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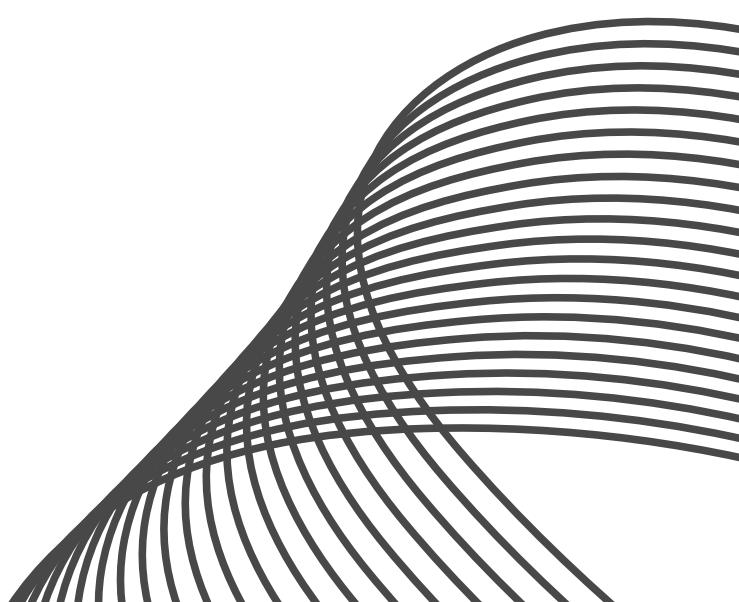
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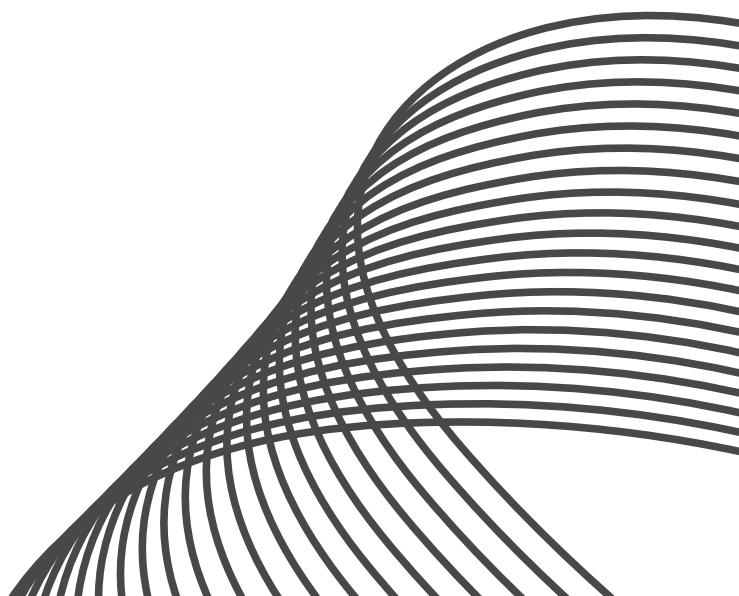


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FROM FAIR USE TO FREