a rise in the "professional fan." The professional fan specializes in providing thorough and detailed content focused on niche topics. As spokespeople for the communities they tailor to, professional fans shape the very cultural phenomena they creatively discuss on YouTube. [2]

As a global platform with no barriers or borders, YouTube has been a gathering place for fans from all corners of the earth to engage with one another over the creations they love. Much like it has been the case for K-pop in recent years, [2] fans of Japanese media, primarily anime and manga, have turned to YouTube since its inception to discuss the nuances of numerous narratives and gather as a community. With streaming making Japanese cultural products like anime more accessible and profitable to the "mainstream," [3] more and more fans have turned to YouTube to engage with the characters and stories they loved. Naturally, with fans craving such content, the professional fan has become a beacon for others to gather around and connect over franchises in anime and manga they would otherwise not be able to engage with on a personal level.

## 1.2. Issue

Yet, professional fans, while integral to the growth of YouTube and have become cornerstones of cultural discourse, engage in a highly volatile and risky profession. In a platform governed by algorithms and automatic systems, those who have chosen to make their livelihoods commentating on others' creations, which they do not own the rights to, find themselves consistently in fear of having their professions eliminated overnight. Indeed, this was the very case of a YouTuber by the username TotallyNotMark, who received over 150 copyright claims from Toei Animation in December of 2021 for his reviews on intellectual properties such as Dragon Ball Z and One Piece. While the reviews that were claimed featured clips from Toei's IPs, Mark argued that they followed fair use in the USA, where he is based, and should remain on YouTube as they do not violate the platform's policies. However, since Toei is a Japan-based company, the concepts of fair use that Mark evoked in his defense of the videos did not sway Toei, which was abiding by the copyright laws in Japan. [4] Through the case of TotallyNotMark, it is evident that the discrepancies between American copyright exceptions, like fair use, and the Japanese interpretation of copyright laws construct a further hazard for professional fans on YouTube, who seek to discuss anime, manga, and Japanese games on the platform.

For Mark, his controversy with Toei Animation became viral and a platform wide topic. Even the largest independent YouTuber, at the time, PewDiePie, took a moment to address the issue of the YouTube copyright system to over three million viewers stating, "Japan is so notoriously dumb when it comes to copyright, backwards thinking, and just overall lacking in what most people agree with what is fair use." [5] In the case of Toei's claims, after over a month of uncertainty and a level of virality that forced YouTube to acknowledge the fair use dispute, Mark, surprisingly, was allowed to recover a majority of the videos claimed and taken down by Toei Animation. In fact, YouTube decided to resolve the issue by evoking a policy that limited the distribution of the videos in question by territory in order to rectify the copyright discrepancies between regions—allowing Mark to keep his videos up in the USA but restricting and removing his videos from Japan. [6] While proving to be an overall victory for Mark, the community that surrounded the content creator was left embittered towards Toei for initiating the claims in the

first place, with some commenters even stating they will only consume Toei's IPs illegally in order to avoid giving the company money. [7] Despite fans' sentiments towards Toei, Mark stated that he hoped to one day see a "symbiotic relationship between online creators and copyright owners" as, according to Mark, it would prove mutually lucrative for both the professional fans and the rights holders. [6]

The aftermath of the whole conflict still influences creators to the present day. With prominent Japan-based creators like Chris Broad, AbroadInJapan, noting "I know a few YouTubers here [Japan] doing anime related content and they basically blocked their videos within Japan so Japanese organizations and authorities can't sort of see them, discover them, and clamp down on them. . . It's a tough thing, and YouTube is a scary thing. You never know what's going to go wrong." [8] As the internet is borderless and ideally a place of international knowledge exchange, the idea that those who post on the second most frequented platform on the planet [9] are incentivized to limit their content to national borders proves concerning. An imminent divided, or "split," internet [10] would go against the very nature of the "World Wide Web" and detract from knowledge and culture sharing that the masses have grown to engage with, daily, on Web 2.0. To avoid this reality, there must be an international, or at least an internationally applicable, tool for creators to access and interact with IPs without restricting their content to specific borders.

### 1.3. Research Objectives

By evaluating the contradictions in Japan's soft power initiative (Cool Japan), copyright enforcement in the digital age, complications with local copyright compliance in a borderless internet, Creative Commons and other resulting copyright centered designs made to overcome the lack of international copyright regimes that accommodate the modern age, and the scholarly work surrounding copyright and creativity online, this thesis aims to illustrate the dire need for a new system which can sustain fan works and professional fans on YouTube and other platforms. In such, I propose a design which aims to create a new copyright framework, through applied copyright regimes like Creative Commons, so that fans can engage with the franchises and IPs they are passionate about online without in-

curing legal penalties. In this pursuit, I interviewed various industry experts and content creators to gain nuance on the current copyright situation online, while also surveying fans, more online creators, and YouTube viewers. This thesis concludes with consideration of how the design can be implemented effectively, the future applications of the design, and what can be assessed in further studies. Ultimately, my intent is to present a system that could be beneficial to content creators and satisfactory to IPR holders so that creativity can continue to thrive on user generated platforms.

## 1.4. Thesis Structure

This thesis has five chapters which delve to illustrate the need for resolving copyright discrepancies online in regards to IPR holders, fan communities, and professional fans.

### Chapter One: Introduction

Through this introductory chapter, the issue of copyright exception discrepancies between the United States and Japan, and the resulting effect these differences have on professional fans becomes apparent through exploring the idea of the professional fan and the case of TotallyNotMark.

### Chapter Two: Related Works

In this chapter, readers will become familiar with how these intellectual property management tactics, particularly from Japanese IPs, has become an issue of national image. From there, by assessing the international and domestic laws, as well as platform policies, that dictate creation in the modern age, readers will further understand the legal complexities in which this design thesis is attempting to navigate.

Furthermore, through an extensive analysis of Creative Commons, which is the most prominent entity online which provides a permissions system to allow others to reuse existing works, this thesis reveals many gaps in the scope of Creative Commons Licenses from both analyzing the design and delving into the scholar-

ship surrounding the Commons. After analyzing the strengths and weaknesses of Creative Commons in relation to the proposed design, this thesis goes on to contemplate other designs which relate to Creative Commons, access to existing works, and badges as a means to engage fans.

As this thesis focuses on fan communities, professional fans on YouTube, and their engagement with copyrighted works, this chapter pivots to reviewing the scholarship surrounding the relationship of these actors. In all, through a review laws, policies, and literature, the related works section intends to highlight the unique issues surrounding copyright exceptions and fan engagement, while contemplating the design implications of the works noted.

### **Chapter Three: Design Process and Development**

In consideration of the works reviewed in Chapter Two, this thesis then addresses the process I undertook to develop the design. After considering the methodological framework of this thesis, readers are able to review the various interviews and surveys executed in the process of identifying how to best address copyright exception issues online, with an emphasis on YouTube. Through in-depth analysis of the data gathered, readers can more readily understand the design process.

### **Design and Evaluation**

In this chapter of the thesis, readers will be introduced to the mechanics of the proposed design and the subsequent endeavors made in order to evaluate and validate aspects of the design. Through two user studies, one aimed at YouTube viewers and the other at the content creators themselves, this chapter showcases how a third-party guidelines permissions system could greater benefit creation on YouTube and the IPR holders, themselves.

### **Discussion and Conclusion**

In the concluding chapter of this thesis, frequently asked questions regarding the design are addressed, as well as some final thoughts regarding the design.

## Chapter 2

# Related Works

### 2.1. Cool Japan and Japanese Intellectual Property Management

#### 2.1.1 Japan's "Coolness"

While Japan has consistently held a favorable position in regard to its soft power prowess [11] and innovation status, [12] it has experienced a decline in ranking over the past few years. This decline in perceived global soft power can be attributed to the lack of digital engagement in Japan's cultural promotion strategies, as Japan has traditionally relied on the exclusivity and distinctiveness of its culture to generate international interest in its cultural products. Coined as "Cool Japan" in the early 2000s by Douglas McGray, [13] this concept evolved into a cultural policy aimed at enhancing Japan's international appeal and soft power. However, since the announcement of the Cool Japan initiative, little progress has been made in leveraging this "cool" factor. The envisioned, "Japan boom," the stated objective of the initiative, [14] has not materialized as anticipated. According to Michael Daliot-Bul's viewpoint the success of the Cool Japan policy heavily relies on safeguarding Japan's intellectual properties through laws that ensure exclusive exploitation by Japan alone. [15] Thus, "coolness" is not only an idea, but one that is copyrightable and protected by intellectual property laws within Japan. Nevertheless, in an era of user-generated content, which fosters widespread interest and virality online, the stringent copyright protections that restrict fan works have perpetuated Japan's "cool" image primarily within a subset on the internet.



### 2.1.2 Components of "Cool Japan"

The ministerial bodies of Japan evaluate "Cool Japan" around five key areas: content, fashion, food, lifestyle, and tourism. The ultimate objective of "Cool Japan" is to generate widespread interest in Japan, increase domestic profits, and attract non-Japanese individuals to consume products within the country. [16] To achieve this, the Ministry of Economy, Trade, and Industry has established various awards and conducted industry-specific analyses and recommendations. [17] Additionally, the "Cool Japan Fund" has been established to invest in companies and projects related to "Cool Japan." This public-private fund aims to enhance and expand the international demand for commercialized "Cool Japan" products and services. [18] In recent years, the Cool Japan Fund has invested in eleven companies focused on promoting Japanese media and content globally, with three of them specifically emphasizing English-language content. [19] A 2020 report from the Cabinet Office emphasized the significance of foreign talent in fostering the Cool Japan initiative and highlighted the need to facilitate the career paths of international students in Cool Japan industries and initiatives. [20] Overall, from a policy perspective, it is evident that Cool Japan actively encourages and promotes the involvement of foreigners and English-speaking content creators to realize the goal of a worldwide "Japan boom."

As demonstrated, the aim of Cool Japan is to leverage the distinctive intellectual properties originating in Japan and establish a global presence by expanding the international fan base of its cultural products and services. To achieve this objective, the Cool Japan initiative has incorporated English-language content creation, evident in its funding provided to Tastemade through the Cool Japan Fund and the involvement of foreign talents in Cool Japan industries. [19] This raises the question of potential challenges when non-Japanese English-speaking content creators seek to engage with Japanese intellectual properties (IPs) to support, inadvertently, the goals of Cool Japan. In the digital era, social media platforms serve as active forums for discussing information and ideas about content and media, making it easier for trends and fads to contribute to the desired "Japan boom" outlined by METI. [20] Therefore, it is crucial to investigate how English-language content creators interact with Japanese IPs to assess the effectiveness of the Cool Japan initiative and determine the most effective path

forward. Consequently, the ability of content creators to discuss and engage with Japanese IPs has a direct impact on the Cool Japan initiative. If creators are deterred from making content related to Japanese IPs due to perceived aggressive copyright protection practices, then the aspirations of Cool Japan will stagnate or fail to manifest.

### **2.1.3 The Intellectual Property Strategic Program**

In fact, the Intellectual Property Strategic Program recognizes these conflicts between protecting IPs and fan engagement online. In a recent report, the IPSP called for “a content strategy suited for the digital age,” and called for the creation of a means in which rights holders can manage their IPs online easily while engaging users. To this end, the IPSP proposes a centralized office in which users can request use from rights holders as a means to “realize an integrated rights management system for vast, diverse contents.” The proposed office would handle the distribution of funds for the purpose of granting permissions between rights holders and users. [21] While a centralized office to handle permissions is one way to attempt to mitigate the outlined discrepancy, it is much too formalized and bureaucratic for the fast-paced nature of the digital age.

In recognizing that a bureaucratic method may not be sufficient for alleviating the issue, the IPSP has called upon the implementation of “soft law.” Essentially, “soft law” allows for abstract legal concepts that have no “hard law”—or specific legal language and definitions in the law, in this case IP rights—to be clarified through guidelines and private sector self-regulation. Accordingly, per the IPSP, it is up to the private sector to create provisions in which others can engage with their IP. While the IPSP warns that mishandling of soft law applications could lead to increased barriers to entry into industries, it can, in tandem with governmental supervision, alleviate gray areas in intellectual property rights law. Limitedly, the ISPS calls upon these guidelines for the purpose of research and library usage purposes, [21] but the applications for soft law could become much greater. Guidelines could extend to all types of IPR holders and reusers of their works. Specifically, guidelines could facilitate all manner of vague IPR management laws so that the discrepancy between content creators and IP rights holders can be adequately addressed. Thus, as reported by the IPSP, it will be through

the private sector that these IP issues are addressed and not governmental bodies, alone. Indeed, guidelines can hold a key to resolving these issues, but the manner in which guidelines are accessed, interpreted, and applied to content creators works is by far a major gap in the reliance of soft law practices to alleviate IP matters.

## **2.2. Copyright Law and Online Copyright Management**

### **2.2.1 International Copyright Law**

When issues arise across borders, like that between an American YouTuber and a Japanese IPR holder, copyright laws dictate how IP issues are dealt with online, with all these laws predating the widespread use of the internet and Web 2.0. The first of these international laws is the Berne Convention of 1886. The Berne Convention of 1886 provides basic provisions for an author's rights to their work, as well as constraints in which others can use an existing work. The Berne Convention establishes minimum standards for the types of works protected and the rights associated with them including translation, adaptations, public performances, broadcasting, reproductions, and moral rights. It permits certain exceptions to economic rights, known as "free uses," which include quotations, using a work for educational purposes, publishing current events, and recordings for broadcasting purposes. Due to the wide adoption of the Berne Convention, it is seen as the baseline for international copyright. [22] Yet, it was created and adopted in 1886—far before the internet of things was even conceivable. It is not enough to accommodate the change and availability of copyrighted materials in the modern age.

Another highly cited international agreement on intellectual property is TRIPS, which was adopted in 1994 under the World Trade Organization. TRIPS focuses on intellectual property rights protection and enforcement, along with establishing a multilateral framework for protecting these rights in the case of international trade of counterfeit goods. TRIPS covers several areas including general provisions, copyright, trademarks, industrial designs, patents, and trade secrets.

Member countries of the WTO are required to abide by the stipulations set by TRIPS and provide remedies for enforcing intellectual property rights infringements for their own nationals and the foreign rights holder. [23] Again, while TRIPS is widely adopted under the WTO and is more recently adopted, as compared to the Berne Convention, it still fails to account for widespread digital usage and concerns itself with piracy—which can be interpreted as defining reusers as robbers of content rather than transforming existing works into something new. Furthermore, in a borderless internet, the national jurisdiction requirements of the treaty are difficult to apply and uphold, as seen in the discrepancies between fair use and other domestic copyright provisions.

### **2.2.2 Domestic Copyright**

#### **USA**

As seen, domestic copyright conventions are integral under TRIPS to ensure the regulation of IP use online. However, what is a standard in one country does not translate to other country's laws—creating discrepancies in intellectual property rights management on the internet. Of those, fair use and fair dealing are not universally recognized by all nations. Fair use is a legal doctrine in the USA that permits the use of copyrighted material in specific circumstances without the need for permission. The Copyright Act of 1976 [24] stipulates fair use in Section 107, in which the criteria for assessing fair use include: the purpose and nature of the use, the portion of the copyrighted work used, and the impact on the market value of the original work. Courts review fair use claims, usually on an individual basis, to consider the unique circumstances of each fair use claim. Fair use can apply to works like criticism, comment, parody, education, and reporting the news. Currently, there is no fixed formula specifying the exact amount or percentage of a work that can be used without permission. [25] Fair dealing in the UK and other countries also provides similar exceptions to needing a copyright owner's permission including: non-commercial research and private study, criticism, review, reporting current events, and parody. As a legal term, fair dealing is not strictly defined in the statutes to ensure each case is evaluated on their own basis, like with fair use. Within the court, the market impact and the amount of

the work used is evaluated to sustain fair dealing. [26] In the case of YouTube, this makes it extremely difficult for the automatic Content ID systems to identify fair use or fair dealing practices and individual creators are left on the defensive when attempting to work within these rights.

Another American law, which is perhaps the most cited copyright law on the internet, is the Digital Millennium Copyright Act which was passed in 1998 as an amendment to the copyright law of the United States. The DMCA introduced three updates to the copyright act. The first update was establishing safeguards for online service providers and protecting them under certain circumstances should users engage in copyright infringement. Of which, led to the introduction of the notorious notice-and-takedown system, which enabled copyright owners to notify online services of the use of their copyrighted work so it could be removed from the platform. Secondly, DMCA aimed to encourage copyright owners to upload their works online by assuring that unauthorized access to their works would be penalized under the law. Finally, the DMCA made it illegal to provide false copyright management information, such as the copyright ownership details—ensuring that the rules of attribution persist in online spaces. [27] The notice-and-takedown system eventually will become the basis for how content is dealt with on YouTube under its copyright protections system. People even profit from removing contents from circulating online, as later seen with DMCA.com (a privately owned company). The DMCA is so well-known among content creators and fans that it is not uncommon to see comments, especially on livestreams, stating “DMCA” when copyrighted music is incidentally captured. Indeed, while the DMCA allowed for copyrighted materials to make their way to online spaces under the protection of the law, content creators are incredibly wary of the take-down notices and the removal of content due to this law.

## **Japan**

Regarding domestic copyright laws in Japan in relation to this issue, Japan established copyright provisions in 1868. In 1971, a new copyright law was enacted and has been subsequently amended in accordance with international treaties, since. [28] In regards to re-use of works, Japan’s domestic Copyright Law has limited provisions in which a work can be re-used. Aside from private use, Japan

does allow use of a work if it has been made public, primarily to quote a work with sufficient attribution for the purposes of a news report, critique, or for educational purposes. Mainly, the Copyright Law of Japan goes into detail on how works can be reproduced for noncommercial, educational, and news purposes. [29] In an addition to the law referring to computerized data, it states in Article 47-5:

“A person undertaking an action as set forth in one of the following items that contributes to facilitating the exploitation of a work by creating new knowledge or information through computerized data processing (this includes a person undertaking a part of such an action; limited to one doing so in accordance with the standards prescribed by Cabinet Order) may exploit a work that has been made available or presented to the public.” [30]

Meaning that so long as a public work being reproduced, transmitted, or distributed is creating new knowledge through computerized data processing, an individual is allowed to make use of a work. In essence, there is a provision under Japan’s Copyright Law that allows some version of transformative works so long as it yields to new knowledge or information. Within the law, like in the USA and UK, the extent of use and market impact for the original author is weighed—yet, this provision does prove hopeful for those wishing to engage with Japanese IPs in a transformative manner.

### **Discrepancies Between Copyright Laws in the USA and Japan**

It is evident from this brief analysis that laws in the United States and Japan that there are conflicting premises for use under domestic laws which international law cannot account for within its current versions. While not elaborated in this thesis, Japan’s copyright laws have many provisions protecting the moral rights of the author and clear language expressing what it considers infringement under the law. While the USA also has strong provisions to protect intellectual property, the fair use clause has allowed for creators online to reinterpret IPs for the purpose of user generated content. As a result, there is an expectation among content creators using USA based platforms, like YouTube, for fair use provisions to extend to the content made for that platform. Since Japanese and American laws do not align in

this manner, the resulting discrepancies lead content creators from countries with fair use or fair dealing procedures to view Japanese IPR holders as unnecessarily aggressive in protecting their IPs through YouTube's copyright system. In fact, the overall case-by-case nature of fair use and fair dealings provisions also makes the extent of their use under YouTube's copyright system vague. Attempting to understand the copyright laws of various countries and the platform policies of YouTube make attempting to apply fair use or fair dealing to a content creator's work a nearly insurmountable task.

### **2.2.3 YouTube Copyright Management Suite**

While international copyright disputes exist on all internationally available social media platforms, YouTube is the focus of this study due to its unique and extensive copyright protections measures on the website. In such, there are many components to the YouTube Copyright Management Suite. [31] First and foremost is Content ID, where YouTube identifies content used in uploaded videos through a comparison of audio and visual media in its own database. If YouTube finds a match, it automatically applies a Content ID claim to the video in which could trigger one of three actions based on a copyright owner's wishes: 1) it can block the video from being viewed by others on the platform, 2) it can initiate a scheme where revenue is shared with the uploader, 3) it allows the copyright holder to track data from the video uploaded with their contents, particularly viewership statistics. [32] Once claimed under the ContentID system, a video can remain on YouTube with access to the viewership statistics and ad revenue will channel to the copyright holder. [33] To qualify for Content ID, copyright holders have to prove their ownership of the copyrighted content they want exclusive rights to on the platform. Once approved, copyright holders are bound by an agreement which indicates their exclusive rights to the content and the regional jurisdiction of the work. [34]

Another aspect of YouTube's copyright management system is the Content Verification Program, which allows copyright holders to send multiple removal requests within YouTube. [35] Removal of a video using re-used content is completed through a form; however, per case precedent in US law, copyright holders must consider whether content is used under a copyright exception like fair use or fair

dealing before issuing a removal request on YouTube. [36] For both partnered creators and copyright holders, the Copyright Match Tool, will identify when content is uploaded on YouTube and issue a removal request on their behalf. [37] Overall, if these systems lead to a strike for misuse of copyright on a channel, a YouTuber will have to go to something called “Copyright School” which aims to train users on copyright. After three strikes, a channel is terminated and a user cannot create a new channel. [38] Therefore, incurring copyright claims or a copyright strike could lead to a channel’s demise through either inability to generate revenue or total termination.

Since the YouTube copyright management system relies on many automatic systems, YouTube states that:

“Creators should only upload videos that they have made or that they’re authorized to use. That means they should not upload videos they didn’t make, or use content in their videos that someone else owns the copyright to, such as music tracks, snippets of copyrighted programs, or videos made by other users, without necessary authorizations.” [39]

Even with this considerable warning to users which seemingly aims to limit content creators on the platform, YouTube asks that those who hold the rights to an IP be considerate of fair use prior to submitting removal requests—going so far as to state that copyright exceptions allow “the free flow of ideas and creativity.” Although YouTube believes this consideration allows for a balance of fair use and fair dealing practices on the platform, [40] there is much to be desired from the content creators, themselves. Interestingly, regarding fair use, YouTube offers up to one million USD to compensate the legal costs for a creator if their video was only available in the United States and reaches an American court. [41] While it’s commendable YouTube offers some resources to help its creators understand their fair use rights and defend them within the local jurisdiction of the United States, users do not have tools on the platform to indicate they are attempting to exercise their fair use rights, nor does this solve the international need on the platform for others in different national jurisdictions to produce transformative content on YouTube without incurring claims or takedown requests in YouTube’s automatic rights management system. In so far as to using contents others have



made, one of the limited options available to content creators is through the use of Creative Commons licensed contents on the platform. [42]

## 2.3. Creative Commons

### 2.3.1 Background on Creative Commons Licenses

Since its manifestation in 2001, Creative Commons has been, perhaps, the most prevalent copyright licensing entity worldwide with over 2.0 billion works using Creative Commons licenses to date. [43] The nonprofit organization’s mission is to ease how knowledge and creativity are shared, legally. [44] Through a Creative Commons license, those who create their own music, art, videos, etc. can signal to others, who may want to use the work, what permissions they are willing to grant on their works. Essentially, works with a Creative Commons badge can be reused by others within certain limitations. Creative Commons, currently, offers six unique licenses for individuals who create which allows varying degrees of permission for those who wish to reuse the work. The licenses could be categorized as those which allow transformative use to “distribute, remix, adapt, and build upon the material,” and those which require the work to remain untouched in its use, “unadapted form.” All licenses require that the creator of the work is credited for their creations, “attribution.” [45] The first license is called “CC BY,” which allows the “reuser” commercial rights to use the creation in a transformative manner. [46] The next type of license is “CC BY-SA” which allows the same terms as “CC BY,” but with the parameter that the altered work must also carry a “CC BY-SA” license. The “CC BY-SA” license ensures all works stemming from the original creation continue the cycle of open usage. [47] The next two licenses, “CC BY-NC” and “CC BY-NC-SA” allow transformative use of a work, like the aforementioned licenses, with the “NC” indicating that the licenses are for noncommercial purposes. The final two licenses emphasize that the original work remains untouched in its usage, with “CC BY-ND” allowing the original works to be featured, unaltered, in commercial works, and “CC BY-NC-ND” permitting only noncommercial use. [45] Each of the six licenses Creative Commons offers aims for the creator of a work to signal to others their intentions regarding the

work's dissemination, with the caveat that the author of the work is attributed.

### **2.3.2 Public Domain**

In fact, if a creator of a work wishes to absolve all copyright claims on a work, Creative Commons offers a seventh option: to release the work into the international public domain. The Creative Commons' "CC0" or "CCZero" tool releases a work's copyrights on a global scale, where it can be used freely by others without attribution or other added stipulations. [48] If a work has no known copyright restrictions, Creative Commons offers a "Public Domain Mark." [49] Additionally, through both "CC0" and the "Public Domain Mark" the author bears no responsibility for how the work is used, and the work is submitted into a global repository of free to use works called the "Commons." [48] Ultimately, the "CC0" license and the public domain represent primarily what Creative Commons aims to do, allow free access to knowledge and creative works without legal barriers. The organization's goal of creating an accessible "commons" of available content to use and reuse freely led Creative Commons to assess its licenses based on the definition of "free cultural works." [50] Essentially, licenses marked with an "Approved for Free Cultural Works" icon indicate that a work is contributing to the creation of the "commons," which the nonprofit asserts will lead to "more open culture" than works wholly protected via copyright's "all rights reserved." In such, the "CC0," "CC BY," and "CC-BY-SA" licenses grant the greatest degree of free usage of a work, and use of these licenses promote the organizations primary goal of "free culture." The other four more limited licenses do not fall under the "free cultural works" umbrella, but Creative Commons states that their use still contributes to a free idea sharing society more than standard copyright. [51] Consequently, the Creative Commons platform strives to create network of free to use material through their licensing.

### **2.3.3 Creative Commons Design**

For those interested in granting permission to their works through Creative Commons, the platform will either recommend users to complete a two question quiz that generates a recommended license, "License Chooser," [52] or instructs the

user to upload on a platform that offers Creative Commons licenses such as “Flickr,” “Bandcamp,” “Wikipedia,” and “YouTube.” [53] The Creative Commons licenses are simple to apply to a work. All an author needs to do is select a license and communicate that this work will adhere to a certain license type. Creative Commons recommends that a link for the license type selected be included in the description of the work as well as a badge indicating which license an author has chosen. Authors also have the option of embedding the license information to a website through HTML code, [45] or showcasing the license type selected through badges that can be downloaded from the Creative Commons website. [54] Once a creator selects a license for their work, they cannot revoke or change the license, as permission to use the work has been granted. In return, those who choose to use a work with a Creative Commons license must properly attribute the creator of the work and link/reference the relevant license. Those who use CC content must provide attribution in a way that does not imply the creator of the work sanctions the user or the work which features their creation. [46] In essence, the Creative Commons licenses allows creators, authors, and rights holders to grant permissions to others seeking to use or transform existing works into their own creations, while ensuring proper attribution and intention for the use of a creator’s work. The licenses granted by Creative Commons have three design components to ensure that the licenses comply with international laws and are easily accessed. The first layer is the “legal code,” which is the legal language upholding the license to be reviewed and acknowledged by lawyers. The second layer is the “human readable version of the license,” which allows those who are not familiar with legal jargon to assess the license in an accessible manner. Finally, there is the “machine readable” part of the license, which contains the license in a coded medium so that software can easily differentiate the Creative Commons license attached to a work. [45] In order to make its licenses machine readable, Creative Commons created its own machine-readable language, Creative Commons Rights Expression Language (ccREL), so that works holding Creative Commons licenses are searchable. [55] Wholly, the design of the Creative Commons licenses ensure that the licenses are legally applicable, easily understood, and readily discoverable.

### 2.3.4 Older Creative Commons Licenses (3.0)

Yet, the licensing for Creative Commons does not end with the six international 4.0 licenses nor the “CC0” license; indeed, the platform also has earlier versions of their licenses which are recognized in local jurisdictions called “ports.” Interestingly, the local jurisdiction, 3.0 licenses, are somewhat contradictory to the international licenses it is promoting in its 4.0 iteration due to the regional use limitations of the 3.0 licenses. Despite these limitations, the 3.0 licenses are still valid and available on the Creative Commons platform. 3.0 licenses needed to be “ported” or translated into local languages as well as conform to local laws, while 4.0 licenses were crafted so that they are valid without the need for translation. The 3.0 licenses could be made international through “unported” versions of the license, but this was changed to “international” in the 4.0 licenses. To surmise, while earlier versions of the Creative Commons badges attempted to adhere to local country jurisdictions, the Creative Commons licenses of today, 4.0, have strived since 2013 to comply with international treaties and relevant conventions to overcome complications related to contradicting local laws. [56]

### 2.3.5 Retired Creative Commons Tools: Sampling Licenses

Creative Commons has various iterations of its licenses, but sometimes forms of its licenses can be retired. Even though a license is retired, it is still valid on works previously applied, however, Creative Commons has a notice recommending that reusers avoid using such licenses. [57] Of note, there are two licenses that were retired which are of considerable interest to this discussion: Sampling 1.0 and Sampling Plus 1.0. Both of these licenses required that if a work was to be re-used, it would be “sampled,” or not used in its entirety, and transformed significantly, to varying degrees. [58] The Sampling Plus page and license is still accessible. Per the license, you are able “creatively transform” a work for “commercial or noncommercial purposes,” and distribute the work in a noncommercial manner. Additionally, along with standard attribution, re-users were not allowed to use their newly transformative work in an advertisement or promotional piece if a work had the Sample 1.0+ licenses. The license also made provisions addressing that the reusers fair use rights were not infringed upon through this license and

that the owners of the work’s copyright, in terms of “publicity or privacy rights” were not influenced by the license. [59] The Sampling 1.0 license differed only in the fact that a reuser could not distribute the work. [60] The initial intention for the Sampling license was to persuade more traditionally hesitant copyright holders to allow their work into the commons in some capacity through significant transformation, yet the license did not last. [61] Creative Commons cites two different reasons why the Sampling licenses were retired. The first reason was due to the Sampling licenses being incompatible with other CC licenses; in such, the requirements for the re-used work to be transformative in nature, the noncommercial distribution, and the prohibition of using the works in advertisements or promotional pieces did not complement the less restrictive CC licenses. Secondly, the Sampling licenses were cited to have “inadequate demand” which led to their retirement in September of 2011. [57] Creative Commons goes on to justify its retirement of the Sampling licenses by stating that the existence of specific and niche licenses ultimately diverges from the goal of the commons and makes the commons difficult to navigate and use. Additionally, the vagueness of what constitutes as “high transformative” and the specific commercial elements of the license led to discrepancies in how the license could be applied and what exactly was permitted under the license. [61]

While Creative Commons deemed the Sampling licenses as contrary to their mission of creating a universal commons of ideas and sharing, the Sampling license had potential to allow content creators access and use of otherwise unusable works. There are aspects of the Sampling license, which if resolved, would make it a valuable contribution to creators. One factor which needs to be reconsidered is clarity of the terms in the license. Even in the license deed, the wording is unclear as to what is permissible under the Sampling licenses. Furthermore, in its attempts to allow broad usage, the wording in the license becomes restrictive. For example, the license allows both commercial and noncommercial use of a work if the resulting re-use is “highly transformative,” but it also allows the work to be re-used minimally, without transformation, if it is strictly noncommercial and had no distribution. These terms, while trying to create a license that could be widely applied, are subjective and limiting. Instead, both of these terms could be included in separate licenses in which a work’s creator could select on an individual basis.

Inherently, niche licenses are detrimental to the Commons, as later criticized by scholars, so creating separate licenses to address these issues was not an option for Creative Commons. Likewise, and this is the case for other CC licenses as well, there are no examples of how a work can be reused under a license. Perhaps if reusers were able to see what constituted as “highly transformational” use of a work and options for where Sampled works could be uploaded, more people would have sought to use works under the Sampling licenses. Similarly, since Creative Commons requires the owner of the work to apply the licenses, if IPR holders were educated on the Sampling license, it could be inferred that they would have wider use. The Sampling licenses lack of use was cited as a key reason for their retirement. Yet, it does not seem wholly organic for IPR holders to seek to apply Creative Commons licenses on their work, so the likelihood of applying a Sampling license to their work would appear to those who wish to keep strict copyright as counterintuitive. At the time, a Sampling license seemed nicely applicable to music since songs often “sampled” one another in order to create a new sound. However, in the age where clips of videos are often “sampled” for use on YouTube and other video sharing platforms, there is, seemingly, another use for Sampling licenses. Thus, even though Creative Commons does not recommend its Sampling licenses, the Sampling licenses could be remixed and exist under a different entity, not Creative Commons, in order to address their initial goal of attracting stricter copyright holders to allow some form of reuse of their works. This, in part, was the idea that led to my initial hypothesis and prototype on how discrepancies between IPR holders and content creators could be resolved. While the reinterpretation of the Sampling licenses was, in the end, abandoned, they demonstrate a limitation of the application of CC licenses for IPR holders and reusers. Through examining further literature on the matter, it became evident that Creative Commons and its licenses would not be able to accommodate fandoms, professional fans, and the copyrighted works they engage with online.

### 2.3.6 Scholarly Assessment of Creative Commons

#### The Purpose of the Commons, Lessig

Lawrence Lessig, the founder of Creative Commons, presents the need for and importance of CC licenses in his 2004 paper, one of many published to assert the importance and need to have adaptable copyright law for the internet age and for derivative works. In his paper, Lessig argues that creativity is a result of derivative works to a big extent, especially on the internet. Lessig states, “Every act on the Internet is a copy. Every act in a digital network produces a copy. And that simple architectural fact means that the scope of copyright regulation has changed dramatically.” [62, p.6] In the past, Lessig notes that traditional media has benefitted significantly from being able to adapt works from the public domain, like Disney and its reinterpretations of Grimm’s Fairytales, yet these traditional media outlets now seek to create strong restrictions on their own works. The current copyright regime has been formed and manipulated to create protective creative monopolies instead of creating a space in which creation can thrive, which is cited to be the intent of copyright law. Lessig states that the Creative Commons platform aims to find the middle ground between “all rights reserved” and “no rights,” building “a layer of reasonable copyright law.” [62, p.11] Through using Creative Commons to balance overly protective copyright regimes with free to use content, Lessig strives for Creative Commons to lead to a new type of creativity that permits the prosperity of derivative works, known as “free culture.” [62, p.12] Conclusively, Lessig defends the existence of the commons as a means to combat unsatisfactory copyright law. Unlike Lessig, I do not think the commons alone will be able to overcome the issue of inadequate copyright law. As seen in further literature, scholars have detected both strengths and weaknesses with the system. All in all, there are no CC licenses that could be adapted for the unique needs of IPR holders for the purpose of tackling a unique copyright issue on YouTube. Since this would require stipulations against the Creative Commons ideal of “free culture,” the proposed system cannot exist under the Creative Commons framework. Much like the copyright laws Lessig criticizes as outdated, Creative Commons—whose baseline licenses were created prior to YouTube—has to be remixed to tackle IPR discrepancies on social media platforms.

### **The Benefits of CC Licenses for Licensors, Kim**

This is not to say that the system is entirely faulted, as those who do apply licenses to their works reap evident benefits. In a mixed-methods study, which surveyed/interviewed CC licensors and analyzed licensed works, Kim, illustrates the usefulness of CC licenses for digital copyright protection. In assessing the private interests of those utilizing CC licenses, Kim found that individuals used CC licenses since they were readily available and simpler to adapt than drafting a license for themselves. Those surveyed carried many similarities to professional fans and fan work artists, which are later discussed, with 71.81% percent of those surveyed stating their initial reason for obtaining a CC license was for the passion of creating/for fun or as a hobby. Like scholars of fan works have noted, there was a norm among CC licensors to add noncommercial elements to their licenses. In fact, the study finds, along with creating for leisure, that those who chose to use CC licenses on their work did so with the intention of using the CC license as a means of disseminating their work and building a reputation. As 50% of those surveyed made some income from their own copyrighted works, using a CC license on a percentage of their works showcases their commercial viability to potential consumers. [63] Through Kim's assessment, it is evident that third-party licensing entities like Creative Commons can be useful for those who create copyrighted works as the licenses allow more engagement and use of those works. In the later discussed design, this is further validated through interviews and surveys.

### **Drawbacks to Staying within the Copyright Regime, Dusollier**

Juxtaposing, in criticism of the mechanics of Creative Commons, Dusollier argues that Creative Commons' goal of circumventing existing copyright laws to create a balance to restrictive copyright regimes is hypocritical as Creative Commons functions and uses the same binding language as the existing law. By working through contract centric licenses, CC further restricts reusers to the parameters of the copyright owners and further entrenches that all created works can be owned, bolstering the current copyright regime's idea that intangible things have exclusive rights. By working under the current copyright regime and utilizing the same "tools" as copyright owners, Creative Commons fails to accomplish its goal of reinventing the copyright regime. Dusollier further argues that the



standardization of the Creative Commons licenses has led to no alternative for individual creators to assert their rights, and that copyright itself—meant as a law to protect individual creators—might be perceived by individual creators as an antagonistic element to their works. Overall, Dusollier states that it is copyright law, itself, that must change and that Creative Commons “should never be a substitute for the law.” [64] While Dusollier’s argument that systems that use the tools of the oppressors will not result in revolutionary changes within the current regimes, prove compelling for rewriting copyright law, it is through the same legal language and structures that private enterprises can provide clarification in cases where the law is unable to accommodate specific circumstances. Indeed, where Dusollier’s statements prove most relevant to this design is that there is no current alternative to Creative Commons licenses when it comes to allowing use of one’s owned works. As anticipated in 2006, Creative Commons has now become the prevailing standard that provides individuals with the ability to exert control over the way their works are utilized in the online sphere.

### **Permissions Culture, Flew**

In further criticism of the system, in 2005, Terry Flew warned that Creative Commons could lead to a “permission culture” where those in creative capacities would only be able to create with the permission of powerful IPR holders or the permission of past creators. Flew indicated that there existed a market imbalance between IPR holders and creators, creating a discrepancy where original creators are focused on reaping sole benefit of the IP instead of reaping “the social and economic benefits derived from collaboration and sharing.” Furthermore, Flew compares Creative Commons licenses as an alternative to having creators engage with Digital Rights Management or copyright law,. Regarding Digital Rights Management, Flew noted that it was overreaching, and argued that the laws currently dictating rights management online (i.e. the DMCA) are poor public policy. In all, Flew states that creative industries are dictated by copyright and should be known as the “copyright industries” for how rights holders ultimately dictate the dissemination of creative content. [65] Indeed, Flew’s predictions of creators limited by powerful IPR holders through permission culture was not far from current creation conditions.

At present, permissions are difficult to gain but derived contents are rampantly available online. With strict copyright regimes on user generated platforms, one can argue that Web 2.0 is a space of permission culture without IPR holders granting any permission. Therefore, IPR holders still hold an advantageous position over derivative creations, and it has become evident that it is necessary to create a system whereby permission can be granted to adapt copyright systems on platforms and to ensure creativity can thrive among their creators. In light of current copyright practices on platforms, a permissions culture—to some extent—would not be a negative addition; rather, it would lead to more public creation online as creators would not have to create under the threat of a copyright strike or claim. Furthermore, in a later article in 2015, Flew, in echoing Cunningham (2013), states that copyright protection is not effective, alone, in protecting creativity, rather, there is a need for “innovative new business models” to tackle issues of piracy and copyright infringement in the digital sphere. [66] In such, Flew evolves to embrace private remedies for legal discrepancies. While Flew’s concerns about a permissions culture prove valid, the situation at hand calls for innovations which can improve the overall copyright situation online. In consideration of these insights from this particular creative industries scholar, the “innovative new business model” proposed plans to integrate those who view copyright as privately owned will be able to be accessed, in a limited manner, by those who believe IPs should be publicly circulated in an effort to increase creativity on digital platforms.

### **The Transaction Costs of Obtaining Permission, Elkin-Koren**

Elkin-Koren also provides further insights on the effectiveness of CC under current copyright regimes. Like Flew and Dusollier, Elkin-Koren also agrees that Creative Common’s reliance on existing copyright norms further strengthens restrictive copyright practices which embolden IPR holders to consider their works as property and leads to creators needing to seek permission for each resulting work. Elkin-Koren states that there is a high transaction cost when it comes to currently securing permission for copyrighted work for both the person seeking permission and the copyright holder as lawyers would have to be involved for the purpose of defining the language of an agreement. With such high costs, including substantial financial cost for the individual creator approaching a rights holder,

further creative output is diminished; however, with CC licenses the transaction cost of attaining permission is reduced. Elkin-Koren goes on to emphasize that the confusing nature of copyright makes it beyond inconvenient for a layperson to deduce the scope of their rights, stating, “Individual users, who never intended to make copyright their business, may find it difficult to compete with industries that specialize in commercializing copyrighted materials.” [67, p.13]

Elkin-Koren’s claims have been substantiated through copyright challenges on YouTube, where individuals who have no intention of becoming copyright experts are frequently compelled to familiarize themselves with copyright regulations to safeguard the longevity of their channel on the platform. In such, it can be further argued that confusing fair use, fair dealing, and guidelines also strengthen the copyright regime as the average creator cannot be bothered with attempting to interpret legal jargon while balancing creating new content. Many creators noted, subsequent in this thesis, that this legal impetus and confusion has led them to completely stray away from using other’s works; thus, strengthening the copyright regime and reducing creative output from derivative works. As Elkin-Koren states, “For creativity to thrive, creative works must be shared and individuals must be able to freely engage with them, to create new meaning,” [67, p.12-13] thus platforms and rights holders who enforce restrictive copyright practices are limiting the creative output of user generated content. There is a need to create a means in which permissions granting transaction costs are further lowered, and a space in which copyright issues can be translated and easily understood by the average person. Lastly, Elkin-Koren argues that if copyright regimes remain stagnated in their adaption to the modern age, then owners must exercise their rights in a different manner to create change in the system. [67] Therefore, a system that addresses the aforementioned concerns would prove quintessential in changing the copyright regime itself.

### **Moral Rights Under Creative Commons, Giannopoulou**

In regards to Creative Commons and moral rights, which is essential to the copyright laws of many countries including Japan, Giannopoulou assesses the CC licenses effectiveness of protecting moral rights of authors. In an era of user-generated content, the ability of others to easily access preexisting works and

create new expressions of such works is contradictory to moral rights. According to Giannopoulou, “The conceptual framework in which moral rights have been conceived and developed, breaks down with the expansion of user-generated or transformative works.” [68, p.2] Insightfully, Giannopoulou states that moral rights are difficult to exercise in the digital sphere due to the interaction between various countries and their assorted national legal frameworks. In essence, the moral rights and copyright of an original author to their own work and the moral rights and copyright of the re-user to their own creation are at odds. This legal contention and ambiguity of transformative works has led to platforms seldom permitting these works due to their legality on an international level being scarcely viable outside of local jurisdictions. Giannopoulou goes on to elaborate that Creative Commons provides some stipulations that appease both moral rights and copyrights, primarily the right to be attributed. However, through the Berne Convention, at minimum, rights safeguards should include the right to attribution and the right to integrity of a work. Giannopoulou argues that Creative Commons provides the attribution aspect, but the right to integrity is waived when a creator chooses to use a CC license. Indeed, Giannopoulou argues that CC licenses weaken the international copyright of an author through this moral rights paradox. The little legal precedent of Creative Commons fails to protect moral rights within the framework of the CC licenses. [68]

As maintained by Giannopoulou, the preemptive permissions granted by the original creator of a work discounts the right to integrity of the work as they cannot revoke the license once applied nor reject subsequent derivative works. Mainly, Giannopoulou suggests that the most suitable means of incorporating moral rights into the CC licenses is to create a provision illustrating the author’s moral rights without being able to act upon those rights. Interestingly, the author concludes by stating that CC licenses act as a guiding principle for the author’s intent of a work instead of a means to revoke their rights of a work. [68] It appears that considering Giannopoulou’s argument to integrate moral rights into CC licenses, there is an apparent alternative which could alleviate the issues presented. The moral rights of an author and the ability for others to access and use those works without infringing on those moral rights are often echoed in an IPR holder’s guidelines. Through guidelines, which are guiding principles provided by an original creator,

the issues of jurisdiction online are also resolved as guidelines are upheld between a user and creator, as well as often having stipulations noting the original owner's moral rights to a work. In short, Giannopoulou's paper provides evidence that guidelines, as guiding principles, can both protect the moral rights of an author while allowing transformation of a work, where CC licenses is unsuccessful.

### **Restrictions when Licenses are Compounded, Katz and Hagerdorn et al**

More constraints of Creative Commons are apparent when content featuring various licenses comes into play. Katz notes that the limitations set by CC licenses are multiplied when combined with one another, creating great restrictions on re-users. Katz argues that the proliferation of the licenses through the "share-alike" feature positions re-users in increasingly restricted positions. Ultimately, Katz warns that the licenses could shape the means of how creative works are distributed. [58] Notably, in Katz's study, the significance of examples illustrating how provisions become more restrictive when compounded cannot be overstated. Likewise, Hagerdorn et al discuss that one weakness of Creative Commons licenses is the limitations of the noncommercial licenses. [69] This highlights an important potential weakness of a design that heavily relies on licensing or permissions for the use of works, as discussed later. Specifically, in the context of fan works, where fans will curate video collections featuring various IPs they enjoy, the limitations of mixing licenses or permissions could become particularly pronounced with clashing constraints leading fans to create within the most limiting of permissions options.

### **The International Success of Creative Commons, Garceleon, Dobusch and Quack**

In support of the Creative Commons framework, Garceleon is a scholar who is of the opinion that Creative Commons licenses expands fair use. Through his analysis of the establishment of the company and the licenses as a reinterpretation of Open Software, Garceleon notes that the licenses allow individuals and small enterprises to participate in distribution markets where they would otherwise have to compete with the resources of large companies. Consequently, Garceleon ar-

gues that Creative Commons has the potential to change the copyright system on a grassroots level. [70] Similarly, Dobusch and Quack, explore the ability of Creative Commons licenses to overcome the limited authority of international copyright through its grassroots movement. As noted in their working paper, Creative Commons became a cross-border movement with its incorporation of ported licenses. Intriguingly, the Japan branch of Creative Commons was the first to translate and create a port license for the country in 2004. [71] In fact, the Japan branch of CC has supported the licenses since their inception—even holding an international summit on CC licenses in 2008 [72]—and continues to do so to this day. [73] Moreover, since ported licenses are written in a country’s specific national language, the license is only uniquely applicable within the country’s jurisdiction. Therefore, CC does not offer only six types of licenses, but several through the ported licenses. [71]

Those who create ported licenses operate under a memorandum of understanding which dictates the standards of porting a license to CC volunteer lawyers. Dobusch and Quack state, “By porting the license Creative Commons is effectively (trans)porting its ideas and concepts as well as building an international community of (legal) experts.” [71, p.21] The paper concludes that Creative Commons’s success came from its ability to evoke similarities to a social movement through its call to change the copyright regime, and through the ability of the licenses to reach international levels via porting. For the purposes of understanding the effectiveness of a licensing system as a design framework, Dobusch and Quack provide insights on how CC licenses are able to succeed on an international level. While the grassroots movement elements of CC allowed it to prosper despite transnational jurisdiction issues, the ease of integrating the CC licenses into other languages was important for their proliferation. In the later discussed design, the reliance on guidelines, while solving many of the transnational issues, also brings into focus that many of these guidelines are only available in English. If a design like the one proposed is to make an impact in a borderless internet, being able to apply the parameters in multiple languages will be necessary to ensure the system is used on a widescale and increase its effectiveness.

### 2.3.7 Other related organizations and platforms

#### Organization for Transformative Works

The Organization for Transformative Works is an organization focused on preserving fanworks through various means. [74] Under the organization there are five projects focused on preserving fan works historically, legally, and academically. [75] Of note, the organization participates in legal advocacy to promote the transformative and fair use attributes of fanworks. Particularly, the legal advocacy division of the organization aims to build a legal precedent for the existence of fanworks under fair use. One goal is to obtain a legal exemption for noncommercial remixed works through the DMCA for fan works distributed physically and online. Through submitted petitions to the Copyright office and various letters, the organization is attempting to make changes to the DMCA. Additionally, the organization submits comments, testimonies, and letters to governments to protect noncommercial fan works; likewise, the organization also files briefs for cases concerning copyright law, fair use, freedom of expression online, and right of publicity laws in the USA. Lastly, the organization disapproves of, and has filed petitions to end, a trademark that would give ownership of a fandom to a particular IP. [76] The organization argues that fandoms cannot be trademarked as they are a “cultural phenomenon” and not an inherent result of an IP existing. [77] Like Creative Commons, the OTW has a primary grassroots element attempting to change copyright law on a legal and policy level to accommodate fan works. While their work is commendable, changing policy is a slow process in an age where online trends are endlessly changing. To assist in facilitating their ideal of creating a legal framework that can accommodate fan works, the later mentioned design can provide evidence of fan works being used in a fair use capacity and assist in making a case for the existence of fan works within the legal framework.

#### Audio Commons

There are also other organizations working towards creating systems for the use and reuse of audio. The first organization is Audio Commons, which creates ease of access to audio available in the public domain and under CC licenses. The organization aims to allow the integration of these audio within the creative indus-

tries by facilitating their discovery to industry professionals. The proposed Audio Commons would feature a beneficial system where creators can have their content easily discovered by industry professionals, giving those creators experience and validation for their works, while the reused works by industry professionals also becoming available for reuse within the platform. Similar to Creative Commons, the Audio Commons plans to use metadata and descriptors to organize the database that allows creators and reusers to access the commons with ease. [78] The creators of the system trust that the Audio Commons will “have an impact on the digital value chain that connects content creators and content users and which currently follows the traditional model that has not yet been adapted to modern communication society.” [78, p.6-7] Thus, like the authors of the Audio Commons note, the success of new platforms relies on a steady user basis. The Audio Commons endeavors to achieve this through a creative feedback loop, which could be similarly applied to the later noted design.

### **Epidemic Sound**

Another service which allows free use of music is Epidemic Sound. This paid subscription service has been adopted by many content creators in order to subvert copyright claims on their videos. Epidemic Sound provides access to royalty free music and sounds through a subscription service. Those who subscribe to the service can access music and sound libraries that are owned by the company. A subscription warrants users a direct license in which they do not have to pay additional royalties. [79] In this case, the free to use license is purchased through a subscription. The type of subscription dictates how many social media channels can be registered with the system. [80] Overall, Epidemic Sound’s subscription model provides an insightful means of how to create licensing systems that can be monetized successfully and in a way that is marketable to content creators. The latter mentioned design is inspired by the account association method of encouraging different tiers of subscription, like Epidemic Sound, to propose a means of monetizing the prototype.



### **Badges as a Reward for Fans**

Additionally, when considering different applications of badges in fan communities, a study by Liang and Shen, demonstrates a system in which Chinese fans were able to support their favorite idols through earning a digital badge. To earn the badge, fans had to buy a hundred or more albums, which increased their credibility of being a staunch supporter of the idol in their online profiles. The badges, according to the study, gave fans a sense of participation in the success of an idol and profited from the emotional capital of fan communities. This particular badge system led to increased repeat business from fans and greater overall brand loyalty to the idols involved. All in all, systems that exploit the emotional capital of fans in turn see positive net returns for increased fan engagement. [81] Therefore, badges have the potential to illicit credibility and increased fan loyalty among adamant fans through allowing condoned fan activities.

### **DMCA.com**

Finally, on the opposite end of the spectrum, there are services that aim to reinforce the propriety angle of intellectual property. Owned and operated by a private company, Digital Millennium Copyright Act Services Ltd., DMCA.com is the antithesis to Creative Commons. Established in 2010, this website offers one badge that companies can feature on their websites or IP which indicates they are a subscriber of the website. Those subscribed hire the company to issue takedown notices to anyone who chooses to use material with a DMCA badge. They aim to build a community centered around online protection and offer plans to anyone who makes content. [82] DMCA.com's business model is to offer takedown notices to those who use content featuring a DMCA.com badge without having to pay the service. By embedding the badge to the code of a website, website becomes registered with the DMCA.com takedown system. The verification process takes 30 days, in which DMCA.com will then be able to issue takedown notices on a user's behalf. [83] DMCA.com, while seemingly prioritizing protecting websites, advertises that it will remove images, text, video, audio, and copied products on a badge for a user. [84] This website is an example of using existing copyright laws to protect and limit creators online. While the service can be beneficial to someone who wants to protect their webpages, it is not apparent that this website

would even consider fair use and would issue a DMCA takedown notice for transformative works. Overall, the DMCA.com badge limits creativity online; however, it does show that aspects of copyright law can be monetized and translated into a business practice which is seemingly profitable in the long term.

## **2.4. Influence of Copyright on YouTubers, Fandoms, and Creativity**

### **YouTube as Transmedia, Cunningham**

Cunningham (2013), explores in a highly cited book, how policy influences the creative industries. In a chapter exploring YouTube as a platform, Cunningham attributes the merging of informal and formal economies, particularly, the content distribution economy, for the rise of content creators as a profession. In fact, Cunningham argues that the innovations of Web 2.0 challenge traditional media—like the emergence of television was for the film industry. [85] It could be that this challenge to traditional media leads IPR holders to pursue and protect their contents online as they view YouTube, overall, as a market competitor more aggressively. This, in turn, negatively affects individual, passionate creators who want to engage with traditional media IPs as they had done so prior to the advent of the internet. Traditional media’s attempts to create a semblance of control over their contents rather than organically adapting to the new age of media could prove, historically, fatal—as those who fail to adapt are often left behind.

However, as further stated by Cunningham, in the case of television, it eventually bolstered the traditional film model as “transmedia” where different versions of a story featured in a movie are reinterpreted for serialization on television or novelization. As self-containing stories, new transmedia becomes an entry point for new fans, which Cunningham argues is an emerging trend for content on Web 2.0. [85] This could be argued as a case for fan works on YouTube as the stories from major IPs, in turn, become transmedia when communicated among fans, where theories take a life of their own, and where the elements of the story transform and grow through discourse online. As this type of transmedia is currently threatened by increased assertions by IPR holders on the YouTube platform, it

is a pertinent reminder that YouTube and fan works, as a transmedia entity, are a conduit for new fans and consumers to emerge for existing franchises. Thus, while not entirely sanctioned by the official IPR holder, individuals making creations based on existing works stand to benefit the IPR holder they are ultimately discussing.

Cunningham further states that user generated content on social media has challenged copyright regimes. Through analyzing the emergence of YouTube's Content ID system, Cunningham notes that YouTube was able to avoid the same fates as Napster and Lime Wire by implementing a copyright framework on the platform, which persists as a motivator for strong copyright protection regimes on YouTube, at present. In fact, Cunningham further mentions that Creative Commons served as the inspiration for YouTube's monetization and shared revenue attributes through the Content ID system. Without the Content ID system or Partner Program, as argued by Cunningham, the professional content creator would not exist. Yet, it is through these systems that YouTube has become an enforcer of the proprietary view of creative works, and through these systems creators become limited in what they can produce. In this instance, Cunningham emphasizes that risk management has been at the forefront of digital platforms' and IPR holders' actions online, noting "It [social media] is a space where copyright control regimes are less important than socially networked touchpoints into multiple potential markets; where weak intellectual property (everything can be replicated rapidly by competitors) means rapid exploration of new ways to manage risk." [85, p.80] Instead of IPR holders focusing on how to best utilize Web 2.0 for expanding into new markets, risk management has taken the dominant position of asserting copyright online. Cunningham concludes that it is necessary for Web 2.0 and traditional media to "co-evolve," [85] yet with the advent of Web 3.0 it appears that copyright regimes have yet to evolve even to adapt to the digital age, let alone a new era of it. Without facilitating co-evolution through innovative applications of existing copyright law, creativity on platforms, like YouTube, will continue to be dictated by IPR holders and not the creators that substantiate the content on the platform.

### **A Case for Platform Specific Copyright, Goodyear**

In a similar study of user generated content, granted through blog posts, Goodyear investigates the effectiveness of fair use in the digital age. The author asserts that fair use laws do not account for the digital age and that modern fair use should be defined based on individual platforms, for example, blogs. Individual users are left highly vulnerable as they do not have the legal or financial resources to combat potential statutory damages if they are accused of infringing on an IP's rights when trying to follow fair use. While the internet age has led to the rise of people using IPs through fair use, there is also an increased ability of the copyright owner to find those who have used their works. This has led to a phenomenon called "copyright trolling" where an author aims to gain more financial benefit by bringing a reuser to court rather than "selling or licensing their work." Bringing reusers to court over statutory damages can lead to the author of the work gaining more financially than the original work warranted. The author goes on to discuss what constitutes fair use. According to the article, the greatest factors for determining if something falls under fair use via case law are how transformative the resulting work is and whether it impacts the market. In regard to market impact, Goodyear states that noncommercial elements play in favor of fair use, but gaining revenue—even derived from ad sense—makes it more difficult to determine if fair use was evoked. This is often weighed in terms of whether it was the use of the IP that generated traffic, or the poster themselves. Reusers can overcome having to post their content as noncommercial and earn monetization if the reuser can prove there "was no actual market" initially. As in an example cited by the author demonstrated, "posting the first few lines of an article and linking to the full original article did not dilute the market even though it was a commercial blog." [86, p.35] Only when the work is licensable does the commercial argument falter as it provides unfair market advantages to the reuser wherein others would have to pay for the same use. However, fair use is subjective in nature and each case requires its own scrutiny. The author proposed that, instead, fair use should be evaluated based on the context of which platform was used to distribute the disputed work. Conclusively, Goodyear elaborates that platform specific fair use practices would lead to a "greater adherence" of fair use rather than individuals attempting to navigate the complicated legal nature of

fair use. [86]

Goodyear’s description of copyright trolls is further echoed by the experience of YouTuber’s facing similar experiences with copyright claims on the platform by third-party claimants, which is later explored in interviews with YouTubers. Likewise, YouTubers face their eradication of income when incurring copyright claims or infringement notices on the platform. With no means to defend themselves against the automatic systems, content creators following fair use practices find themselves defenseless—legally and financially—to uphold their fair use rights against a barrage of claims from both IPR holders and so-called-parties acting on their behalf. In fact, the design intends to solidify that works on YouTube benefit the IPR holder directly by promoting and engaging a new audience. As an aspect of this design is to embolden fair use practices, Goodyear’s insights into fair use on blogs can effectively translate to practices on YouTube. Indeed, the content this design intends to preserve is both transformative and does not impact the market of the IPR holder. In satisfying Goodyear’s call for platform specific considerations of copyright exceptions, the platform proposed provides a means in which YouTube specific fair use practices could be applied and upheld within the platform’s fair use policies and be preemptively argued on behalf of a content creator. Furthermore, the standardized method in which all reusers could access and benefit from a work would prove valuable to arguing the commercial viability of fair use resolves potential market impact criticisms reusers face, as cited by the author. Most importantly, by having the design link back to the original owner’s content, the design does not “dilute the market” as shown by the example of the blog linking back to the full original article.

### **ContentID, DMCA, and YouTubers, Solomon**

Like blog posts, YouTube is heavily under the jurisdiction of the DMCA. In consideration of this, Solomon explores how the introduction of the Content ID system manifested through YouTube’s application of DMCA. Solomon notes that the DMCA was written to account for Web 1.0 and did not anticipate the age of user generated content. Furthermore, Solomon states that the DMCA favors rights holders, not the independent users who engage and create the majority of the content on YouTube. [87, p.238] Through this author’s analysis, Content ID is

found to flag videos as copyright infringement without considering the context of the video. In such, Content ID and other automated systems threaten individual creators with the possibility of incurring legal detriments and invalidate the purpose of the copyright law—which is to promote creativity. [87, 238-239] Without a standard for fair use practices, court rooms with their high transaction costs, are the basis in which fair use is determined. Thus, the DMCA, which doctrines YouTube’s Content ID system and takedown removal notices, primarily benefits mass media copyright holders. Yet, since traditional media no longer dictates the cultural zeitgeist, copyright advantages have allowed rights holders to suppress and manipulate their competition, user generated media. Despite case law mandating copyright holders must take into account fair use, the sheer number of videos uploaded to YouTube makes it a daunting task for both the IPR holder and YouTube. Therefore, the only means for those on YouTube to assert they were in their fair use rights is to risk incurring a legal battle with a rights holder through the counternotification system.

Content ID’s automatic application to videos means that rights holders can benefit from claimed revenue on a video regardless of how proportional the use of their copyrighted works was within the video. As a result, the author suggests that rights holders should receive compensation in proportion to the length of their copyrighted material used in a video, rather than for the entire video. Solomon proposes the inclusion of a provision in the DMCA that allows rights holders to monetize a video by claiming compensation for the specific copyrighted content used. In sum, the author argues that Content ID infringes on user’s fair use rights and through amending the DMCA, YouTube’s policies will change to allow more fair revenue sharing practices between YouTubers and rights holders. [87] However, as stated before, amendments to the law take time and it is up to private interpretations of existing laws which will result in the most profound and expedient change. Solomon also fails to account for the international use of YouTube and how amending the DMCA would only provide benefit to content creators based in the United States. Thus, the DMCA does not have to change to accommodate this law, YouTube could provide such a change on their own. Nonetheless, YouTube does not want to change this policy and it will be up to individual agreements between YouTubers and rights holders which will incur such

a proposed proportional change, promisingly through microlicenses.

### **Copyright and Fan works, Tushnet**

In the case of scholarly works addressing the importance of fandoms and fan works, which could include the work of AniTubers and other professional fans, Tushnet reviews fandoms in respect to their relationships with copyright owners. Like other authors, Tushnet argues that when copyright owners aggressively accuse fans of infringement, fans may choose to hide or cease their activities rather than confront legal penalties. This could, in turn, prove detrimental to the copyright owner since fan works benefit the persistence of fan communities and fan interest. Tushnet contends that fan works are not detrimental to the market of original works; instead, they foster loyalty to the source material, as seen with doujinshi in Japanese fan communities, and implies that an IP's fan friendliness could in turn support consumption of the IP. Tushnet goes on to express that fans exist within their own "information ecology" where long-time fans, archivists, and community managers serve as conduits of engagement for new fans and instill norms, like that of attribution, to create a thriving fan community. Fan works, being non-canonical in nature, therefore cannot substitute for the official versions of the works, but rather increase the appetite for more content. The author emphasizes that fans do not seek to disrespect property rights, rather they are driven by a motivation to share their creativity amid existing materials. While Creative Commons licenses support attribution norms in fan communities, Tushnet makes note that there is no CC license for fan works and therefore fans must take it upon themselves to properly attribute copyright owners without recognition from those owners. Since dedicated creators will always find ways to circumvent digital rights management and share their creations, Tushnet suggests there should be a legal means for fans to share their work without infringing on the IP owners' rights. [88]

### **Copyright Norms in Fan Communities, Fiesler**

To further evaluate fandoms on user generated platforms, Fiesler's insightfully recollects the copyright norms in fandoms and explores the evolving landscape of derivative works, which have blurred the distinction between legal and infringing content. Fiesler notes, within fan communities, norms of noncommercialism

and attribution have emerged out of shame and self-policing, driven by respect for copyright owners, especially in fan fiction circles. Fiesler argues that social norms prevalent in fan communities, such as the norm of accreditation, serve as a source of clarity in the gray areas of law, particularly concerning fan works. The inherent close-knit nature of fan communities, fueled by the desire to share creations with fellow fans, remains resilient even as fan works gain mainstream recognition, like in the case of *Archive of Our Own*. However, fans face challenges when deciding whether to share their work, as interpretations of the law, ethical judgments, and community norms often differ. The lack of knowledge about legal rules and policies contributes to fears of copyright repercussions, even when fan creations fall within fair use rights. The dissemination of incorrect information on platforms like YouTube further compounds misconceptions about fair use. Unclear and difficult-to-interpret Terms of Service exacerbate this problem, leaving content creators unsure about remixing others' works. YouTube's enforcement methods, such as assigning a copyright violation for a video within fair use inadvertently discourages remixing despite it being within the rights of reusers. Unsurprisingly, many fan creators view YouTube as a daunting platform to post their content. Consequently, Fiesler's research further demonstrates that remixers who possess a better understanding of copyright law are more confident in their rights and face fewer inhibitions. To address these issues, the author proposes several suggestions for platforms, including simplifying copyright policies, establishing monitored spaces for legal inquiries, incorporating fan norms into platform policies, and integrating copyright knowledge into content uploading tools. While YouTube struggles to strike a balance between protecting copyright holders and fostering transformative creativity, noncommercial fan works, conclusively, appear to face less scrutiny. [89]

### **The Evolution of AniTubers on YouTube, High**

As to how these systems effect YouTubers engaging with Japanese IPR holders, High explores the history of anime YouTubers, who make fan works and fan reviews of anime on the platform. Through analyzing the history of AniTubers and interviewing 24 AniTubers in 2020, High establishes how the phenomenon has grown from fan activities to professional careers for individuals on the YouTube



platform. As High recounts, in order to fill a demand not met by Western media outlets to discuss Japanese cultural products abroad, fans turned to YouTube to cater to their own communities surrounding a Japanese IP. AniTubers played a crucial role in maintaining the popularity of anime in the West by accessing content that was otherwise inaccessible to general audiences. Through their discussions and analyses of these contents, they sustained interest in anime and manga, even when distribution in Western countries was limited. However, the landscape changed with the advent of dedicated streaming services that made anime more widely available, leading AniTubers to shift their video styles from vlog-like reviews to incorporating more contextual elements from the shows themselves. This allowed viewers to understand critiques without having to co-consume the intellectual property, as they could rely on borrowed visuals and clips. Moreover, AniTubers began to include broader cultural context in their videos to frame their critiques and explore larger ideas, such as social implications and gender roles. The interviewed AniTubers noted that their audience desired deeper and more detailed analyses due to their existing deep investment in anime, making basic reviews insufficient. To cater to these demands, AniTubers needed to stay informed about ongoing topics in the anime industry and provide thoughtful commentary. As further detailed by High, while entry-level AniTubers initially produced simple vlog-style reviews, the trend shifted towards integrating commercial aspects into their works. [90]

In High's further analysis, the rise of YouTube's partner program enabled AniTubers to become entrepreneurial and profit from their content through various business schemes, including ad revenue and sponsorships. Creators outside of niche fan communities began to recognize the potential for participation in the user-generated economy on YouTube and found their way into AniTubing, seeking to fill gaps in the market. While these creators may be traditional fans, their motivation to discuss IPs is also driven by a desire for financial gain. This shift towards monetization has transformed AniTubing from a participatory fan culture to a commercial culture. AniTubers now create works under the influence of factors such as the YouTube algorithm, popularity metrics, and the platform's ability to connect them with fans and advertisers. The popularity of an anime or manga directly impacts the financial viability of an AniTuber's video, as more

well-known titles are likely to generate more views compared to lesser-known ones that the AniTuber may personally be interested in. As a result, according to High, AniTubers must adapt and shift their content to stay relevant once a particular anime season ends. Through interviews, High deduced that higher metrics, such as view counts and engagement, contribute to an AniTuber's perceived credibility, especially when it comes to reviewing anime. This enhanced credibility attracts sponsorships, which serve as a critical source of revenue for YouTubers. Surprisingly, High notes that anime and manga-related companies sometimes recognize the value of participating in the user-generated economy and sponsor AniTubers. However, this sponsorship also raises concerns about the credibility of larger AniTubers' reviews, as they are receiving money from the entities they aim to critique. To maintain some form of credibility independent of anime content, AniTubers have shifted towards personality-based content, where relatability and cults of personality uphold their views on various topics. This shift allows AniTubers to sustain their channels without relying solely on external works like anime. [90]

In accordance with High's detailed depiction of the history of AniTubing, while some scholars view the rise of commercially viable fan activities as the demise of noncommercial participatory fan culture, AniTubing demonstrates many of the social norms associated with fandom communities. AniTubers engage in discussions and share best practices within communal spaces like Discord, addressing ongoing issues in the AniTubing community. As AniTubing filled the void left by traditional media outlets in catering to niche subcultural communities, it has gradually adopted elements from traditional media models to ensure its continued growth. However, there are also instances where AniTubers focus on creating niche content and fostering community engagement that goes beyond catering to the YouTube algorithm, resulting in slower growth compared to other AniTubers in the realm of social media entertainment. High argues that AniTubing is a highly time-consuming endeavor, requiring extensive consumption of content, research, and long-term engagement with their communities in order to establish a sustainable presence on YouTube and generate a full-time income. In conclusion, High posits that AniTubing has evolved into a branch of the anime market economy, going beyond mere fan works and becoming a commodified entity sustained through sponsorship from more traditional anime media industry entities and the

social media entertainment industry propelled by YouTube and its Partner Program. [90]

### **Monetization of Content Made by AniTubers, Kellet**

Similarly, in Kellet's thesis regarding AniTubers, the author essentially focuses on monetization practices on YouTube regarding fan works. In a similar methodology to this thesis of interviewing fans and content creators, Kellet argues that defending fair use and transformative content has been the biggest impetus for creation on YouTube among AniTubers. To mitigate this issue in the past, AniTubers would flash disclaimers advocating that they were within their fair use rights to comment on a topic and that they did not own the content being featured. Despite these attempts, many AniTubers' review or list type content that were under much copyright scrutiny became a victim of the automatic systems and algorithms dictating the platform, with these creator's content no longer appearing to their subscribers. Through interviews with AniTubers, Kellet illustrates that algorithms and automatic systems dictate what type of content creator's make, otherwise their works could become undetectable to potential viewers. Even when automatic systems are not considered, Kellet further indicates that AniTubers who make content that is low effort, like reaction content, are viewed poorly by the fandom. AniTubers who put in the effort to provide insightful commentary are viewed as more authoritative and trustworthy by fans. Fans have a norm of recognizing transformative work as valuable and contributing to the fandom. In an age where YouTubers can gain direct monetization from views, fans view their content in how the creators' profit from their engagement. In such, content creation, according to the creators Kellet interviewed, is considered an unreliable means of income as platform-wide policies can impact how videos are monetized instantaneously. [91]

Through High's insightful analysis of the AniTubing community, it is apparent that YouTube has been a beneficial aspect for the Japanese contents market, despite AniTuber activities often failing to fall under Japanese copyright law. The rise in copyright strikes on AniTubers could be a result of the availability of anime content in Western markets through Crunchyroll and other streaming websites, transforming the role of AniTubers from redirecting fans to purchase physical

media to watch contents, but directly in competition with online watch time for streamed anime. As High illustrates, that AniTuber content is transformative in nature and brings new fans to watch new anime content. Yet, with the introduction of the YouTube Partner Program and the ability of fans to gain monetarily from what was traditionally seen as noncommercial fan works, Japanese IPR holders view this as individuals profiting from their works—despite the transformative nature of the content. Furthermore, it is evident from Kellet’s thesis that AniTubers face unstable careers on YouTube as their content is centered on copyrightable media. Individual attempts to mitigate copyright restrictions through disclaimers proved underwhelming, showcasing a need for a standardized system recognized by IPR holders in which any fan can provide disclaimers for following fair use properties—or even following guidelines. Furthermore, Kellet’s thesis suggests that fans value higher quality content that exhibits effort—reinforcing the Lockean perspective of copyright that labor is a key characteristic of original works. By providing a standardized means in which AniTubers can assert their rights, using a recognizable icon that can be detected by automatic systems, and encouraging transformative content through guideline adherence, the further introduced design can address many major issues for AniTubers.

## 2.5. Related Works Conclusion

As seen in the related works, relationships between English content creators and Japanese IPs have a direct impact on Japan’s soft power initiative of Cool Japan. Outdated international laws on intellectual property rights have made it difficult to identify a means through the law, itself, to address Japan’s desire to protect its IPs as a means of preserving their uniqueness with content creator’s desires to discuss and showcase IPs they find fascinating from Japan. While there are copyright protection measures on YouTube, they ultimately benefit copyright holders over individual users. Through Creative Commons there are available works for YouTubers to access and create based off of what is made available by individual rights holders, yet the lack of legal precedent and the limited scope of the licenses lead fan works to be overlooked within the framework. Whilst scholars explore how effective CC licenses are, the effect of copyright on creativity, and an overall

call for a system like CC licenses to include fan works, there has still yet to be a design that has emerged to help fan communities gain access to copyrighted works for the purpose of transformative content on YouTube. Interestingly, the Japanese government has called for soft law and guidelines from private actors to make clarifications where the law cannot, but the limited governmental application of such and the inability of fans to understand legal language needs to be addressed in an improved design. Thus, the resulting design, through the combination of CC licenses with guidelines, aims to answer the scholarly call for a system that can accommodate fan works where Creative Commons cannot.

# Chapter 3

## Design Process & Development

### 3.1. Methodology

#### 3.1.1 The Initial Phase of the Design Process

When I began this journey, I was focused on understanding the components of the Cool Japan initiative and how it could be improved upon. Yet, as a consumer of professional fan content on YouTube myself, I found myself utterly perplexed when creators on the platform began discussing the issue of TotallyNotMark en masse. I began to consider the implications of Japan’s intellectual property parameters versus fair use in the United States and elsewhere in the world. Considering the adoption of fair use policies in South Korea to promote its cultural contents worldwide, [92] I was inspired to delve deeper into the topic of how a version of fair use could be implemented under Japan’s current copyright regime. My research question driving this interest became “How can Japanese IPR holders protect their IPs online while engaging content creators and fan communities?”. In pursuit of this goal, I first aimed to intricately understand the disconnect between content creators on YouTube, where this problem seemed to be most prominently discussed, and Japanese IPR holders, primarily in the anime industry. After ethnographic observation on the YouTube platform, delving into existing literature to brainstorm possible outcomes, I rapidly prototyped a solution. From there, I completed qualitative interviews with three varying sized, Japan-based foreign content creators, a representative from one of the most well-known foreign content creation agencies in Tokyo, and an authority on the anime industry for the purpose of creating and improving my design based on design thinking [93] and human centered design principles. [94] The resulting research journey would lead to four prototypes, of which one appears a promising path to resolving copyright

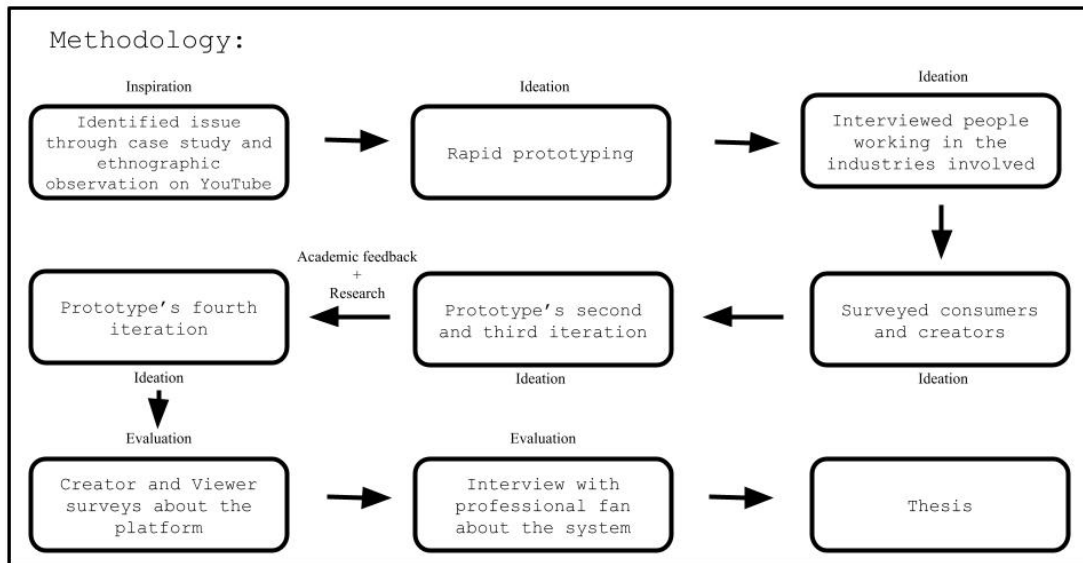


Figure 3.1 Methodology

discrepancies on the YouTube platform.

### 3.1.2 Design Iterations

I went through a few iterations of possible solutions for solving fair use discrepancies on YouTube. The first prototype, while innovative in its approach to capture anime clips from legal sources, like Netflix or Crunchyroll, through a complex permissions system that involved intricate engagement from both IPR holders and streaming licensors, appeared much too complicated and legally unsound. Essentially, my first, rapid prototype aimed to legalize a form of screen capturing for transformative use on YouTube through a plug-in that would guide the creator through a series of checks, which would inevitably generate a watermarked version of the anime clip for the reuser to use within preestablished parameters IPR holders would have to register with the service itself. I hypothesized that by providing an official capacity in which a clip was sampled, that it would result in a favorable outcome for the creator and for the IPR holder through mandating the clip's application. As seen with the failed Sampling licenses under Creative

Commons, it became apparent after completing a few interviews, a couple surveys, and receiving academic feedback about this system and its components that the process should be severely reduced. In doing so, the plug-in aspect was eliminated and just the watermark aspect remained. Effectively, this simplified second prototype focused solely on attribution through a QR code watermark. Yet, there was no innovation involved in this second iteration, nor did attribution seem to solve the inherent problems between IPR holders and YouTubers. I researched extensively on what could be added or amended to the process to both protect IPR holders moral rights while maintaining YouTubers rights to express themselves', creatively. This led me to momentarily contemplate a third prototype that would utilize smart contracts on the blockchain to uphold microlicenses between content creators and IP creation guidelines in place. These fan guidelines encouraged fan works while also protecting the IPs themselves. Guidelines seemed to be the key to solving the fair use discrepancy issues.

### 3.1.3 Foundational Design Principles

Initially, I investigated several companies' guidelines to gain a better understanding of their content. It was from this investigation that I realized the average content creator might not be able to understand what exactly is allowed in the guidelines or might not know what terms to search for online to find the guidelines. I also realized that once the guidelines were read, there was no way for a creator to signal to the IPR holder that they had deliberately attempted to work within the guidelines. Thus, I began envisioning a platform where creators could go to find guidelines for an IP—regardless of their knowledge on who exactly owns the IP—easily understand the stipulations of the guidelines, and receive proof of their efforts to act in accordance with an IP's guidelines. This idea grew into a grander platform where content creators could reliably visit to understand their fair use rights and apply them to a video without relying on second-hand information from other creators and, eventually, a harmonious system where IPs could grant rights permissions through limited licenses. Inadvertently, my pursuits led me to create something akin to Creative Commons. However, unlike Creative Commons, my platform does not aim to create universal licenses that could allow free use of an IP under an accessible "commons"; rather, the aim of the platform



is to create a space where content creators and IPR holders can foster mutually beneficial arrangements for continued creative user generated content that does not infringe on an IPR holders perceived rights.

### 3.1.4 Resulting Design

The resulting platform is a third-party verification system for content creators to reputably engage with IP rights holders and assert their own creative rights called Guidely. On Guidely, content creators can earn QR enabled badges for their content to showcase to IPR holders that they are either following set guidelines or abiding by regional fair use practices. IPR holders benefit from ensuring their guidelines are comprehensible, and they benefit from the redirected traffic to official websites and merchandising channels from the content creator's video. Content creators benefit from the system by bettering their relations with IPR holders and avoiding copyright strikes on YouTube. With the intention of evaluating the platforms functionality, I initiated a user study for both content creators and YouTube viewers, along with an in-depth interview with an artist who owns a company focused on fan works. Consequently, through this thorough research involving an exhaustive literature review, multiple surveys, and numerous interviews, I intend to present a design which could transform copyright, itself, to accommodate the digital age.

## 3.2. Initial Interviews and Surveys

### 3.2.1 Rapid Prototyping

My initial, rapid prototype involved a plug-in that allowed “clipping,” selecting a short period of time in a video and downloading it (a mechanism already seen on Twitch), from legal streaming services. I believed that by allowing access to the copyrighted material through official services—providing viewership and subscription money to the platform as a means of compensating the IPR holder—would lead to greater acceptance of transformative works on YouTube. The prototype endeavored to allow content creators to download watermarked versions of these officially clipped videos to show they had monetarily contributed to the IP licens-

ing system built around streaming services, like Crunchyroll. At the outset, my hypothesis was that IPR holders would be more willing to allow content that had been attained by fans that actively compensated them through subscription services. After creating a prototype showcasing the features of the plug-in, I strived to collect empirical data on whether an ecosystem like the one I created could benefit the industry.

### 3.2.2 Interview with Anime Industry Expert

While the legitimacy of implementing my first design led me to ultimately pursue a more simplified prototype, it was from this basis I conducted five interviews with various key actors regarding anime and YouTubers in Japan. The first interview I conducted was with a high ranking official in an anime industry conglomerate that specialized in Japanese contents markets. During our brief, yet informative conversation I was able to conclude that the industry does not inherently dislike fan creations. Indeed, even piracy has been condoned in markets where the official Japanese anime market has yet to penetrate—nonetheless, it is when fans profit on an IP without any evident benefit to the IPR holder then there was cause for issues. Contrastingly, in the past, when anime was not so readily available worldwide via streaming, it was evident that pirated works benefitted IPs directly by producing a market for Japanese contents abroad before official market penetration—the monetization benefits of selectively allowing illegal viewership of anime was clear, despite pirated works being a blatant copyright violation. Since many anime productions are now available, globally, through licensed streaming, the anime industry has taken an hardline stance towards unlicensed copies of their works circulating. While, previously, fans could argue that their fan works allowed the proliferation of IPR holder’s works abroad, widespread international availability of anime has led the industry to consider fan works as direct competition to fan consumption online—with fans spending time consuming professional fan works instead of anime through licensed services. Currently, while many argue that fan works can provide promotion for the IP, according to the expert interviewed, it is not directly evident to the IPR holder that they are benefiting from such promotion. Mainly, through the interview, it appeared that the anime industry was primarily concerned with the issue of fans profiting without direct compensation

to the IPR holder, whether through videos online or through sale of unofficial merchandise. Thus, if I wanted IPR holders to engage in a system that would allow fair use/fair dealing/transformational works to exist and make money on platforms like YouTube, there needed to be evidence and clear monetary outcomes directly from allowing the YouTuber to use the works.

### **3.2.3 Interview with a Content Creator in Tokyo**

#### **Experiences with the YouTube Copyright System**

Subsequent to my discussion with an anime industry authority, I aimed my attention towards gaining a more nuanced understanding from content creator's perspectives on YouTube copyright issues. In this pursuit, I was able to arrange interviews with three foreign YouTubers based in Japan. The first interview I conducted was with a Tokyo-based YouTuber from Australia. She has over 300K subscribers and several years of experience on the platform, making her well-versed on the intricacies of the platform as a professional YouTuber. During our insightful interview, she mentioned that she was "very over careful" when it came to featuring copyrighted material. Like many YouTubers, she often turns to sound libraries that are royalty free like Epidemic Sound to avoid issues on the platform. Before using Epidemic Sound, she had used music from SoundCloud that artists would list as "copyright free," but after an incident involving third-party claimants, she deemed this method as unreliable. According to her, despite sounds being uploaded as copyright free music on SoundCloud, third-parties take music and sounds and upload them on websites under different names so they could claim ownership of the music or sound on platforms with copyright systems. Many YouTubers are aware of this scheme by third-parties attempting to profit on videos, yet are often victims of the process. She, too, though she is careful about copyright on the platform, received a claim by a third-party abusing the copyright system on YouTube. The process, according to her, was lengthy to prove that the third-party claimant did not have the rights to the contested music. During the dispute process, she stated that "YouTube makes you look like the bad guy for disputing it [the third-party claim on her video], and if you're in the wrong, then you get a strike... It's a very unfair system. You are guilty until

proven otherwise.” In the case of the claim on her video, the third-party dropped its case. According to her, third-parties will drop the claim if disputed to avoid being flagged in the copyright system as a scam, but the YouTuber must take the risk of incurring a copyright strike if they cannot adequately and convincingly dispute the claim on their video in the first place. Luckily for her, the resolution was favorable, but she stated that many of her YouTuber friends were not so fortunate and received strikes despite being in the “right” to use works.

### **Gray Areas in Copyright Online**

In continuation on our discussion of copyright issues on social media, the sentiment was clear that having a professional career as a content creator was “high stakes” due to the looming presence of copyright strikes. While she had avoided incurring any strikes over the years on YouTube, she had many friends that were not so fortunate. In fact, there are types of media she avoids including in her content despite widespread use on the platform because the copyright surrounding the contents is unclear and lies in a gray area. The first example she mentioned was the inclusion of GIFs, animated images, in her content. While platforms like Instagram have GIF libraries integrated in the stories and reels features of the platform, it is not clear to creators whether Instagram’s featured “stickers” are free to use or if Instagram owns the rights to allow users to utilize GIFs as they please. Similar GIF libraries are readily available when using the keyboard function on a phone or tablet, yet it is incredibly difficult to locate and ask permission from the artists who created the GIF or the rights holder who owns the content of the GIF. Notwithstanding this daunting feat, the YouTuber tries her best to give attribution to the artist of the images she incorporates in her videos. Another gray area that she mentioned was gaming music. There is a trend on YouTube of creators incorporating music from popular Nintendo franchises in their videos as background music. This attempt to incorporate copyrighted music has appeared successful, as Nintendo has not pursued claims against these videos, however, this YouTuber believes that it is simply too risky to feature copyrighted material despite the lack of action on a copyright holders’ part. On the topic, she noted that despite free to use music or images being inferior to copyrighted music, free to use media is worthwhile if it avoids copyright strikes. Accordingly, while it

is tempting to engage in trends utilizing copyrighted works that are seemingly condoned by the IPR holder, the YouTuber stated, “If you’re wrong, then that’s all of your content that you have to take down and edit.”

### **Influence of Copyright on the Creative Process**

Overall, the constant pressure to keep her content within copyright has inhibited her creative process. She revealed, “I feel like, right now, I have a filter in my head when I’m working,” and that she stops herself from thinking about using copyrighted content despite her natural creation process incorporating existing works. In the case that she has used copyrighted materials in her content, she was careful about incorporating transformative elements such as using limited, undetectable amounts of a work—a second or less of segmented music—paired with distortion from other audio elements—in this case, a xylophone—to avoid a strike on her video. Even if she were to pursue permissions to use copyrighted materials, she stated that the licensing rates are incredibly expensive for use on a YouTube video. She mentioned “Even if you were to purchase the rights, I don’t even know how that works on YouTube. Do you just put it in the description?... It would be nice if there was a website to pay membership to use copyrighted music.” Ultimately, she has decided to diversify her content outside of YouTube, focusing on other platforms like Twitch or Instagram. On the matter, she said:

“Just with YouTube, it’s just so frustrating how high the stakes are. It’s your whole job, your career, and everything and if you use the wrong media, if you do the wrong thing—say the wrong thing—you can lose your job... They [YouTube] are very unresponsive. I’ve seen many people fighting for getting monetization back... it’s very hard to work through it, it’s very scary to watch that.”

### **Experiences with Collaborating with Japanese Companies**

Since this YouTuber was also affiliated with an influencer agency, I wanted to know about her experiences working with Japanese companies and their views towards YouTubers from her experiences. We began by discussing attaining permissions to film, as she spends a lot of time featuring various places in her videos. On

the matter of permission, she stated that she avoided filming in stores or arcades due to permissions complications and general uneasiness of incurring ramifications for filming in those areas. Instead, she prefers filming in places that encourage promotion on social media, like love hotels, as she does not feel the need to ask for permissions. In all, it appeared that gaining permissions from Japanese businesses to film is a complicated process for the type of uncomplicated content she creates. She noted on the topic that people overseas tend to understand the promotional value of allowing creators to film in their establishments, but due to Japan's familiarity with traditional media, like television, businesses are more prone to follow established rules and standards for traditional programming. This leads to content made under permissions less natural and more scripted, which "sucks the fun out of everything." The need to ensure a certain quality and image is projected to the public extends to travel experiences sponsored by prefectures, as well. When recounting her experiences working with promoting cultural products and experiences, she noted that there were often a few officials present at the filming, even though they could not understand what was being said, to ensure the content was being "presented in a way that best represents them."

Often, what is said in done in videos made with the sponsorship or permissions of a Japanese company or prefecture involves hierarchal approval processes without consulting the YouTubers involved which makes the content inflexible. However, most content on YouTube is loosely scripted to come off as more natural and approachable, so working with Japanese companies to present their products can become "really tedious" and "really intense" for individual YouTubers. This is where working under an official entity, like an influencer agency, can be beneficial for YouTubers. The company can manage communication, negotiation, and liaising between a sponsor and a YouTuber while the creator is free to focus on their work on camera—eliminating, for the YouTuber, the balancing act of negotiating with companies while focusing on creating quality content. Overall, it appeared that being affiliated with a company eases the formal permissions and negotiation processes in Japan, but the creator noted that this is especially hard for individual YouTubers to navigate the process.

Content creators are in a position where they must balance promoting whatever they are showcasing without taking away from the image of their own brand. The

expectations of Japanese companies to include scripted content that has been approved through many meetings and hierarchical channels can often interfere with a creator's ability to let their individuality and brand exist within the parameters of the video. On the matter, the YouTuber expressed, "A lot of times, they don't really get it... Usually they want a lot more control and scripted content, like a TV commercial rather than letting us put our own little spin on it." While the YouTuber admitted that her content existed in a unique niche where Japanese companies seek to work with her, a foreign YouTuber, for the purpose of promoting to foreign audiences, mainly on a tourism capacity, she observed that Japanese businesses tended to be less understanding of YouTubers. Since most Japanese companies are focused on advertising domestically on traditional media, they are not privy to the individual branding associated with YouTube videos. Instead, Japanese companies are concerned with avoiding being misrepresented, and have a certain expectation for themselves on "how Japan wants to be shown." Yet, due to a consensus on what constitutes as alluring about Japan, a lot of places want to be advertised in a nearly identically manner and, paired with the hierarchal chain of approval, are not open to changing their scripts in a manner that might appeal to the unique desires of foreign audiences. The scripted and controlled process can lead to content creators often speaking in a way that is unnatural for a native speaker, noting "For viewers overseas, if they see something [odd]... it might be a Japanese interpretation of what they want."

### **Interview Insights**

From this interview, it was apparent that copyright issues were a fundamental part of being a YouTuber. The job of a YouTuber was high stakes and even the most cautious of YouTubers could incur copyright strikes even on rights and royalty free content due to third-parties that take advantage of the copyright system. The need for a system that allowed YouTubers to ensure that they were within their rights was perceivable through this interview. The demand to make YouTube a less high stakes platform for its creators is a desire from creators. Furthermore, as is apparent with the YouTuber's experiences working with Japanese companies for tourism promotion, Japanese cultural contents are specifically promoted in certain ways that have been approved through the chain of command. Without approval

from some higher official, the ability to showcase Japanese cultural contents is limited and controlled. Moreover, it appears that Japanese companies were highly cautious about their affiliation with YouTubers and preferred that the individual expression and branding common in YouTube videos was scripted to the point of creating unnatural behaviors for the YouTuber. Thus, if I were to make a design that would be appealing to Japanese companies, it would have to fit their intense desire to control the image their works project to the public.

### **3.2.4 Interviews with Additional Foreign YouTubers Based in Japan**

#### **Interview with a Real Estate YouTuber**

The next content creator I interviewed is an American who co-founded a real estate company in Tokyo, Japan. Following his appearances on a few popular Japan-based YouTuber's videos, he saw exponential engagement in his business' social media accounts and interest in his company. After seeing positive outcomes for his business in correlation to being featured on YouTube, he decided to start his own channel. Through his real estate focused content on YouTube, he was identified by a Japanese businessman who reached out to him to start their own real estate company. As revealed by this real estate YouTuber, "The cornerstone of the company is the channel. If it were not for the channel, there would be no company." Being a property focused channel, there are two forms of permission he has to consider, 1) permission from owners of unlisted properties, 2) permission from listing companies for listed properties on the market. Since the content creator has his own company, he finds it easiest to get simple permission from other companies whose houses are meant to be purchased on the market than individuals who own interesting properties that are unlisted. While there is currently high congestion in short-form video content surrounding real estate, he states that there is no competition for long-form content in the real estate market. In fact, more and more companies are embracing videography to promote properties—seeing online video as an excellent means of promoting properties for sale. He found that the Japanese people he approaches to film unlisted properties tend to be receptive about allowing cameras on their property, although are not particularly open



about the property's expenses (mainly, how much someone paid for a property). The content creator stated that he enjoys making videos in Japan about Japanese property because he has the unique opportunity to access and showcase something that would be difficult for other creators outside of his profession. He also said that he enjoys making content in Japan as it is still a rather unique profession for foreigners. Like the first YouTuber I interviewed, he, too, used Epidemic Sound to avoid copyright issues on his video. In so far as to when I interviewed this YouTuber, he had yet to face any issues on his channel in the past two years of making videos. Since his content is mainly focused on showcasing real estate, he did not find himself actively looking to incorporate copyrighted media in his content. The only time he chose to do so was to make a reference to a movie franchise for the purpose of a joke. He was careful to use a limited clip, less than a second, and was not claimed for its use. When asked about a system that would ease access to copyrighted works, he said that he would be drawn to use such a system in order to enhance a visual or to make a connection between an anime/movie and an existing place.

### **Interview with a YouTuber who has a Traditional Media Background**

The final content creator I interviewed prior to revamping my prototype is, currently, an Australian creator who has been on YouTube part time for five years and works in the media industry. As someone in the media industry, she aspired to create a YouTube channel to hone new skills. In the interview, when discussing her experience with traditional media, she noted that the major difference between Japanese and Australian contents is that Japanese content tends to be aimed at global audiences and produced in multiple languages, while content in her home country of Australia is often only produced in English. Interestingly, she also revealed that when it came to the labor of creativity in both Japan and abroad that "the amount of skill and effort that goes into media creation, in some situations, can be underappreciated." When it came to copyright on YouTube, she believed that "it is important to honor the creators of media... that we wish to use on screen." This creator believed in the importance of attribution for one's work and avoiding infringing on a person's rights to their work, as both a YouTuber and creator in traditional media. Like the first creator interviewed, she also had an

experience where a third-party claimed music in her video and she received a copyright strike. Conversely, in her case, she stated that she was ““worried the dispute would get lost within YouTube’s systems or take a long time to resolve,” but her case was resolved rather quickly, within 24 – 36 hours. If she was able to reference copyrights as she pleased, she would also use copyrighted media to make references between real life places and film. All in all, she believes that improved copyright regimes on YouTube that allow creators to make references without incurring strikes would lead to an environment “for creators to be able to create freely, collaborate, and explore new ideas. I would like to see a YouTube where this is possible in the future.”

### **Interview Insights**

Through speaking to the latter two creators, I was able to draw further conclusions about my design. For one, both creators wished to use copyrighted works outside the framework of fan works. In both cases, they wanted to make visual references to popular media without incurring copyright strikes. In these cases, a plug-in that relied on streaming services would not suffice as a tool for these creators. Instead, my design should allow for casual use and provide a more straightforward approach to copyright that would allow a creator to quickly understand how a copyrighted media could be referenced in their videos without incurring copyright strikes. If I wanted my design to be used by a variety of YouTubers, not strictly those who wanted to create fan works, I had to make the design encompass many types of IPs. I also found the third creator’s comments about labor and creativity rather insightful. As seen in the Lockean interpretation of copyright, [95] labor and effort are often seen as a component of assessing the transformative use of an existing media. If labor is indeed undervalued in the creative process, then transformative uses of a work are not going to be readily recognized by Japanese IPR holders. The third creator also seemed to value attribution, much like the first creator. Fascinatingly, the third creator’s motivations for copyright accordance did not necessarily stem from simply avoiding copyright strikes, but having genuine values of ensuring the original media is properly attributed, which is likely a result of their career in traditional media. Nevertheless, attribution was once again reaffirmed as a essential component of my design.

### **3.2.5 Interview with a Leader at an Influencer Talent Agency in Tokyo**

#### **Understanding the Role of an Influencer Talent Agency**

The final industry expert I consulted was a C-suite executive of a prominent Tokyo-based talent agency focused on international content creation. Due to time constraints, the interview was conducted in the form of a survey. This person had started an influencer talent agency under an existing Japanese publishing company. When asked about if there were any hesitations from the Japanese parent company of the agency when she first proposed working with YouTubers, she stated that there was no hesitation. In the day to day functions of the company, it facilitates contact, negotiation, and sponsorship between Japanese companies and the YouTubers. In fact, Japanese companies reach out to the agency to either sponsor or collaborate on content. The Japanese companies that collaborate with the agency are usually anime companies, travel agencies, consumer goods, publishing companies, and video game companies. These Japanese companies utilize the influencers at the agency for brand promotion, sponsored product reviews, sponsored unboxing, sponsored gameplay, sponsored TV segments and articles, collaborative streams, and merch/offline events. The executive also stated that the overall sentiment of Japanese companies towards international YouTubers is either curiosity or indifference. Conclusively, it was asserted that working with influencers allows Japanese companies to gain international recognition, receive greater brand engagement online, increase their revenue, and create a larger fan base.

#### **Influencer Agencies and IPR Managment**

Regarding the company's role in copyright on YouTube, it was indicated that it is much easier for content creators to gain permission from Japanese companies for the use of their IP through the agency. The company will both reach out on behalf of the creator to get permissions, or forward information to the creator to facilitate the process. Since the talent agency is under an existing Japanese publishing company, the influencers of this agency can also gain permission to use and feature IP from the company through an internal process. After gaining

permission to use or feature an IP in a video, how revenue is split varies from company to company. The agency will also try and resolve IP issues between a company and a creator, but it is ultimately up to the creator themselves to navigate and take charge of the issue. When asked about whether content creators would be more willing to make content about anime on YouTube if permissions for those IPs were easier to access, it was stated that “Maybe some creators might make more anime related content, but I don’t think permission will make a big impact.”

### **Interview Insights**

Through this survey-based interview, I was able to surmise that creators can more easily navigate the permissions process through a company. Companies and building relations with IPR holders are the key to easing permissions access. Thus, if individuals were able to go through a verified process and a legitimate service or agency, then it is possible that IPR holders might be more willing to work with individual creators. It was also made clear during this inquiry that even when there is an intermediary, like an agency, it is the creator’s responsibility, in the end, to overcome IP infringement on platforms. Furthermore, due to the high engagement of Japanese companies with this particular influencer agency, it is apparent that Japanese companies, mainly anime companies, are not necessarily opposed to working with creators, but prefer to do so in an official capacity. This seems to be the case not only with this influencer agency, but echoed by the two YouTubers who also work with companies. Intriguingly, the executive’s final comments about permission struck me as rather pertinent. It appears that creators will make content on the IPs they wish to engage with regardless of the difficulties of navigating the permissions process. While other creators interviewed seemed incredibly cautious about copyright violation, this executive’s experiences with AniTubers, specifically, leads them to have the notion that content creators will not be influenced by permissions in pursuit of creating fan content. Consequently, the design would have no impact on increasing the amount of fan works, instead it will predominantly allow fan works to exist online. Through this interview, I concluded that my design had to provide some sort of authority or verification in a manner that IPR holders could engage with on an official capacity as

Japanese companies appeared more willing to cooperate with YouTubers through sanctioned networks.

### 3.2.6 A First Attempt at a Creator Survey

#### Results

In addition to the interviews, I issued two surveys to try to understand the issue comprehensively. The first survey I conducted was a general survey for content creators. This first survey was distributed online in Facebook groups for content creation and expat communities in Japan, along with a Discord group for content creation. Despite widespread dissemination of the survey in several groups, I was met with a lackluster response of five. It seemed that if I were to generate responses from content creators, I would have to find a way to engage with them in another manner. Nevertheless, among the five respondents, I was able to gain further insights about content creators and their experiences with copyright on social media. All but one of the people who responded had received at least one copyright strike in the past. Three of them stated it was for copyrighted music, while one received a strike for a video clip. Of those who received a copyright strike, half had disputed the strike and won, while the other two lost the dispute and did not dispute at all. Two of the creators who answered the survey attempted to contact copyright owners in the past, but were left without replies to their inquiries, while one creator successfully contacted a rights holder for permission. Two creators had also administered copyright strikes against other creators. In the case of copyright strikes against other creators, one creator cited that someone had uploaded their content without permission, while another stated that their content was stolen and the uploader tried to earn money from the reuploaded video. When asked about the fairness of copyright on YouTube, those who uploaded on the platform were split on the matter with one respondent leaning towards unfair, one neutral, and another leaning towards fair. Only one person was negatively affected by the strike on their video, stating that it led to an overall loss on the video's profit.

## Survey Analysis

The results of this survey are interesting to me as, while there were not a lot of respondents, a couple of sizable content creators participated—with one person claiming to have over a million followers on YouTube for educational content. There was also a variety of content creators who participated in the survey with two primarily using YouTube, two using Instagram, and one on Twitch. This survey demonstrates that copyright issues are not just limited to the YouTube platform, but concern other creators as well. All in all, four out of five of these creators faced copyright issues on the platforms they posted on and had varying views on the fairness of these platforms when it came to copyright—with none of them stating that the systems were inherently fair or unfair. While small, this survey further demonstrated that copyright is a part of creators experiences when posting on platforms and it is generally a gray area for those producing content online.

### 3.2.7 Fan Survey

#### Results: How Fans Select a New Series

The final survey I sent before redesigning my prototype was a general survey for anime fans. The goal of this survey was to understand how copyright issues on YouTube were generally perceived by consumers, fans, and whether they had engaged in creating fan works. This survey was posted after an anime group on Line after an event, and it was also shared in other groups. I received 36 responses to the survey and gained interesting insights on anime fans and fan works through it. A majority of those responding, 41.7% stated that they watched anime a few times a week. Most people, 83.3%, selected that they watched a new series based off recommendations from friends, with others also selecting that they watch shows based off of what is trending on social media (38.9%) and on streaming websites (33.3%). Review websites like MyAnimeList or AnimeNewsNetwork were also selected as a popular source to help decide on what series to watch next (38.9%), with recommendations from content creators selected by 19.4% of those polled. When asked if online trends influenced their anime consumption habit, one third of respondents stated that they would watch an anime based on if it was trending

online. Overall, it appears that most people rely on recommendations from friends as the main persuader for consuming new anime content.

### **Results: The Influence of Professional Fans on Anime Consumption**

Turning to the topic of content creators, of those who did watch content creators with an interest in anime, 60% of respondents stated that they decided to watch an anime based on a content creator's recommendation. Fascinatingly, when asked if they had decided not to watch an anime because of content creator's dislike of it, 90% of those who watched content creators said that a creator's negative view of an anime did not dissuade them from watching the anime. In fact, 75% of those who watched professional fans stated that they had discovered new anime because of a content creator discussing it. In all, those polled were mostly neutral about content creator's being highly critical of an anime, meaning that the content creator's opinion on an anime did not matter to 57.1% of those polled. From this portion of the survey dealing with content creators, it is evident that fans are indifferent to if a content creator negatively discuss an IP on a platform, rather, what is more persuasive to fans is that the anime was mentioned. What is key, here, is that a professional fan's opinions about an anime, regardless of it is positive or negative, is a net benefit for fan engagement simply due to an anime being mentioned by the content creator. For Japanese IPR holders who have demonstrated a fondness of scripted control of what creators should state in regard to their products, it is apparent that the presentation of an IP does not matter to fans. The most important aspect, for anime fans, is that an IP is discussed or mentioned. Negative professional fan opinions do not influence the market, which is a core component of arguing fair use/fair dealing or transformative use. Furthermore, it is apparent that content creators are a strong influence as to what anime is discoverable among their own fan base. Therefore, the professional fan plays a key role in publicizing an anime among fans, regardless of their actual opinions on an anime.

### **Results: Fans making Fan works**

In terms of fan works, 55% of those polled had made some form of fan works. Indeed, 30% stated that they had made many creations based off anime. A third

of the anime fans polled stated that they did not make anime related works, but they enjoyed consuming such creations online. Interestingly, the types of fan works that people made varied greatly. A majority, 30.3%, made fan art and posted it online, while another 24.2% cosplayed. Fan fiction (15.2%), fan video compilations (9.1%), and music (15.2%), were among the top works. Yet, some fans were rather creative with their fan works with some fans stating they did dance covers, made fan games, or even replicated “iconic hair color schemes from anime characters onto clients.” There was also a large percentage of fans stating their wish to make fan works, with 24.2% of respondents stated that they had not made fan works, but desired to in the future. Despite the variety and proliferation of fan works, only 30.3% of respondents stated that they posted their fan works publicly online, with a majority (51.5%) stating that they do not post their fan works online. Only 6.1% of respondents experienced a copyright strike and takedown notice from posting their content online, with one other respondent saying they had to alter the fan work they posted online. Twitter (36.8%), YouTube (31.6%), and Instagram (31.6%) were the most popular places to post fan works. Surprisingly, Tumblr was also a popular option with 26.3% of participants uploading their works on the platform. Finally, when fans were asked about their favorite anime, it was rare to see more than two or three people overlapping in interest, with most respondents stating a unique show.

### Survey Analysis

From this data, we can see that fan works are not limited to professional fans. According to the survey, a majority of anime fans create fan works, have a desire to create fan works, or consume fan works. Fan works are also diverse and are integral to fan communities as an expression of their passion for a work. If posted, fan works span many platforms and are not constrained to YouTube. However, many fans appear to avoid posting their fan works online or in public, which is a pity considering how wide-ranging and diverse fan works are in this survey’s findings. If I were to successfully create a design that will help fan works persist online, the design should be available across online platforms to cater to the assortment of fan works. Furthermore, limiting the platform to working with a few friendlier IPR holders would not cater to the sheer variety of fan’s anime taste. Anime fans



are diverse and are drawn to different shows. A new system must encompass and try to incorporate even unfriendly companies so that fan works can exist online.

### **3.3. Design Process & Development Conclusion**

At the beginning of my design journey, I was focused on designing for accessing works on official capacity as solution to copyright exemption discrepancies. As it became apparent that the proposed rapid prototype was far too complicated and failed to address the needs of creators and rights holders, as evident in the interviews and surveys, I was compelled to consider other options to overcome this imperative issue I had identified. By consulting fans and fan friendly IPR holders, I concluded that guidelines were promising to alleviate the apparent problem of gaining permissions to use works. This inevitably led to much research and brainstorming as to what sort of system could benefit creators under the pretense of guidelines. After reviewing the results of the interviews and surveys I launched in connection to my rapid prototype, along with delving into the aforementioned literature, I was able to imagine a design-based solution for this policy-based problem.

# Chapter 4

## Design & Evaluation

### 4.1. Design

#### 4.1.1 Introduction to *Guidely*

Bearing in mind the call for soft law applications by private enterprises to clarify vague international and domestic copyright laws, the limitations of Creative Commons in accommodating fan works, the professional fan and their plight with online platforms, comments from YouTubers, industry experts, and fans, I set out to build a system which could resolve discrepancies between content creators, copyright law, and IPR holders. The result is *Guidely*. *Guidely* is a third-party verification system for creators on YouTube to assert their reputability to IPR holders. Through a badge system reminiscent of Creative Commons, users of the *Guidely* system will be able to showcase that they are in adherence to an IP's guidelines, applying fair practices, or have acquired a microlicense to showcase works in a limited manner. Each badge is QR enabled and comes with a link so that viewers of a content creator's works featuring an IP can be redirected to the official IPR holder's information either by scanning the QR code or accessing the link in the description of a creator's work. By preserving attribution norms set in moral rights and in fandom communities, *Guidely* ensures that viewers of the reused content are aware of who the IPR holder is and that the work produced is noncanonical. In return, content creators can gain a deeper understanding of an IPR holder's user guidelines through a simplified checklist version of said guidelines, and notify a copyright holder and YouTube's Content ID system of their intent to work within set guidelines through the "Guideline Badge." Moreover, through the application of the "Fair Badge," content creators will not only be able to ascertain if their content falls within fair use or fair dealing, but learn how

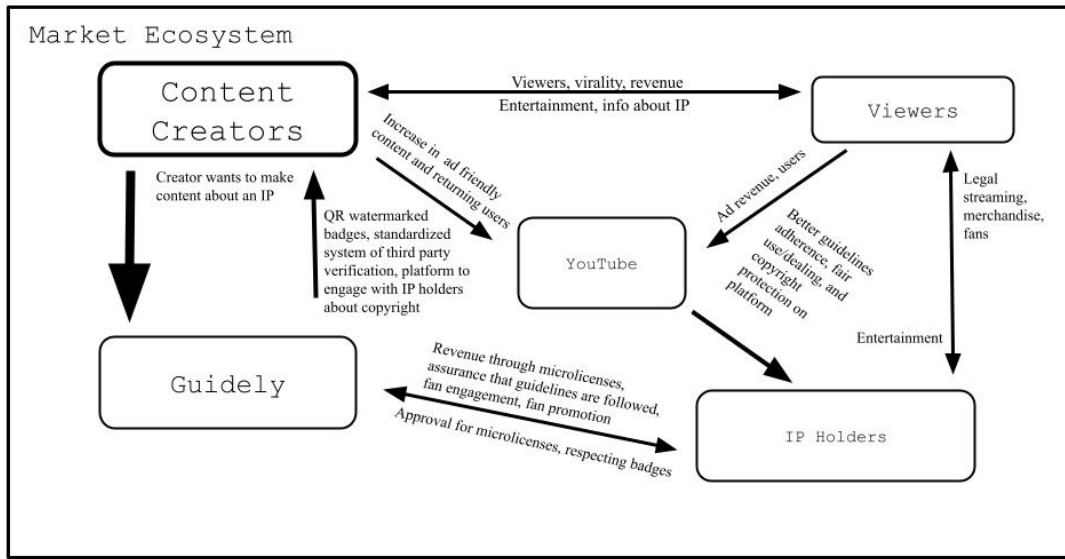


Figure 4.1 Market Ecosystem

to ensure their rights are properly asserted on platforms like YouTube. Finally, through the ability of company's to microlicense their work, company's can monetize copyright exceptions to using their IP and earn revenue for the use of their work, reliably, and in a way that facilitates better relations with content creators. Overall, through the introduction of these three badges, *Guidely* aims to foster and formalize the mutually beneficial relationship of fans and IP holders.

When users first encounter *Guidely* they will come to a landing page where they can search to trigger three different outcomes in their journey to understand and overcome legal issues on platforms like YouTube. Users of the *Guidely* system can earn a "Guidelines Badge," which showcases a user's adherence to a company's official guidelines, a "Fair Badge," which shows the user understands of fair practices in their country of origin, and a "License Badge," which showcases a user's purchase of a limited license from an IPR holder, "microlicense." Each badge earned is QR enabled and can be displayed in a user's video or work. In addition to featuring the badge overlayed on their work, users can include a link to the badge in the description of their work to ensure viewers are redirected accordingly.



Figure 4.2 "Guidelines Badge"

The badges each display unique information in accordance with what they showcase about a user's application of a work. Badges also act as a conduit to redirect viewers of the reusers work to the official channels to consume the original work, like an official web page or a list of places where a viewer can officially stream the IP. Moreover, Badges earned can also be displayed in a user's profile on *Guidely*, which can be linked or generated as a QR watermark, so that others can view the array of badges a user has accumulated. Thusly, the badges from *Guidely*, and the processes to receive them, aim to educate creators about transformative works, verify creators' application of works in a transformative manner, and assure rights holders of creator's adherence to approvable usages of their works.

#### 4.1.2 "Guideline Badge"

The first user flow for *Guidely*'s "Guideline Badge" will begin with a search of a show, game, character, or company on the *Guidely* homepage. For example, if the user chooses to search "Mario" or "Nintendo," they will be directed to a list of search results, with the *Guidely* version of the user content guidelines

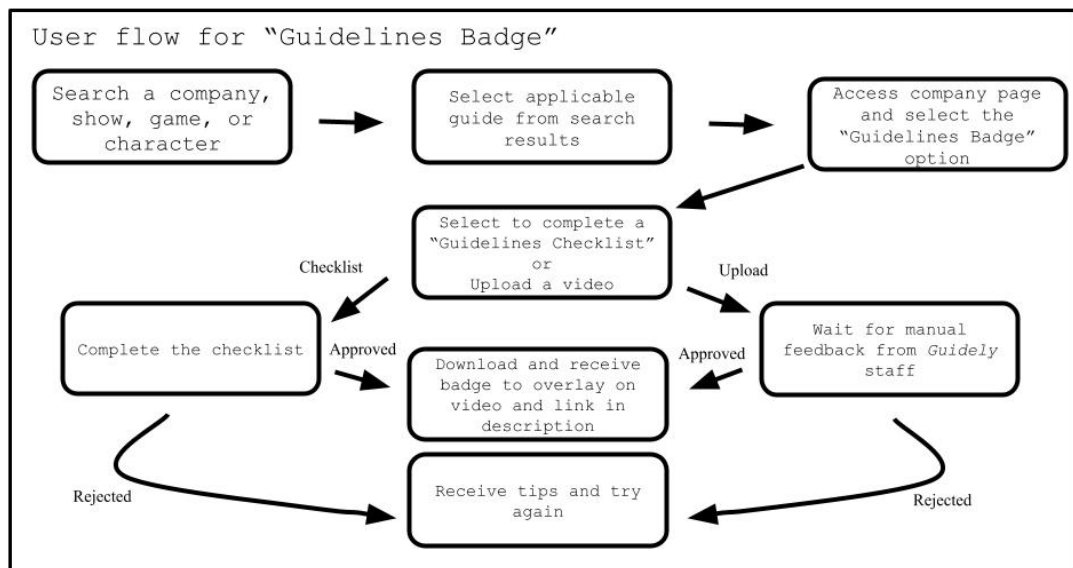
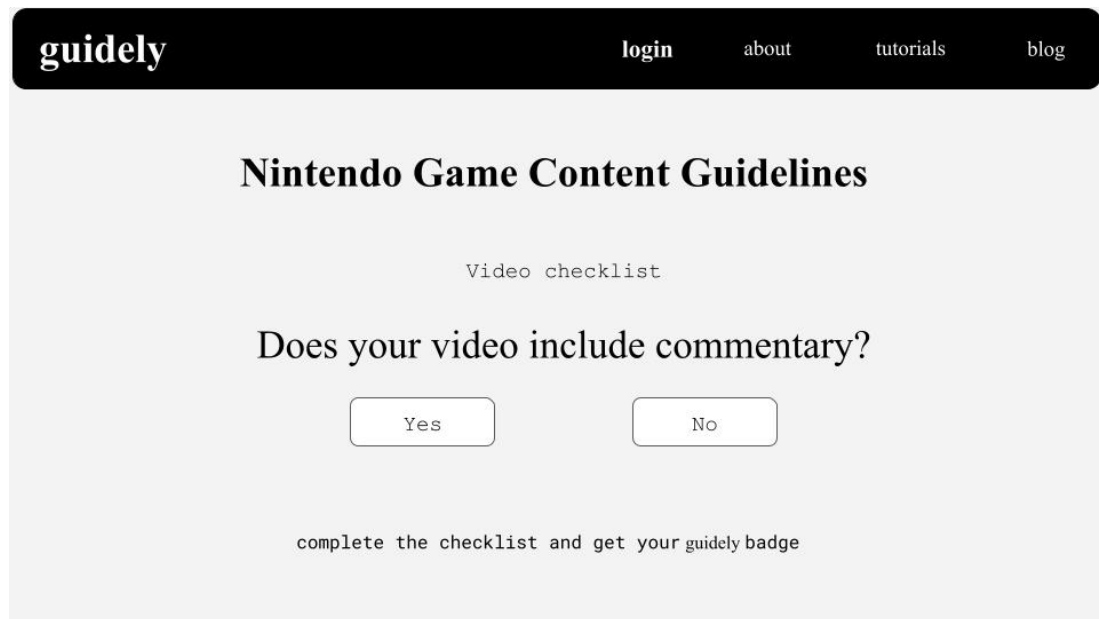


Figure 4.3 User Flow for "Guidelines Badge"

for Nintendo available as the top search result. From there, the user will be prompted to complete a guidelines checklist, which will present Nintendo's content guidelines in an easy to read and follow manner. Through completing a series of "yes" or "no" answers, the creator can assess whether their video falls in line with existing guidelines for that IP. Upon completing the checklist, *Guidely* will provide a unique QR watermark badge which provides attribution to the official IPR holder, signals that the product is not an officially licensed or affiliated production and provides links to official ways viewers can engage with the IP. In the future, I also envision this process could be completed by uploading a video and having an AI trained on the content guidelines of a particular company assess its quality. However, since automated processes have had trouble assessing fair use at the current time, this might not be a feature available on the platform, at first.



**guidely** login about tutorials blog

## Nintendo Game Content Guidelines

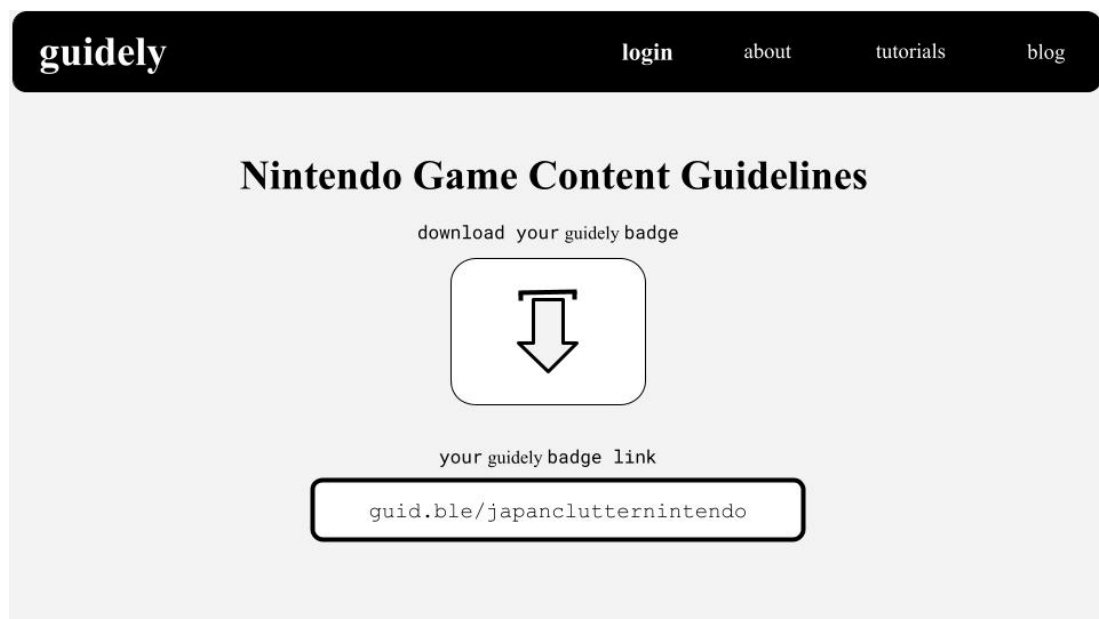
Video checklist

Does your video include commentary?

Yes No

complete the checklist and get your guidely badge

Figure 4.4 Sample Page of "Guidelines Badge Checklist"



**guidely** login about tutorials blog

## Nintendo Game Content Guidelines

download your guidely badge

↓

your guidely badge link

guid.ble/japanclutternintendo

Figure 4.5 Download Page After Successfully Completing Checklist for "Guidelines Badge"



Figure 4.6 Suggestions Page if "Guidelines Badge" Checklist is NOT Fulfilled

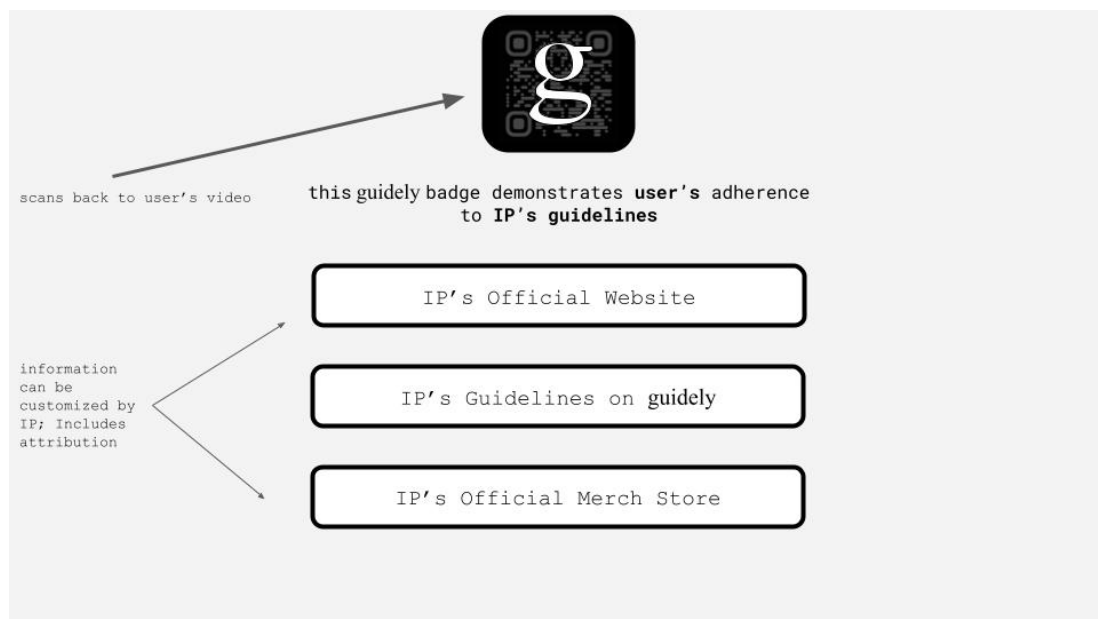


Figure 4.7 Information Displayed when "Guidelines Badge" is Scanned

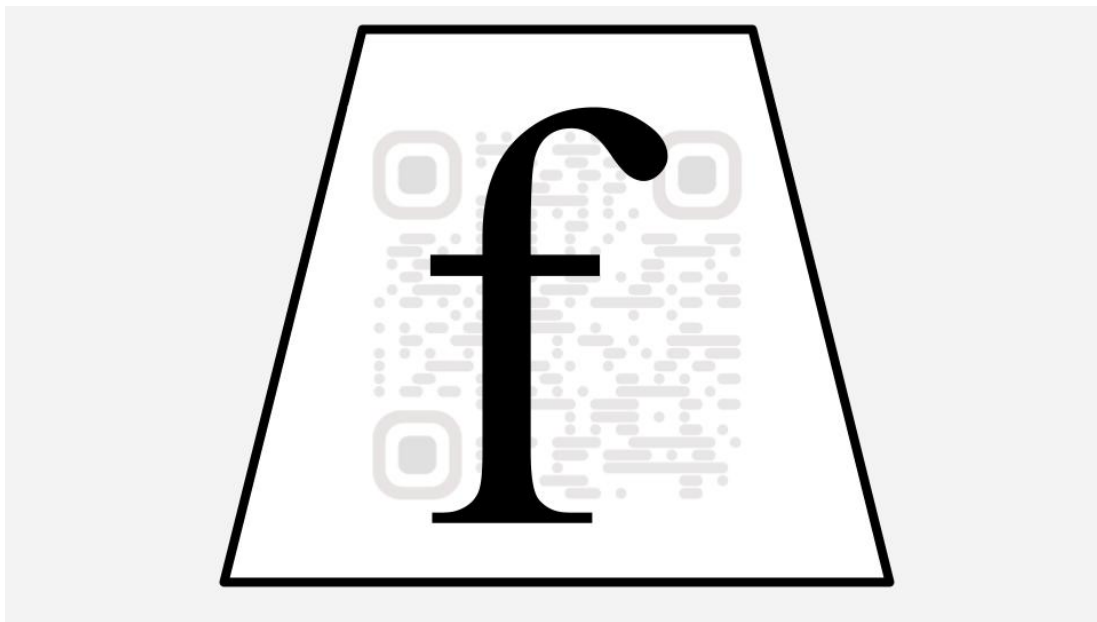


Figure 4.8 "Fair Badge"

### 4.1.3 "Fair Badge"

The second user flow is for *Guidely*'s "Fair Badge." If a user enters the name of a company that does not have fan guidelines, they can still find information on that company via the platform. On the company's page, instead of being guided through the fan guidelines, users can select to check either the "Fan Friendliness Score" of a company, or "Complete a fan check." If a user selects to check the "Fan Friendliness Score," they can assess how "friendly" a company is towards fan works based on both a *Guidely* analysis and user feedback. In this instance, if a company is deemed "unfriendly," the user will be able to read in simple terms what actions lead the company to file strikes against users. However, an "unfriendly" score does not mean the end of a user's journey to post about an IP. Users can then click on *Guidely*'s "Fanmade Guidelines," which leads to a page of how to avoid copyright strikes from the particular company based on what other fans have reported. Through the fan tips, users can learn what has worked for others if they choose to make content based on an "unfriendly" company's IP. After reading the tips, they can either choose to watch an example video of how to showcase the IP



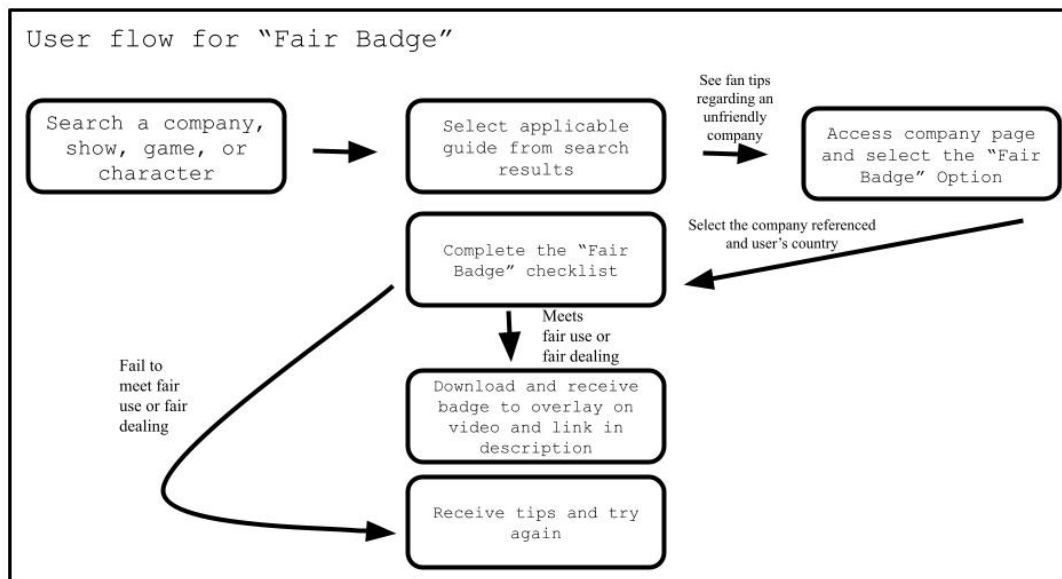
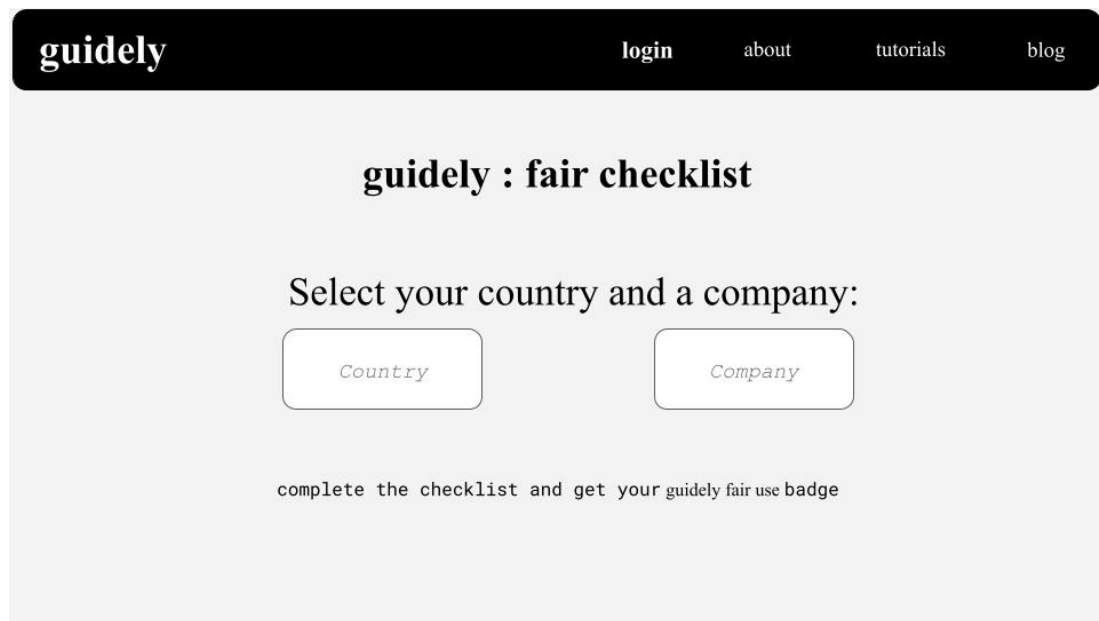


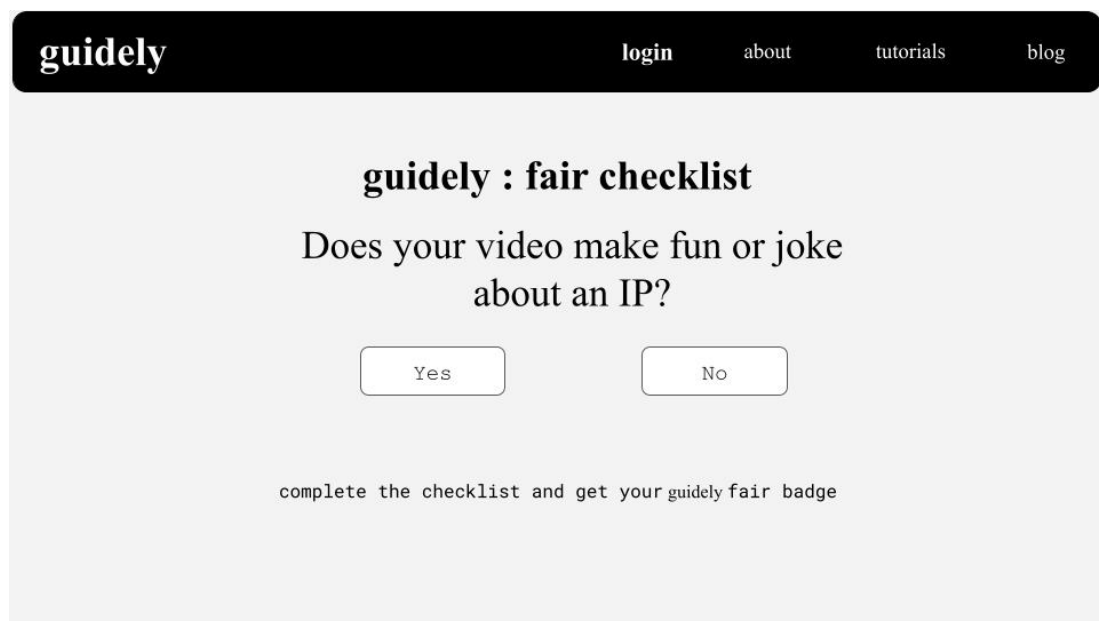
Figure 4.9 User Flow for "Fair Badge"

in a "friendly manner," or a user can choose to download a *Guidely* "Fair Badge." Much like the flow for the "Guidelines Badge," the "Fair Badge" is earned through the completion of an easy-to-understand checklist aimed at determining if a user understands fair practices in their country and can apply it to their videos. Once completed, *Guidely* will provide a QR code watermark to display in videos to assert the user's understanding of fair practices in their country. When scanned or redirected via link in a video or work description, the "Fair Badge" displays the user's username, the IPR holder's attribution, the country whose fair practices are applied, and information redirecting viewers to official websites of the IP owner, where to watch the IP officially, and the IP owner's page on *Guidely*. Not only will the process lead users to earn a "Fair Badge," but users can learn more about fair practices and tips under *Guidely*'s video tutorials. In essence, the completed process aims to ensure that *Guidely* users are educated about fair practices, apply fair practices wisely, and uphold attribution norms in a beneficial way to the IPR holder.



The screenshot shows a web page with a black header bar containing the 'guidely' logo and navigation links: 'login', 'about', 'tutorials', and 'blog'. The main content area has a light gray background. It features the title 'guidely : fair checklist' in bold. Below the title is the instruction 'Select your country and a company:'. There are two input fields: one labeled 'Country' and one labeled 'Company'. At the bottom, a line of text reads 'complete the checklist and get your guidely fair use badge'.

Figure 4.10 "Fair Badge" Country Selection Page



The screenshot shows a web page with a black header bar containing the 'guidely' logo and navigation links: 'login', 'about', 'tutorials', and 'blog'. The main content area has a light gray background. It features the title 'guidely : fair checklist' in bold. Below the title is the question 'Does your video make fun or joke about an IP?'. There are two buttons: 'Yes' and 'No'. At the bottom, a line of text reads 'complete the checklist and get your guidely fair badge'.

Figure 4.11 "Fair Badge" Checklist Example Page

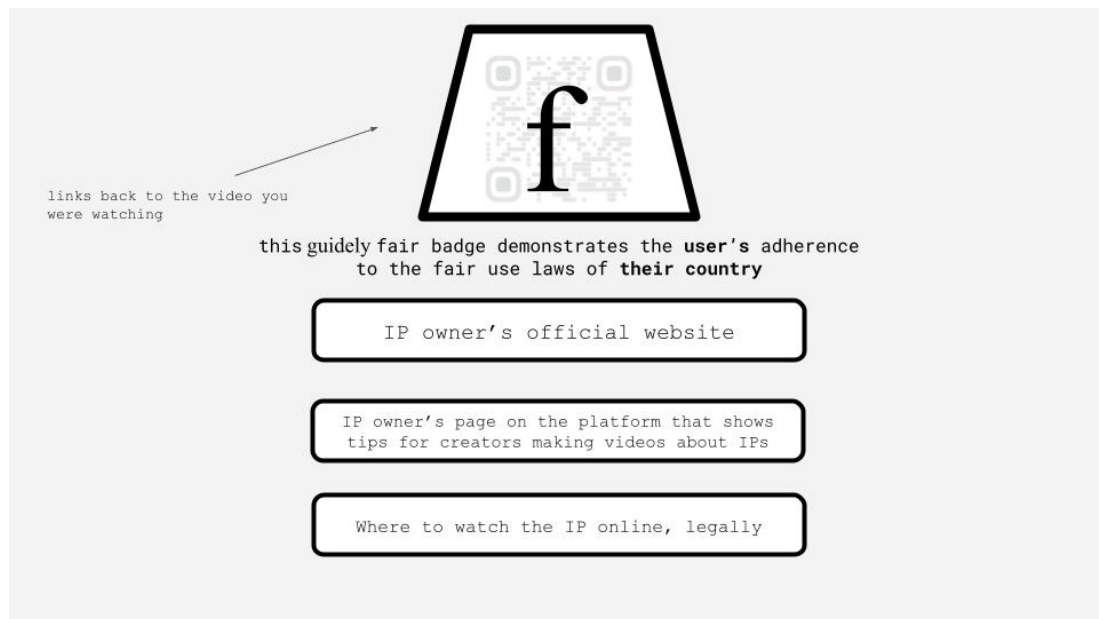


Figure 4.12 Information Displayed when "Fair Badge" is Scanned

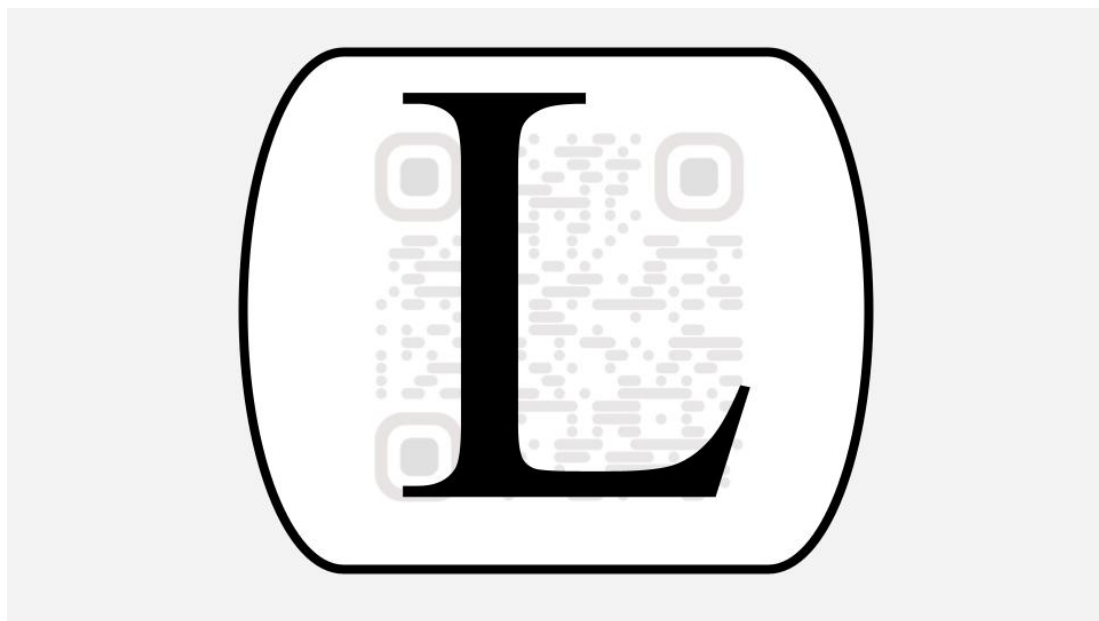


Figure 4.13 "License Badge"

#### 4.1.4 "License Badge"

Lastly, the third badge users can earn in the *Guidely* prototype is a "License Badge," which allows users to "microlicense" aspects of an IP for the purpose of using the IP in a limited manner, such as a longer clip or soundbite in a video. Similar to the other processes, users of *Guidely* will search or locate a company on the website. If a company offers microlicenses, an option will appear on their company page to purchase the microlicense. After reading what the microlicense provides and the stipulations of the license, users can complete a checklist to receive a quote for the badge. Once securely paid, users can download a QR-enabled "License Badge" and link to include in users' own works. When scanned or clicked, the "License Badge" shows a user's username, the IPR holder's attribution, links to the IPR holder's official website, a link redirecting to *Guidely*, and a customizable link that can redirect to the user's socials or support pages, like Patreon. The purpose of the license badge is to allow users access to limited usage of an IP's works for the purpose of user generated content, which would normally not fall under fair practices or within general guidelines, without incurring demonetization or a copyright strike/copyright takedown notice. In turn, IPR holders will be able to monetize aspects of their IP on user generated platforms, which can foster better fan relations and support the growth of an IP on Web 2.0 platforms. Examples of the "License Badge" uses could include: showing a longer clip of a copyrighted work without immediate input or commentary, using a fragment of a song in a video, or permission from a company to sell fan works in a limited time venue (like a convention). Through the "License Badge," *Guidely* intends to streamline the process of purchasing permissions in a manner that best fits the in-demand, fast pace field of user generated content.

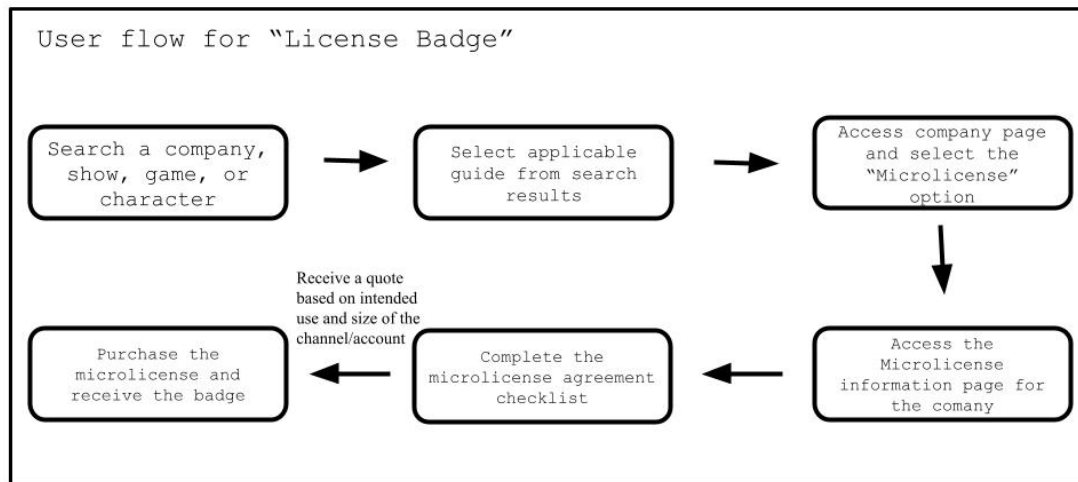


Figure 4.14 User Flow for "License Badge"

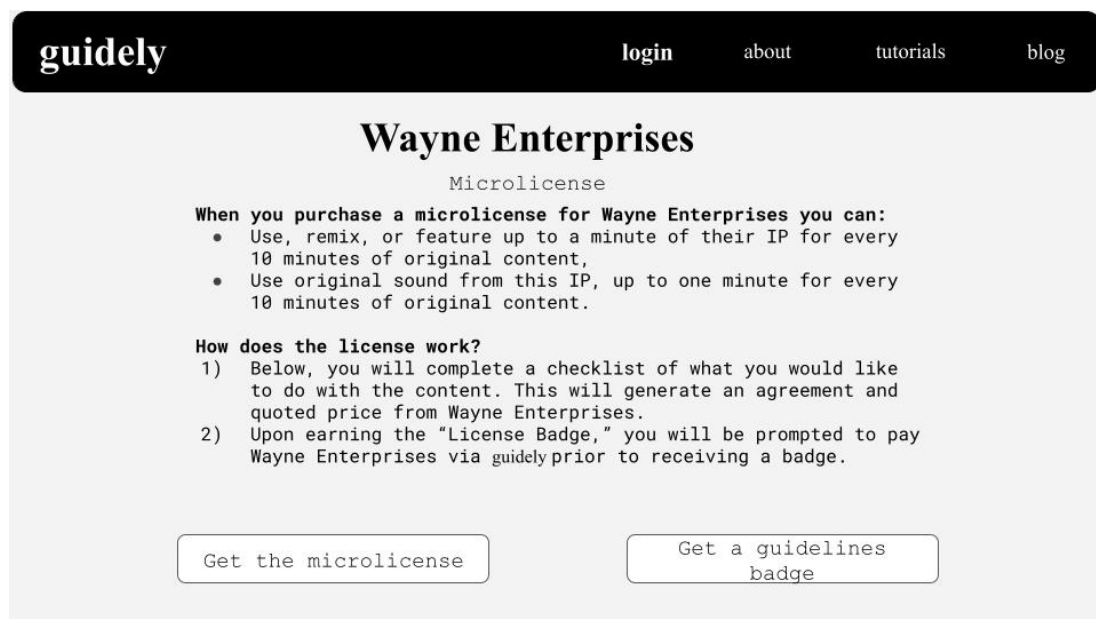


Figure 4.15 Sample Company Page for "License Badge"

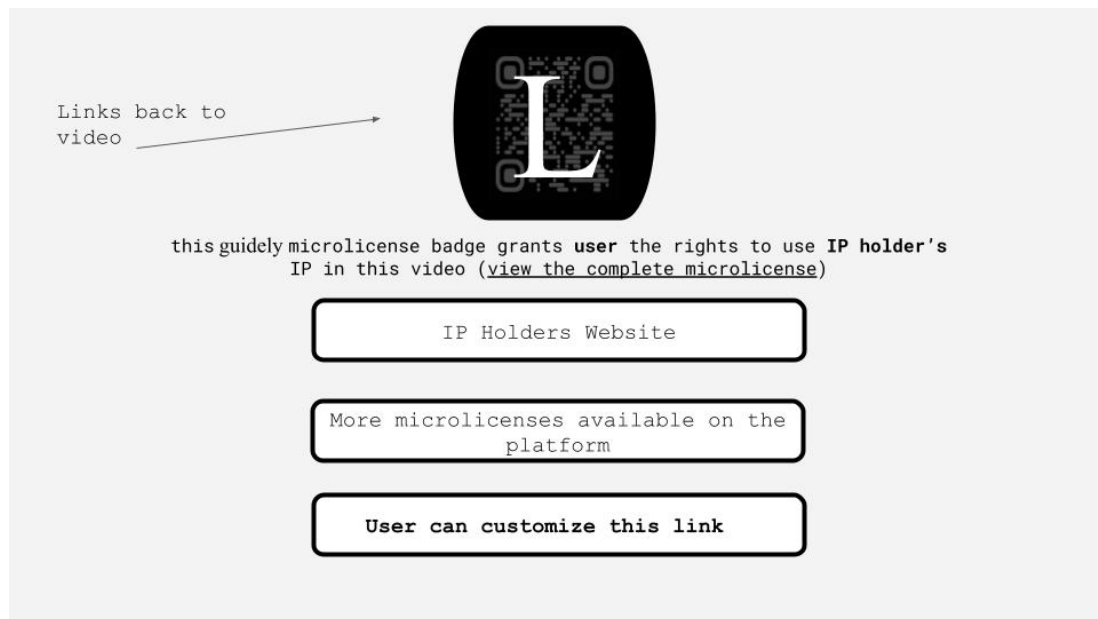


Figure 4.16 Information Available when "License Badge" is Scanned

### 4.1.5 *Guidely* Badge Profile Page

#### Profile Page for Creators

Reusers and IPR holders, alike, can benefit from being registered with *Guidely*. After logging in, reusers can access their own profile page, which showcases a profile picture, badges users have earned, and links to their social media. On the profile page, users can examine and download badges they have earned, review a company's friendliness, and upgrade their subscription plan to *Guidely*. The user profile aims to provide access to earned badges so *Guidely* users do not have to repeatedly complete the checklists to use or display the badges. There are three tiers for *Guidely* profiles. The first tier is the basic, or free plan. Much like Epidemic Sound, a basic, free plan with *Guidely* will allow the user to display one badge and one linked account. Basic plan users can change which badge they want displayed on their profile based on the badges they have earned. The next tier is the "verified" tier. Verified users pay a small subscription fee each month and can display up to three interchangeable badges on their profile and

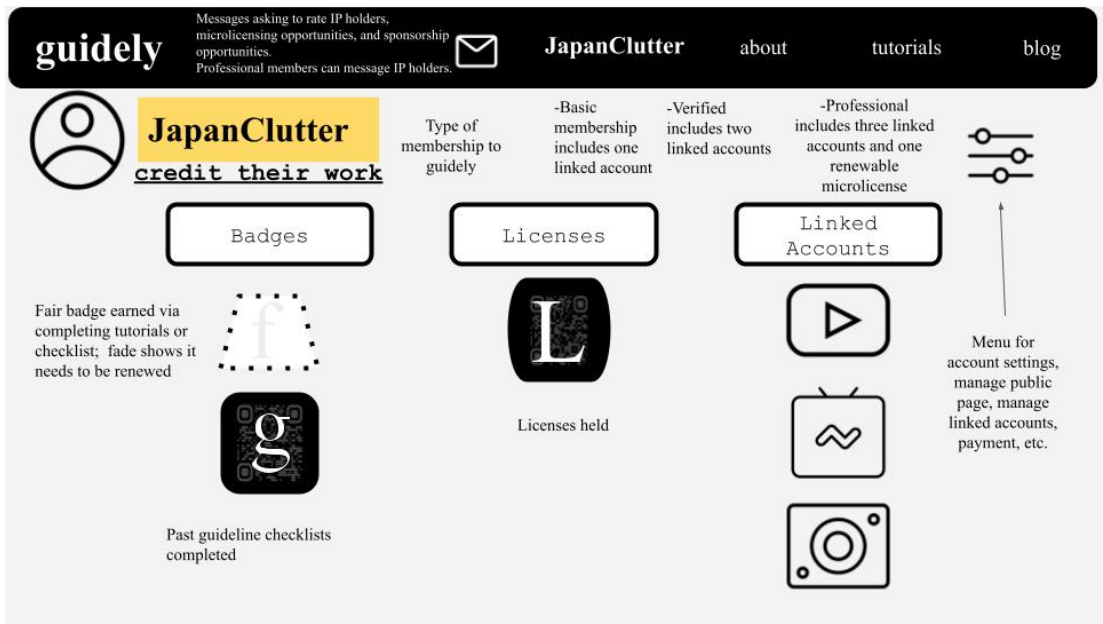


Figure 4.17 Profile Page Information Breakdown, Content Creator

link two social media accounts. The third and final tier is the “professional” tier. Professional tier members can display unlimited badges and link up to five social media accounts. Professional members will also receive a discount to purchase a microlicense during their initial sign-up, courtesy of the platform. *Guidely*. Users can display their profiles on their social media, links pages, or in the description of their works. For reusers, a *Guidely* profile will ensure that they have access to the badges they have earned, expedite their badge journey for repeated use of works, and showcase their continued dedication to working both within their rights and within boundaries set by IPR holders.

### Profile Page for IPR Holders

IPR holders can also enjoy the benefits of being registered with *Guidely*. On an IPR holder’s public profile page, visitors can see the “Fan Friendliness” score, the types of licenses offered by the company, and the guidelines available on *Guidely*. Through the public profile page, reusers can easily access information about a company’s openness to creators without having to search for the com-

pany on *Guidely*. Through the options located on the IPR holder profile, IPR holders can access information on revenue earned, create a microlicense through a guided process on *Guidely*, or update their guidelines. Those companies that have “unfriendly” fan scores will have suggestions on their private profile page on how to improve their score on the platform. On both the IPR holder profiles and the user profiles, there will be an option to receive messages through the platform. For IPR holders, the message function will provide notification for completed licenses on the platform and messages from professional members regarding partnerships/sponsorships/collaboration opportunities. For users, messages can include sponsorship or microlicensing opportunities from IPR holders and professional users can send correspondence to IPR holders for potential collaborations or other licensing possibilities. In summary, the profile system on *Guidely* not only provides information about badges and scores on the platform, but can be utilized for building relations between IPR holders and reusers.



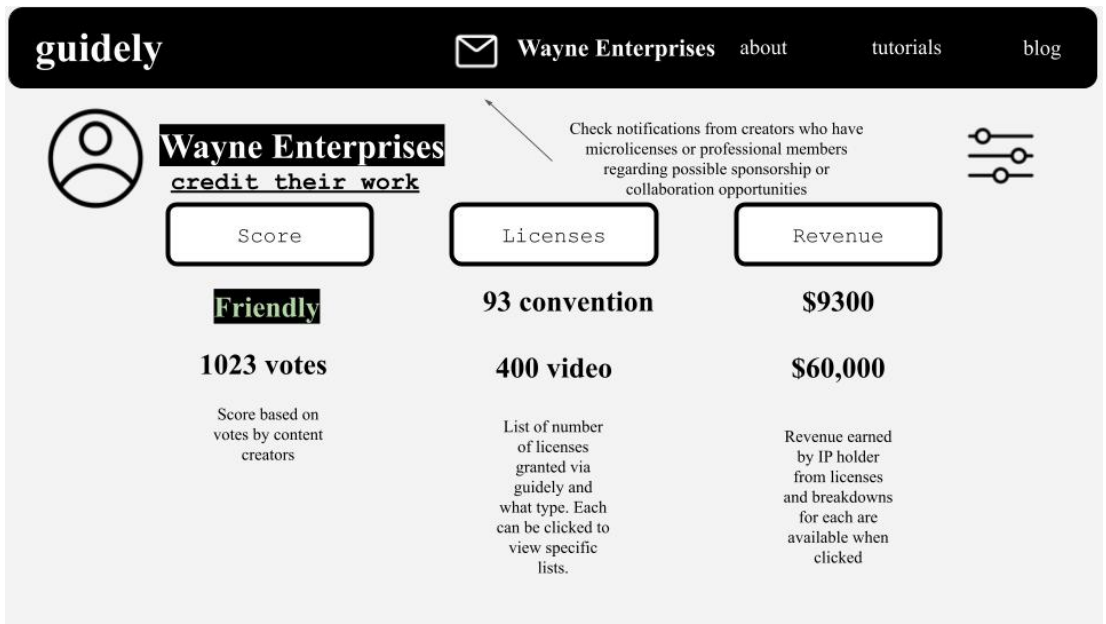


Figure 4.18 Profile Page Information Breakdown, IPR Holder

4.1.6 Attribution Badge

In addition to the badges that can be earned through *Guidely*’s checklist and microlicense systems, users can easily access correct attribution information through the *Guidely* profile pages. By clicking the ”credit their work” section of the page, users can automatically generate an ”Attribution Badge” for anyone with a *Guidely* profile page. Particularly, users who do not want to engage with guidelines, fair use, or microlicenses can still benefit from *Guidely* by locating attribution information from those they wish to credit for their work. As the attribution norm, as illustrated in the literature review, is one of the key tenets of the current copyright regime, *Guidely* can facilitate access to attribution information and create a means in which others can readily showcase attribution in their own fan works through the QR watermark badge. Examples of use include, content creators who show images or brief clips from other content creators, or those who want to credit an IPR holder for their work. Those with profile pages on *Guidely* can encourage accreditation for use of their work with ease and the information provided through the badge allows for greater engagement with the user’s works

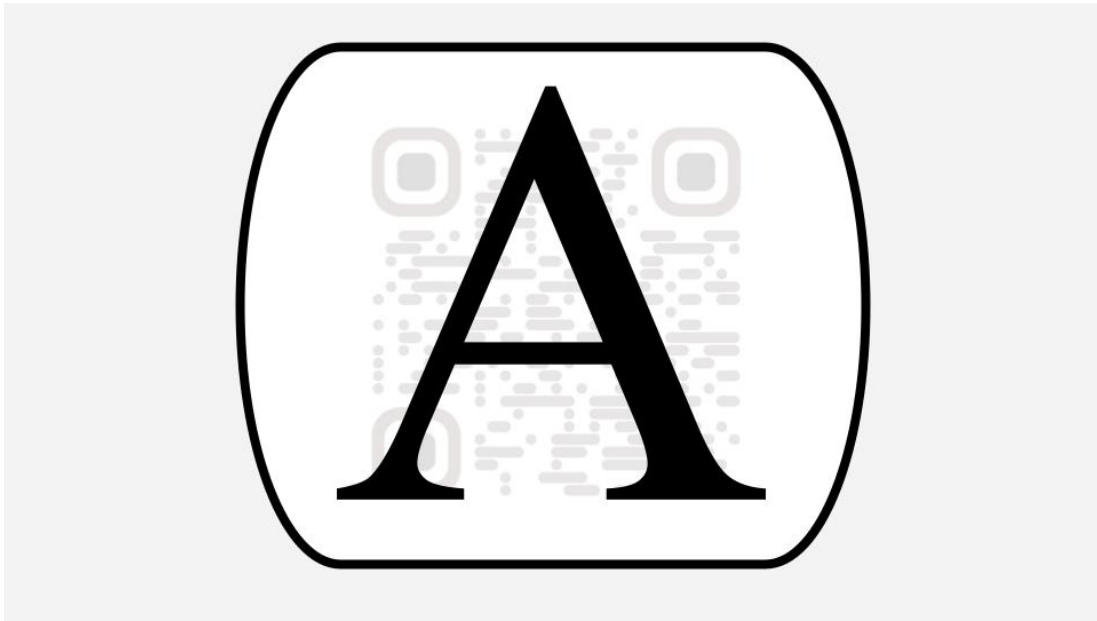


Figure 4.19 Attribution Badge

than simple attribution (often a person's username or company name with an indication that they own the work featured).



Figure 4.20 Attribution Badge Page Breakdown for Individuals

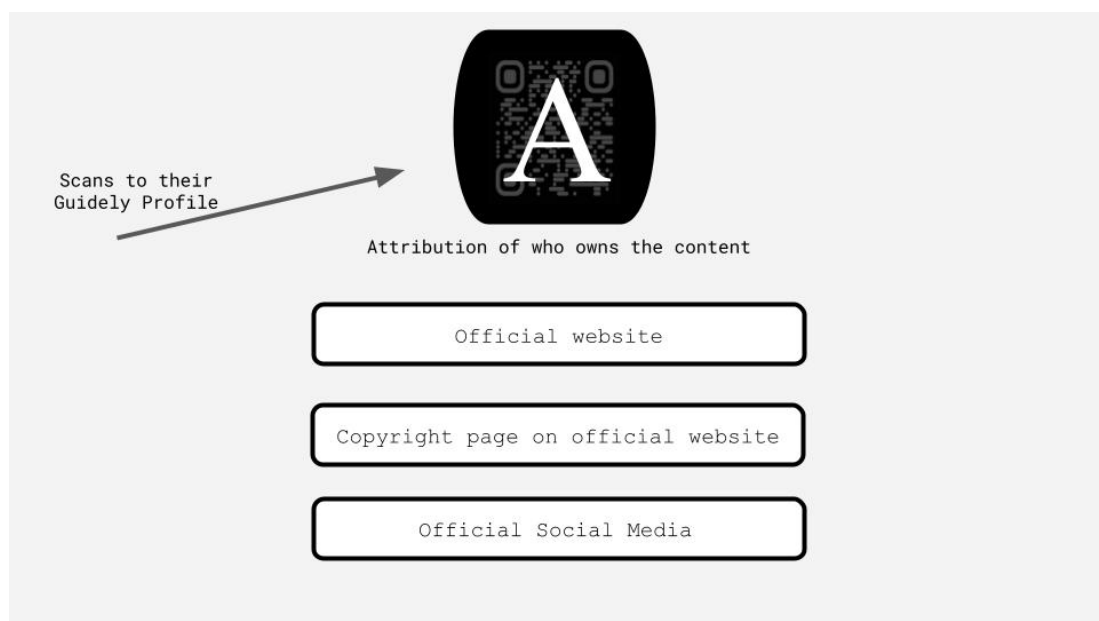


Figure 4.21 Attribution Badge Page Breakdown for IPR Holders

## 4.2. Evaluation

### 4.2.1 Introduction to Evaluation Methods

To assess the competence of this final prototype, I conducted two surveys and an interview with an artist who owns a business centered on fan works. The two surveys aimed to comprehend content creator's perspectives on the design and the YouTube audience's perspective. The purpose of the YouTube viewer survey was to understand the reactions of those who engage with content creators on YouTube when presented with a new component in a followed creator's videos. The viewer survey proved to be an important part of this study, as the badges serve the dual purpose of asserting the validity of the creator's content under guidelines and fair use, while also redirecting traffic to official IPR holders. The intent is that direct engagement with the IP after seeing it featured in a content creator's work would allow IPR holders to reap direct benefits, such as money from purchasing official merchandise, while permitting the creator to keep their video monetized. In this regards, the function of the content creator survey was to gain greater understanding of how the design could assist them, with the goal to identify their confidence in using such a design to avoid copyright strikes. Likewise, my in-depth interview with a career artist endeavored to identify the multi-platform capabilities of the design, as well as gage its professional capacities. In essence, the design aims to create an official version of the win-win scenario that professional fans often cite when defending their works: that a content creator discussing an IP on YouTube, or other platforms, benefits the IPR holder by generating new fans. Henceforth, understanding how viewers, content creators, and creators of fan works would interact and use the design through data will serve as a foundation to convince IPR holders of the legitimacy and value of the platform. Ultimately, it is the engagement of the fan creators, viewers, and IPR holders that will allow the platform to thrive.

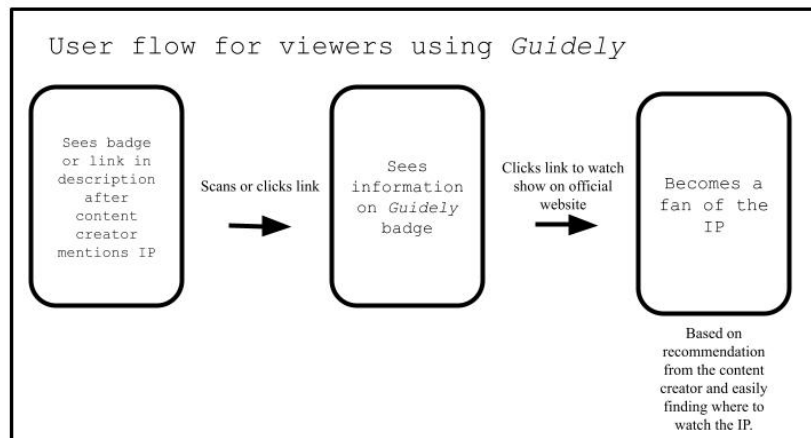


Figure 4.22 Viewer User Flow

### 4.2.2 User Study: YouTube Viewers

#### Demographics and General Knowledge of Copyright

The YouTube viewer survey was distributed at an art event, Slack, Facebook groups, and on Discord. In total, I received 46 responses, with 50% of contributors being in the age range of 26 – 30 years old. 85% of respondents watched YouTube either every day or nearly every day, with a majority of respondents consuming gaming (65.2%) and music (67.4%) content on YouTube. However, the range of content consumed was quite large as many individuals watched several genres of channels including, educational/tutorial/DIY (54.3%), comedy/parody (50%), travel (45.7%), and lifestyle (32.6%) topping the list. When asked about their experiences with creators mentioning copyright concerns or fair use on YouTube, 91% of respondents said that they had heard at least one creator mention the topic—with 67.4% noting that they had heard many creators bring up the topic. Although those who took the survey consumed a variety of videos on YouTube, it was observable that the idea of copyright being an issue on YouTube for creators

was common knowledge among YouTube viewers.

### Design Evaluation from YouTube Viewers

With respect to the design, viewers were mixed in its reception. When shown an image of the QR badge during a fictional review of an anime, most noted that the badge was not distracting (52.2%), with 39.1% noting that they would not have noticed it if the creator did not make a point to highlight it. A majority of those polled would scan the QR badge if the IP referenced in the video was personally interesting or relevant to the viewer (45.7%), and if they were confident that the QR code was linked to a reputable source (43.5%). When redirected to the page of links, only a third of participants found the information more or less helpful, with a majority (54.3%) leaning towards looking up the information themselves. However, when the question was framed as scanning the QR code as a means of helping a creator make more content about IPs, 50% of respondents said they were more likely to scan the QR code to support a creator they liked. Considering negative feedback towards the design, including the 15% of respondents who stated they would not scan a QR code and the five comments from respondents about their dislike of QR codes influencing their results, I decided to add a question asking if those polled preferred links instead. While only being able to capture six of the respondents, due to the question being added late in the survey's existence, overwhelmingly, the answer was that people preferred links. Recognizing this suggestion, I added a links portion to the QR badge generator portion of my prototype to better accommodate viewers who prefer to be redirected via a link in the description of a fan work on YouTube.

### Analysis of Survey Results

On the whole, the data from the viewer survey indicates that fans have a general knowledge of copyright issues on the platform. Additionally, viewers were hesitant about QR codes. Mainly, if the content creator in the situation presented to them was not adamant about the legitimacy of the QR code, or the benefit of scanning the QR code to the viewer, viewers were, in most cases, dismissive of the code. It would appear that if this design were to officially launch, at its onset, creators and the *Guidely* platform would have to work together to communicate how this

addition to the YouTube viewing experience benefits those watching. For example, the *Guidely* information provided in the “Fair Badge” exhibits where to watch an IP on an official capacity. Currently, for anime, this is difficult to discern as there are several streaming sources where an IP could be available (Netflix, Hulu, Crunchyroll, HiDive, etc.). By accessing the information under the “Fair Badge,” viewers can save time looking up this information and dive right into watching an anime. Despite this reasoning, one viewer commented “The benefit to the viewer of scanning the QR code would have to be clearly stated in order for me to scan it. What’s in it for me?” This comment made a compelling point: there is no incentive for the viewer to scan the badge outside of showing support for the content creator and learning about an IP. *Guidely* would have to provide viewer incentives, perhaps in the form of financial benefits (like discounts or coupons on official merch with IP partners), or being able to watch an IP for free in a limited manner (maybe one free episode on a streaming platform), as a means of convincing viewers to be redirected to *Guidely* and an IPR holder. To be able to offer such incentives, however, would require a partnership between an IPR holder and *Guidely*. Nevertheless, the fact that half of the viewers were open to the QR code badge if it helped a content creator demonstrates that, if *Guidely* is shown to be a legitimate platform and content creators spur interest in an IP, some viewers will scan the QR badge and further engage with an IP.

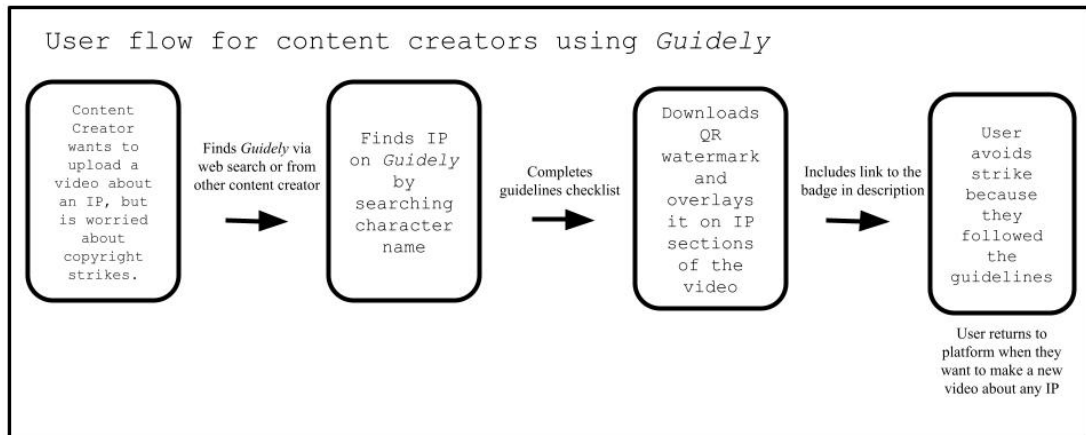


Figure 4.23 Content Creator User Flow

### 4.2.3 User Study: Content Creator Survey

#### Demographics

Unlike the first content creator survey I administered, this survey was strategically distributed during an event tailored to content creators and digital artists. The interpersonal mode of delivery led to a much larger pool of participants, with 20 content creators engaging in the survey. The survey had two parts. The first part focused on gaging the creator's experience with copyright, fair use, and guidelines in regards to posting content online, while the second part intended to assess the design's ability to help creators make content confidently. Among those who took the survey, 80% primarily posted on Instagram, with the other 20% focusing on YouTube. 65% of those polled identified as either a digital artist, photographer, or artist—with 20% identifying as content creators. Some creators approached me after taking the survey stating that they identify with more than one type of creator profession—indicating to me that many creator's consider themselves multifaceted and do not confine themselves to one sort of form of expression.



Indeed, the creator's polled had a wide range of experience creating, with, in descending order, 20% creating for over 10 years, 25% creating for 5 – 10 years, 25% creating for 2 – 5 years, 20% creating for 1 – 2 years, and 10% creating for 0 – 1 year. Thus, those polled, were diverse in their experiences and types of creations, but mainly concentrated to posting on Instagram and YouTube.

### Copyright Experiences

With regard to their familiarity with copyright, guidelines, and fair use on the platforms they used, the creators had varying experiences. When asked if the creator had used copyrighted media in their own content, half of the participants stated they had used either an image, clip, or character from an IP. Regarding use of copyrighted media, 10% of those polled used an IP in a review, 10% used an IP as a joke or in a parody, 20% made fan art about an IP, and 5% had included music from an IP in a short film. Over a third, 35%, of those polled stated they did not feel the need to include other IPs in their art, with 20% deliberately avoiding posting copyrighted content. Although half of those surveyed used an IP in their creations, only 15% of those polled had actually received a copyright claim or strike on their content. When asked if the creator had read fan work guidelines, 35% answered that they were not aware that companies have fan work guidelines. Another 35% stated that they had at least read the fan work guidelines once, with 15% asserting that they read the guidelines before posting their work. Many creators, 25% of those surveyed, indicated they only try to abide by fair use when posting other's content, with 5% stating they only follow the platform's guidelines. In regards to the ease of understanding guidelines, 68.8% of those surveyed were neutral in their ability to comprehend guidelines, with 18.8% leaning towards guidelines being unclear and difficult to understand. Only 12.5% of those who chose to answer the question stated that the guidelines were somewhat straightforward. Finally, when asked about their familiarity with fair use, 50% of content creators leaned towards familiar or very familiar, with over a third, 36.8%, stating they were aware of the concept. Through this section of the survey, it is observable that many content creators utilize existing IPs in their works in a variety of ways. Yet, the guidelines for those works exist in obscurity to content creators, or are difficult to understand. While those who received a

copyright claim or strike were in the minority of those polled, the confidence in the familiarity of fair use practices was split between rather familiar, 50%, or somewhat to no familiarity with the idea, 50%. Consequently, legal issues that influence the ability of creators to make creations and post them online are an area which creators are not universally well-versed on the matter.

### **Design Evaluation: Fan Friendliness**

In the second part of the creator survey, I had content creators evaluate the badge system and the “Fan Friendliness” score of the design. The first aspect I surveyed the creators on was the “Fan Friendliness Score.” After viewing the prototype page showcasing an “unfriendly score,” creators were asked to evaluate whether they would be willing to make content about an “unfriendly” company’s IP. In answering this, 63.2% stated that they would be less inclined or avoid using copyrighted materials from that company, while 26.3% remained neutral and 10.6% leaned towards the score not effecting their intent on posting about an “unfriendly” company’s IP. When shown the “Fan Tips” for avoiding copyright, 15% stated that they would feel confident posting about an “unfriendly” company’s IP after reading the page, with 20% stating they would feel somewhat confident, 40% neutral, and 25% leaning towards not wanting to post material from an “unfriendly” company at all. From this response, it can be determined that content creators would avoid posting about “unfriendly” companies in an attempt to avoid copyright strikes, while some fans are willing to try to post about an “unfriendly” company if they were given direction on how to do so. As found in the anime fan survey and in comments from the influencer agency executive, fans are driven to post fan works regardless of the IPR holder. Although some content creators, in this survey, were inclined to post content regardless if a company is an “unfriendly” IPR holder, the score deterred many from posting. While it was my initial intention to use the “Fan Tips” to educate content creators and encourage practices that would ensure the IP’s integration in a more favorable way to the IPR holder, perhaps the deterrence of the “unfriendly” score towards IP use could also prove helpful to an IPR holder. If IPR holders do not wish to engage fans or fan works, then an “unfriendly” status could deter content creators from using those copyrighted works. In doing so, content creators can focus

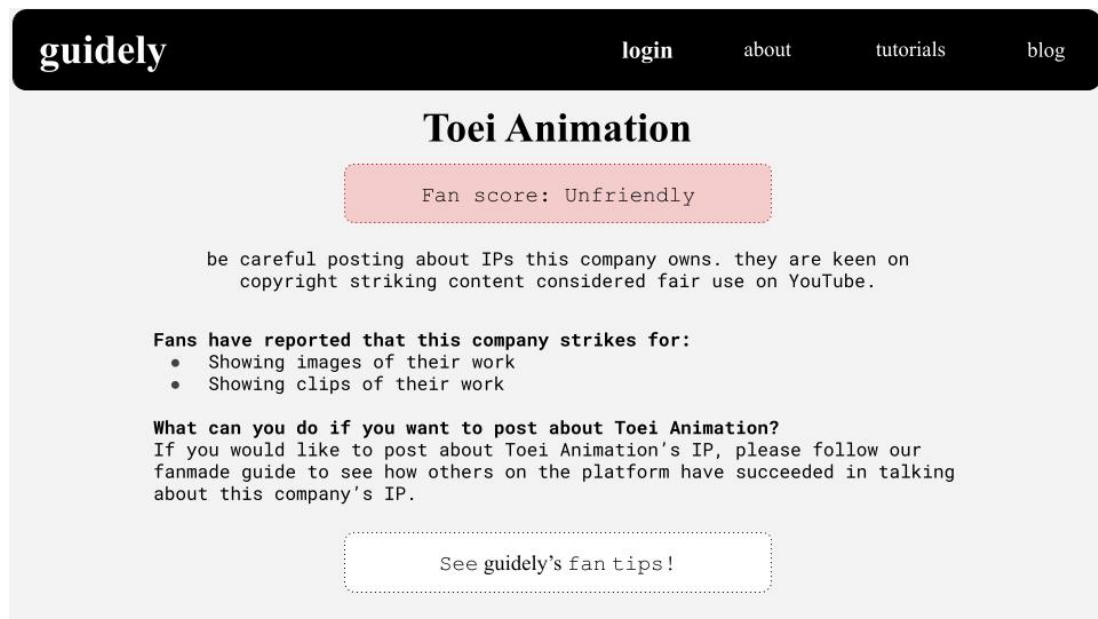


Figure 4.24 Unfriendly IPR Holder Page

on creating content that caters to “friendly” IPs which prevents demonetization, while “unfriendly” IPs are saved from policing the use of their content online.

When it came to evaluating a “friendly” IPR holder’s page, content creators appeared rather receptive. For an IPR holder who had earned a “friendly” score on *Guidely*, 75% of those surveyed responded that they would be confident in their video not receiving a copyright strike if a company was ranked as “friendly.” Meanwhile, only 10% said they would post the video regardless of the score, with 15% answering they did not feel like the fan friendliness score eased their distrust of the YouTube copyright system. Overwhelmingly, content creators felt more confident about an IPR holder being receptive about a content creator’s works with a friendly score. Therefore, if an IPR holder wanted more creator engagement about their IP, there is evidence that a “friendly” score on *Guidely* could increase content creator interest about the IP. In fact, through the results of both the “friendly” and “unfriendly” pages, it is concludable that content creators would be more inclined to make content about “friendly” IPs. As seen through the previous fan survey, when content creators discuss IPs—regardless of if it is a

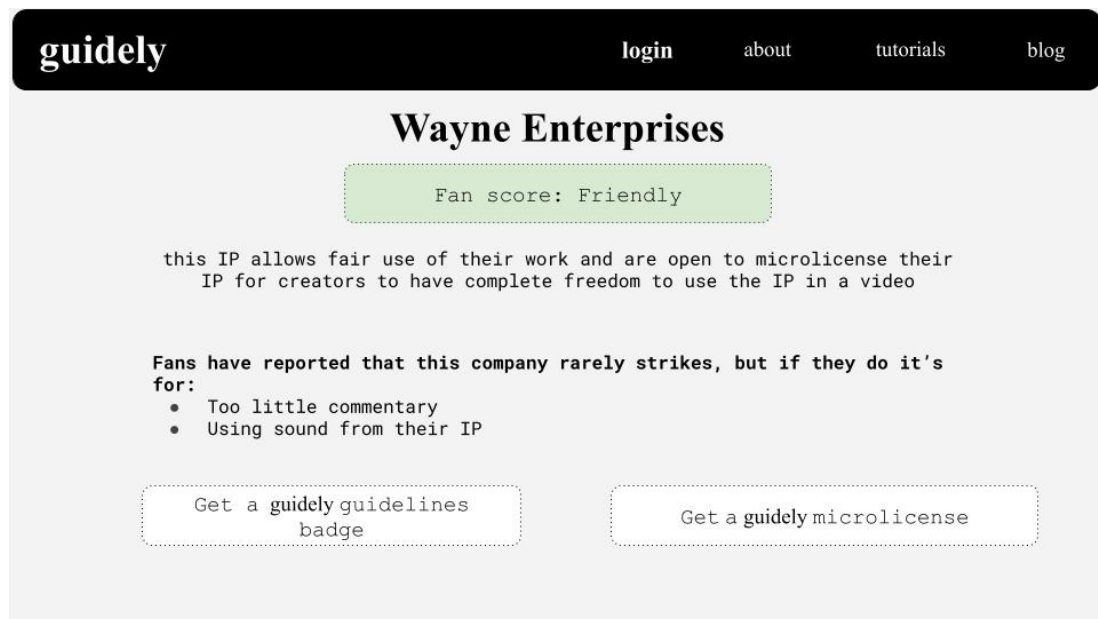


Figure 4.25 Friendly IPR Holder Page

positive or negative review—fans are inclined to examine the anime mentioned. Consequently, the resulting trend of a “friendly” score on *Guidely* is more fans consuming the IP.

### Design Evaluation: Badges

In reference to the badges offered by *Guidely*, content creators appeared open to using these new functions in their videos. After being shown an image of the intended use of a *Guidely* badge, content creators were asked whether they would be more confident in posting a video with copyrighted material if they were able to show the IP owner that they had read the guidelines or were following fair use. Of those surveyed, 45% answered that they would be more confident that their video would not receive a copyright strike by using a *Guidely* badge, while an additional 35% answered they would be somewhat confident about a video’s safety from copyright strikes. Only 15% answered that they did not think the badge would make a difference in terms of copyright strikes and 5% answered that the badge would not dissuade their wariness of an IPR holder striking them.

All in all, 80% of respondents thought the system could reduce the chance of copyright strikes on their videos by showcasing that the content creator had read the guidelines or was within fair use parameters. Since there is currently no way for content creators to display this information, the *Guidely* “Guidelines Badge” and “Fair Badge,” according to the results of this survey, can increase the confidence of creators making content about IPR holders. As seen with the in-depth interviews with content creators prior to this prototype, all of them were weary and careful about using copyrighted content in their works, despite a desire to incorporate such content, because of the copyright system on YouTube. The *Guidely* badges could increase the confidence of such creators and allow them to make content and reference IPs when they would otherwise avoid doing such. Furthermore, the *Guidely* “Guidelines Badge” aims to ensure that content creators are in line with fan works guidelines from companies. Thus, not only do the badges increase confidence in the creators posting copyrighted material, but also lead to better content creator compliance with existing IPR holder guidelines.

### **Design Evaluation: Incentive for Utilization**

When asked about the factors which would encourage content creators to use the QR watermark badge in a video, there was a high indication that content creators would use the badges to accomplish a variety of goals. The first goal content creators indicated would encourage them to use the QR watermark badge is to build better relations with IPR holders (50%). After building better relations, 40% of respondents all indicated that they would use the badge to: 1) avoid copyright strikes/claims/demonetization, 2) demonstrate authenticity and credibility as a creator, and 3) to overcome faults in the YouTube copyright system. Only 25% indicated that they would use the badges to showcase their “friendliness” for advertisers and sponsors. Therefore, one can observe that the badges are multi-purpose in their benefits to content creators. Interestingly, the high response rate for bettering relations for IPs indicates that content creators do not inherently mean ill-will when posting videos featuring copyrighted content, rather, there is a desire by content creators to have a means of connecting and communicating with IPR holders. At present, as seen with the first content creators survey, IPR holders often do not respond to content creators wishing to ask permissions to

use their content. Hence, a system like *Guidely* could facilitate this longing from content creators to have better relationships with IPR holders.

With respect to the monetized features of the *Guidely* prototype, creators were asked under what circumstances would they be driven to purchase a microlicense. There were a variety of factors that would drive the content creators surveyed to purchase a microlicense. The first and foremost factor, receiving 52.6% of the vote, was that the creator was passionate about the IP and enjoyed making content about it. The second two most popular answers, with answers from 42.1% of respondents respectively, were 1) if the microlicense granted complete creative freedom in using an IP in a video, and 2) if the microlicense was cost effective (under USD 100). Other forms of monetization were also open to some creators, with 26.3% of those surveyed indicating they would purchase a microlicense if the cost was limited to the scale of use of the IP in the video (the example given being if the IP featured took up 3% of the creator’s video, the IPR holder would receive 3% of the money generated from the video). For some creators, 21.1%, the IP’s popularity would lead to them purchasing a microlicense in order to create a trending video. Resultingly, content creators and those who make fan works, as seen in the fan survey, will make content about an IP if they enjoy it and are passionate about it. Content creators indicated they were willing to purchase a microlicense for creating content on an IP they enjoy and are passionate about. Therefore, if an IPR holder offers a *Guidely* microlicense, they can receive revenue for fan works that would be created regardless of if there were a microlicense. The benefit being that the IPR holder is compensated and fans, both professional or otherwise, can post their content without fear of copyright strikes or claims. Moreover, a *Guidely* microlicense can provide content creators more freedom to use an IP than fair use/dealing or guidelines—allowing their content to thrive and be expressed in new ways instead of being hampered by copyright law. Henceforth, if an IPR holder is seen as “friendly” on *Guidely* and many creators are more inclined on featuring the IP in their content, then not only will IPR holders earn revenue from the increased viewership of their IP, but they will also earn revenue from a percentage of content creators seeking to microlicense use of their IP for the purpose of joining trends and generating interest in their own content. Through *Guidely*, IPR holders will be compensated through increased fan traffic and from

revenue generated by content creators seeking to make content about IPs they are both passionate about and could lead to a benefit for their own channel.

### **Design Evaluation: Badges as Attribution for Creator's Own Works**

Notably, when placed in the position of the IPR holder and asked if they would want others to reference their work through QR watermark badges, 50% of respondents stated that they would like to be credited properly through the badges, while another 15% leaned towards favorable use. Likewise, 20% were neutral about the use of QR badges as a means to credit their work, while only 15% of respondents indicated that they were indifferent about how others used their own works. With over half, 65%, of the content creators leaning towards the badges as a beneficial means of redirecting viewers to their works, shows that *Guidely* could be utilized not only as a way for IPR holders to be properly accredited for their works, but content creators could reference each other's works amongst themselves, as well. *Guidely* could be made the standard for the attribution norm already present in content creation circles, and could be used by both large and small IPR holders—including the content creators, themselves, who often make their own original works.

### **Design Evaluation: Asserting Rights**

Lastly, content creators were asked how likely they would use the badge system to assert their rights as a creator. 65% of the content creators polled were mostly in favor of using the badges, with 15% stating that they would use the badges as a means of asserting their rights as a creator to use a copyrighted work. Of those polled, 25% were unsure if they would use the badge at all, while 10% were not in favor of using the badge system (with one vote for somewhat unwilling and one vote for unwilling). Interestingly, the person who was completely opposed to using the badge system to assert their rights, answered that would definitely want someone to use the QR watermark to redirect people back to their own work. In this insight, perhaps some content creators do not view the QR watermark badge as an effective way to combat copyright issues, but an innovative way to provide attribution. All in all, through the content creator survey, I was able to ascertain that a majority of content creators polled would use the badge system

for asserting their fair use/dealing rights. As there is currently no way to indicate your work is attempting to fall in line with fair use parameters, along with the general vague understanding of fair use among content creators polled, using the *Guidely* “Fair Badge” checklist would provide content creators a way to create videos referencing copyrighted content within generally accepted parameters of fair use/dealing. Since content creators often cite fair use to dispute copyright claims or strikes on their channel, earning a “Fair Badge” would allow content creators to make this argument prior to any claim/strike on their channel. Creators could argue that they are within their rights to use certain content, while being confident they understand what those rights are and able to cite them in their disputes. Therefore, *Guidely* not only aims to appease IPR holders by ensuring that creators are abiding by the guidelines and parameters they set, but also ensuring that creators are able to make transformative content in confidence of their rights to do so.

### **Analysis of Content Creator Survey**

The content creator survey revealed many insights into the potential of *Guidely*. First guidelines, as they exist online today, are inaccessible in their language to content creators, and the overall legality dictating their creation process was not universally comprehended by the creators; thus, a design facilitating their ability to understand these legal ambiguities proves to their benefit. In regards to assessing the design, the fan friendliness scores had an influence on whether creators were willing to produce content in reference to a particular IP. Unfriendly scores deterred a majority of those surveyed, despite the availability of recommended tips to circumvent more proprietarily protectant IPR holders—while friendly scoring IPR holders in the prototype incurred more positive reception to creating contents relating to a friendly IP. In terms of the badges, a majority of respondents felt confident or somewhat confident about posting content that references an IP on YouTube without incurring a copyright strike, showcasing the ability of the badge system. Since content creators would have to demonstrate an understanding of the guidelines in order to generate a badge, this could also lead to greater copyright compliance on YouTube and other user generated content driven platforms. The primary reason content creators would choose to use a sys-



tem like *Guidely* is to better relationships with IPR holders, which, currently, no system provides in the space of content creation. Many creators also responded positively towards the ability to purchase a microlicense, with the foremost incentive to purchase a microlicense being a desire to make content about an IP. Interestingly, the survey also concluded that the badges fulfilled strong attribution norms in the content creation community, and a majority of those survey felt confident that a badge system would assert their rights as a creator. Demonstratively, through this survey, *Guidely* can lead to greater guidelines compliance through its badges, educate content creators through simple checklists about ambiguous legalities that influence creation online, and inspire creator confidence in the copyright system. In conclusion, IPR holders can also benefit from increased engagement from creators—or lack thereof if they so desire—through the fan friendliness scores, and drive further profits for their IPs through microlicenses.

#### 4.2.4 Design Evaluation through an Interview with a Professional Fan Artist

##### Introduction to the Professional Artist

The professional artist I interviewed is a well-known online and in the convention circuit for their fan works. Through their artistic endeavors, this artist has worked for renowned clients and has won awards for their work. As a current VFX artist for a game studio, their career as a professional artist stems from many years of creating fan works for conventions and posting their works online—growing a following for their innovative interpretations of various IPs they enjoy. In addition to their work as a professional artist, this person is the co-founder of an artist conglomerate which sells fan works from various artists at conventions and through their e-commerce website. As someone who is deeply entrenched in the fan works community and found a career in art primarily due to their portfolio of fan works, I sought this professional artist's insights about the community to provide perspective on the feasibility and usefulness of my design for those who create fan works.

### **Perceptions of the Relationship Between Fan works and IPR Holders**

Fan works, according to the VFX artist, often depict franchises or characters that had an impact on the artist in some way and supplement a niche desire from other fans in their works that is not necessarily provided by an IPR holder. In the artist's experience, they have never received copyright strikes or claims for their fan works. In fact, in some cases, companies had commented on the quality of the artist's work. The artist suspects that many companies condone fan works because they help promote the brand and sustain interest in the IP. In their experience, they reveal that many companies understand that there is a "symbiotic relationship" between those who create fan works and the longevity of an IP. Fan works provide the emotional connection to a franchise whereas corporately-minded IPs often fail at providing such since they are focused on producing the product to be consumed. In regard to the benefits of fan communities, the artist stated that IPR holders gain massively from fan works as there are several talented artists and creators who want to engage and expose an IP to large audiences without paid sponsorship from an IPR holder. Fan works fuel fan passions and artwork, according to the artist, will drive people to consume an IP based on exposure to works.

### **Ambiguities under the Law**

Since the artist sells their fan works online and at conventions, they are aware that their activities could be argued as a violation of an IPR holder's copyright. When asked how the artist would defend their works if an IPR holder were to strike or claim their fan works, the artist said they would oblige with the request as they do not own the works. Admittedly, the artist said it would be difficult to defend the existence of their works online in lieu of the team of lawyers large IPR holders have under their domain. The artist believes the ambiguous nature of their works has allowed their works to persist online. Their works can be argued as artwork beyond the referenced IP—noting instances where those who were not aware of the franchised referenced still purchased and appreciated their works. In this conversation with the artist, it was evident that fan works were not only able to sustain interest from fans in a franchise, but created accessible channels in which non-fans can engage with an IP. Overall, the legality of the artwork they created was something they admittedly thought little about in their

creation process. On the matter of copyright and fan content guidelines, the artist remarked, “We [artists] don’t think about the legal things so much. We just want to make artwork for the sake of making art. . . . The last thing I think about is if I make it guideline friendly which impedes on my work. . . I think about how my art makes other people feel and what kind of emotions my art elicits.”

### **Design Evaluation: ”Guideline Badge”**

In the latter half of the interview, the artist was shown the Guidely platform and how creator’s earn badges on the website. Regarding the “Guidelines Badge,” The artist stated that it was best suited for content that would require planning like a YouTube video. In the case of fan works, the artist noted that artists want to post their art as soon as they are able to for the purpose of joining trends or reacting to new content that was revealed by IPR holders. In these instances, going through a checklist each time they wanted to post about a particular IP would slow down their ability to remain topical. When a profile page showcasing the badges earned by the creator was proposed as an alternative to going through the “Guidelines Badge” journey each time a creator wanted a badge, The artist showed more receptiveness. In such, they revealed their awareness of several artists who were hesitant to post their art online due to fears of copyright infringement or cease and desist notices. The artist suggested that if an artist was able to showcase their knowledge of the guidelines, particularly through a profile page, it could potentially mitigate reluctances towards sharing their fan works online. These insights could apply to content creators on YouTube, as well, who want to react to news from an IPR holder in a timely fashion. Thus, the profile page that showcases a user’s badges earned is imperative for content creators and artist who want to quickly upload their fan works without impeding their workflow.

### **Design Evaluation: QR Watermark**

The artist was then asked to comment on the QR capabilities of the badge and the fan friendliness score pages. Concerning the QR code aspect of the design, the artist stated that they would prefer to click a link as they are often watching or consuming fan works on a device—instead of a desktop. Links, in the artist’s opinion, were more accessible than a QR code. Insightfully, they noted that the

QR code had the unique advantage in a convention setting where fan artists are often asked to prove they are within guidelines or have a microlicense, and noted that a QR code option could allow creators to link back to the information in whichever situations best fit their requirements. When shown the fan friendliness score of an IP, the artist stated that the score would not influence their intent on posting a fan work, as their fan works showcase IPs and franchises they are passionate about. Again, it is observable that fans do not find the “unfriendliness” of an IP to be a deterrent in creating works they are passionate about. All in all, the artist emphasizes that the design is beneficial, especially, for video creators who are under more scrutiny from IPs than fan work artists. Stating that the system was empowering for video content creators by providing them with the confidence that their content will not be removed or demonetized.

### **Design Evaluation: “License Badge”**

The aspect of the design that was most intriguing to The artist was the microlicensing portion. For fan creators who go to conventions to sell their fan works, presently, are able to do so because these activities are condoned by IPR holders through deliberate disregard. Consequently, conventions have developed their own nuanced rules which make it difficult for fan creators to determine their ability to sell fan works. If creators of fan works were able to gain a limited license or specific license from an IPR holder which would grant permission to sell fan works at a convention or other fan led event, then they can easily provide proof to conventions and convention goers that their work can be sold. At present, many IPR holders would not grant official permissions in order to avoid promoting something as an officially licensed, or canon, product. However, through a third-party like Guidely, the fan works do not have to be certified as officially licensed products under the platform, simply that the “License Badge” indicates the work being sold is a fan work. Additionally, IPR holders would be able to receive compensation for fan works, which would have been sold regardless of permission, while providing fan artists an incentive to continue promoting and sustaining interest in an IP—giving an IP a presence at a fan convention without having to exist there in an official capacity. Moreover, The artist noted that the badge would provide legitimacy and authenticity to an artist as they are showcasing that the rights

holder is being compensated for the fan works being sold. Accordingly, standard microlicenses on Guidely could expedite the legal process for fan artists to receive permissions for fan activities, while effectively compensating the rights holder in a facilitated manner.

### Interview Analysis

Collectively, this interview with a professional fan artist was able to verify some important aspects about the Guidely platform. The first aspect that was validated was the QR code function. The artist's perspective of using the QR codes for verification of fan works at conventions was a novel idea for the platform that could have implications for other fan works that occupy physical space outside of the internet. Another fact that was validated was the importance of expediency in the process of getting a badge. Understandably, thinking about legal issues causes a creator's work to suffer. As seen with content creators who work with influencer agencies, the ability of a third-party to negotiate and facilitate contracts and other legal matters allows them to focus on creating content. The same appears to be the case with fan artist who have the increased pressure to release new works as soon as new information is revealed by an IP (for example, in an announcement or trailer release). Thus, having a page which shows previous badges a creator has earned can encourage facilitate the creation process without having guideline compliance impeding an artist's workflow. Lastly, the microlicensing aspect of Guidely proved incredibly promising from the artist's perspective. The ability to connect and purchase a limited, standard license from an IPR holder for fan works is needed in fan communities. By having a third-party verification system that grants limited licenses on behalf of the IPR holder, IPR holders do not have to license fan made works on an official capacity and can profit from fan creations. As seen with the discussion with an anime industry expert, the concern of fans selling unofficial merchandise has perpetuated among IPR holders. Instead of eliminating fan made merchandise that would not exist in an official capacity, IPR holders can earn revenue from a microlicense scheme. All in all, the Guidely platform helps sustain the "symbiotic relationship" cited by The artist between fan artists, content creators, and IPR holders on an official, verifiable capacity.

### 4.3. Design & Design Evaluation Conclusion

In this sections, the introduced *Guidely* system allows users to generate three new indicators to assert their rights to use owned content. Through the "Guidelines Badge" users will be able to better decipher what is admissible through a company's guidelines and preemptively indicate to IPR holders that they are functioning within the user guidelines. Consequently, IPR holders will see greater guidelines compliance on platforms like YouTube and more confident engagement with their IPs. Through the "Fair Badge" content creators can become better educated on how to apply fair practices to their work and indicate their evocation of fair practices so that IPR holders must consider this usage before submitting takedown requests or strikes on YouTube and other platforms. Finally, the "License Badge," once purchased, will allow IPR holders to profit on the use of their IPs by providing a standardized permissions and purchasing system, while content creators will be able to use IPs in novel ways. Overall, *Guidely*'s goal, through the applications of soft law, aims to mitigate copyright exception discrepancies on YouTube and other online spaces.

Through the Design Evaluation, it became evident that *Guidely* has many applications for content creators and fan works, but currently provides little incentive for viewers to scan the QR enabled badges. Observably, introducing a linked function of the *Guidely* badge system alleviated this qualm from YouTube viewers, yet there is still a call for added benefit on their behalf. Perhaps this can be implemented in a further sponsorship focused badge where scanning the badge provides inherent benefits, like a discount, to viewers. In observation, sponsors have already begun applying QR code overlays to sponsored sections of YouTube videos, so creating a standardized badge which all viewers can recognize as a validated and reliable link—which was indicated as important to those surveyed—would be a feasible application of the *Guidely* system.

In surveying content creators and my discussion with a professional artist who is prominent in the fan works community online and at conventions, there was an overall positive reception of the system. Particularly, the badge that peaked the most interest was the "License Badge," as creators envisioned many creative applications of the tool, including allowing fan activities at conventions like selling fan works. Content creators also found the fan friendliness scores useful for assess-

ing how receptive an IPR holder would be to their creations. Indeed, the design evaluation provided much evidence that *Guidely*, if it were to officially launch, would be an important tool for content creators to engage with IPR holders.

# Chapter 5

## Discussion & Conclusion

### 5.1. Discussion

#### 5.1.1 Frequently Asked Questions about *Guidely*

#### 5.1.2 What novelty does *Guidely* provide as a service?

As explored through the literature review, nothing like *Guidely* exists on the market to facilitate content creators' understanding of content guidelines, their fair practices rights, and allows them limited permissions through a microlicenses marketplace. Often, the conversation about content creation and rights permission access tends to revolve around encoding and expanding fair practices in the law, or debates about how to allow permissions access. *Guidely* addresses a gap in the copyright regime by proposing a third party rights clarification and verification system which provides a platform for content creators and IPR holders to engage within the realms of soft law, primarily guidelines. By upholding current copyright regime standards, like attribution, in a novel manner (through QR watermark badges which link to where to access a work), *Guidely* aims to evolve the current copyright regime to accomodate the digital age.

#### ***What are the incentives for IPR holders to use Guidely***

As seen through the literature review, IPR holders benefit greatly when they engage in fan communities. Furthermore, the data gathered in this study from content creators and fan communities, when content creators discuss an IP, new fans are drawn to discover and consume the protected content—regardless of if the content creator discusses the work negatively. Likewise, system on YouTube has led to stop making videos on certain aggressive IPs. If this trend were to continue,



the result will be that professional fans will focus on friendly IPs while others are not discussed on the internet. Thus, this system allows IPR holders to have some sort of assurance of how their IP is used online while remaining in a favorable position with their fans. Additionally, allowing content creators to discuss the works through the *Guidely* system would allow a third-party verification process for guideline adherence in an expedient manner allowing IPs to become trendy/reach virality online—whereas governments are looking to add a bureaucratic component, like the centralized IP body proposed by the Intellectual Property Strategic Program, which would slow down this process and reduce benefits. Additionally, revenue from limited microlicenses, which IPR holders can easily create through *Guidely*, would provide further revenue for IPR holders rather than relying on the YouTube claims system. Ad revenue on YouTube can be an unreliable source of income, as seen by the multiple assurances from content creators that YouTube is not a stable career in terms of monetization; therefore, a microlicense generates guaranteed revenue for use of an IP, outside of general guidelines, regardless if a video makes money on YouTube.

### ***What is the legal justification for Guidely?***

As cited by the Intellectual Property Strategic Program, guidelines are considered soft law and can provide clarification for IP use where the law cannot. Many companies have existing guidelines that *Guidely* can adapt to be readable and understandable to the average person using YouTube. Like in Creative Commons, the layperson language is not a legal substitute for the actual guidelines or licenses, but is aimed at making the parameters easily understandable. At this point in time, YouTubers and other content creators have to wait to counter-notify an IPR holder that they are within guidelines or their fair use rights and wait for the IPR holder to respond, which can take up to 30 days. By preemptively defending their works as within fair use or guidelines, IPR holders, according to YouTube, must consider this intent before issuing takedown notices as per the DMCA and YouTube policy. In addition to this, the microlicenses the *Guidely* system proposes fall under the same contract law norms established by Creative Commons and is a simplification of the system proposed by the IPSP; thus, it is not counterintuitive to the current copyright regime.

***How does this design account for regional legal jurisdictions?***

Taken in inspiration from Creative Commons 3.0 Licenses which allowed licenses to be “ported” to account for local jurisdictions, *Guidely* has an option to select the region in which you want your “Fair Badge” applied. If content creators choose to use a “Fair Badge,” they must region lock their content to a part of the world that recognizes fair use or fair dealing. Luckily, to avoid such limitations, guidelines do not need the same region locking tactics as they are meant to be applied to clarify existing law, in this case international copyright treaties like the Berne Convention, and tailored specifically for dictating how content can be used online by users.

***How does Guidely evaluate fair practices?***

As fair use and fair dealing are often decided by courts on a case-by-case basis, *Guidely* will, unlikely, be able to dictate if something is fair or not. However, what *Guidely* can provide is a simplified explanation of fair practices and allow an individual to assess whether their works are considered fair use. Through later added tutorials and example videos, *Guidely* aims to better educate users to their fair use or fair dealing rights and how to best apply them to user generated platforms, like YouTube.

***What happens if a rights holder updates their user guidelines?***

*Guidely* badges are not meant to allow a user to be able to state they are in compliance with the guidelines, indefinitely. Once a user creates a profile and has access to past badges earned, the badges will exist on their page for a limited time. As the time to renew the badge nears, the badge will slowly fade. If only the vague dotted outline of a badge is left, then it is time to renew the badge. Those who visit a user’s page can also see expired badges to know if a user is up to date with the guidelines. If an IPR holder updates their guidelines, the badge will automatically fade to incentivize users to renew their guidelines compliance badge in accordance to new guidelines.

### ***Why QR watermarking?***

Creative Commons, as demonstrated in the literature review, and other similar designs have metadata involved so that automatic systems can detect the application of a badge. Since YouTube videos cannot embed information in this manner, and since it would also require an additional step for the creators to apply the badge, I turned to the inspiration of QR watermarking techniques seen in papers like Chow et al [96] to provide both a visual cue and scannable, verifiable aspect to the design that could be, ideally, picked up by automatic copyright protection mechanisms on YouTube.

### ***Why is it necessary to have a fan friendliness score?***

The intent of the “Fan Friendliness Score” is twofold. One, it gives assurances to creators which IPR holders are more willing to accept transformative uses of their works without having to rely on hearsay on YouTube from other creators about which IPR holder is “on a crusade,” or what the IPR holder will allow. [97] Instead, they can come to a third-party source which specializes in the matter and receives specific feedback regarding these issues in order to more accurately inform professional fans. Moreover, the friendliness of an IP was a strong indicator for those surveyed as to how likely they would engage with an IP. As iterated, increased engagement from content creators can result in a positive outcome for an IPR holder; therefore, the other function of the fan friendliness score is to encourage unfriendly companies to adopt friendlier practices towards content creators. By observing the increased engagement and benefit from friendlier IPR holders, unfriendly rights holders will be persuaded to at least adopt guidelines to increase traffic and consumption of their works. Ideally, this will ultimately promote changes in the copyright regime through the private sector if several rights holders were to choose a friendlier copyright position through *Guidely*.

### ***What are some weaknesses of the design?***

While *Guidely* aims to provide many benefits to content creators and IP rights holders, there are some drawbacks to this current prototype. For one, the checklists system could be considered a “quiz” and people might be tempted to find

answers online in order to generate a badge without actually following the process to assess if their video follows the guidelines. Other badge systems follow-up on the usage of their badges, like DMCA.com, so *Guidely* would have to implement a system to follow-up on the usage of a badge. If a user is reported for misuse of a badge, then *Guidely* would have to implement a penalty system—most likely banning a channel from using the badges—in order to maintain its reputability. Ironically, this is not unlike the system built for YouTube with three copyright strikes resulting in a channel ban.

According to the literature review, one weakness to *Guidely* is that like Creative Commons, *Guidely*'s focus on guidelines and what copyright holders deem to do with their works furthers strengthens the proprietary regime of copyright—restricting ideas and innovations under the scope of property rather than public benefit. Another weakness per the literature review is *Guidely* badges, like CC licenses, could influence the distribution of creativity as IPR holders still control the system. While the Fair Badge was created to mitigate this disparity, the systems lack of supporting case law weakens the badges as an argument for fair use or guidelines adherence unless otherwise proven in court. Like a stated weakness of Creative Commons, *Guidely* will ultimately have to work within the copyright regime in order to change it, which limits its ability to do so. Similarly *Guidely* will have to work together, inevitably, with the very system it is built to go around, YouTube copyright system, in order to uphold the badges and keep them verifiable.

A final weakness, per the analysis of Creative Commons, of the *Guidely* system is increased limitations on creators when multiple works are used in a transformative manner. With each IPR holder having their own stipulations of how their work can be used, there is a possibility that creators will be limited by the most restrictive of guidelines when creating a transformative work with many IPs. While more limiting guidelines will affect the fan friendliness score of an IPR holder, providing suitable warning to fans about stricter limitations, many fans would not be deterred from these ratings if it allows them to create content involving franchises they are passionate about—therefore, putting the *Guidely* system in a position where it is limiting creativity to some extent.

### ***Why not incorporate NFTs or the blockchain?***

Early on, when prototyping *Guidely*, I aimed to integrate some blockchain facet to the system, yet when consulting an expert in cybersecurity on the matter he stated that blockchain was not a feasible avenue due to the capacity and energy needed to run blockchain based platforms. It was my goal to present a design which could be launched within a reasonable timeframe as the issue is a timely matter. When I revisited blockchain as a future addition for the platform, my limited knowledge on how these systems functioned proved to be a barrier in how to apply such to *Guidely*. Moreover, blockchain is simply another form of attribution and assuring correct attribution. Since the attribution norm is already quite strong in fan communities, I found that simply focusing on blockchain for the purposes of this design would not lead to adequately addressing the components of the copyright system that needed to be amended to allow derived fan works—outside of changing the law. Therefore, I would encourage future scholars to evaluate the potential blockchain capabilities of the badges—as they bear much resemblance to NFTs.

### ***How would AI generated contents be treated under the system?***

*Guidely* is a system made to protect the rights of creators. As there is no current legal precedent for the rights of AI, a *Guidely* badge cannot be applied to an automatically generated AI creation. Yet, if a person were to input into a prompt into an AI generation that resulted in a work that either followed the guidelines of an IPR holder or could be within fair practices, the user is allowed to apply a *Guidely* badge. It will be up to IPR holders to stipulate whether or not they condone AI generations of their works within their guidelines which will warrant the extend of a *Guidely* badge being applied on said creation.

#### **5.1.3 How does *Guidely* make money?**

*Guidely* would have two means of incurring a profit. The first means is through the *Guidely* microlicenses. Much like other transaction services online, while the microlicenses will be primary transactions between the rights holder and those who wish to use their works, in a limited manner, as the service providing the platform for such a transaction, *Guidely* would acquire a small percentage of

the transaction. The second means is through the *Guidely* profile pages. As aforementioned, the profile pages were inspired by Epidemic Sound and follow a similar subscription model based on the amount of accounts a content creator can link to *Guidely*. The more social media accounts a content creator wants to link to *Guidely*, the more per month a content creator must pay to have those accounts attached to their *Guidely* profile. Another possible means of making *Guidely* financially viable is to offer a service in which the platform maintains company profile pages on behalf of an IPR holder. Indeed, there are many possibilities for how *Guidely* could be monetized in the future.

### **What are the next steps for Guidely to become a viable platform?**

For the platform to officially launch, *Guidely* would require partnerships. The first partnership need is with one or two rights holders which would allow the platform to promote their guidelines and a version of the microlicenses function for the purpose of accumulating data. Once obtained, *Guidely* can use said data to entice further IPR holders to register with the platform. Another partnership needed is with either a law firm or governmental body as to provide legitimacy to the platform—as Creative Commons was founded by a lawyer and crafted by volunteer lawyers. A partnership with a regional government like the IPSP under the Cool Japan initiative would only prove to benefit Japanese soft power initiatives as it resolves the fair use discrepancies plaguing the initiative. Finally, *Guidely* would have to be a system that is actively maintained by a core team. Primarily, as a service, *Guidely* would need a team to maintain the servers, update the database of guidelines (especially as IPs change ownership or guidelines or laws are updated), monitor use and misuse of badges, and provide customer service for the subscription services and microlicenses functions of the website.

## **5.2. Conclusion**

This thesis set out to evaluate how copyright exception discrepancies could be resolved among professional fans on YouTube and Japanese IPR holders. The resulting proposal is a third-party guidelines verification system that allows YouTubebers to showcase they have read and understood company guidelines, assert their

fair practices rights, or have limited permissions from a company to feature their works. By utilizing soft law, *Guidely* provides a conduit for IPR holders to clarify the parameters they have set for use on their works. Through this research there are many conclusions that can be made about fan works and their relationship with copyright holders. Firstly, per the literature and my fan survey, copyright holders directly benefit from fan works and professional fans discussing their works. Secondly, the literature review also verified that if copyright law is to change, it must be accomplished through private sector initiatives. Third, while Creative Commons attempts to expand fair use of content online, it is ultimately unable to accommodate fan works and professional fans on YouTube. Furthermore, while there are some designs out there that allow access to free to use content, currently there exists no design that functions as a permissions system that permits fan works outside of the scope of fair use. Through the initial interviews conducted in this research, I was able to establish the nuanced perspectives of those effected by the current copyright discrepancies and how they choose to navigate YouTube's difficult copyright landscape. Similarly, through the interviews, I was able to identify that content creators are able to engage with IPR holders to seek permissions through third-parties, like influencer agencies or a company, as it provides them with an official capacity to interact with IPR holders. Moreover, through the fan survey, I was able to conclude that fans engage with IPs mentioned by content creators regardless of how the content creator viewed an IP.

Thusly, I was able to develop *Guidely*, which has considerable promise to relieve issues in the current copyright regime on YouTube, and other social media platforms, by providing clarification on legal matters. like guidelines and fair use. for content creators and assuring rights holders that content creators will represent their IPs within the soft laws they had set for their works. Through “Fan Friendliness” scores, content creators can also assess whether they want to feature an IP or if doing so would be a risk. In return, IPR holders who want greater fan engagement will find more fans drawn to using their works, while those who do not want fan engagement deterring online traffic to their IPs through content creators. As an added benefit, IPR holders are able to monetize and earn revenue for the use of their IP in a guaranteed manner, instead of relying on ad revenue from a video, through microlicensing their content. Microlicenses also provide users

added functions outside of guidelines, like extended use of a clip or soundbite for the purpose of a video, or third-party permission to engage in fan activities, such as selling fan artwork, at conventions. In the end, *Guidely* provides a way for greater monetization and profit for both the professional fan and the IPs they engage with through the design.

By creating harmonious relationships between content creators and rights holders, *Guidely* intends to ensure a future of new creative possibilities for those on user generated platforms. Ultimately, it is through private enterprises and innovations that the copyright regime will be interpreted and applied; therefore, it is necessary to utilize soft law practices to clarify what would otherwise be a costly court battle for all parties involved. Derivative, transformative, and innovative content all come from prevailing knowledge and entities, so ensuring access to the use of existing works will be pivotal to preserving creativity for the future. While the law aims to uphold ideals, as copyright was crafted to preserve and uplift creative endeavors, it is up to individuals and enterprises alike to boldly explore how these principles can live up to everyday realities.



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# Appendices

## A. Definitions

To facilitate clarification for terms used in this thesis, below are a list of definitions.

### A.1 Content Creator

Someone who makes user generated content on social media platforms as either a part-time or full-time venture.

### A.2 Derivative works

Works directly derived from existing works.

### A.3 Fair practices

Fair use, fair dealing, or other copyright exceptions which allow others to use existing works under the law.

### A.4 IPR Holder

Intellectual Property Rights holder, otherwise known as the copyright holder, or the rights owner of the work.

### A.5 Remix

Taking an existing work and changing how it is used, depicted, or interpreted.

## **A.6 Fan works**

Works—whether it be artwork, videos, or other expressions—made by fans of a specific franchise or intellectual property.

## **A.7 Microlicense**

A limited license granted by rights owner to allow one time use of a copyrighted work. In the scope of this design, the intent is that these licenses are only available through purchase.

## **A.8 Profession fan**

A fan who has a career on YouTube, or other social media platforms, in which they derive their primary source of income from making works related to existing intellectual properties.

## **A.9 Transformative works**

Expressions that transform a work so that they are considered new works or new knowledge.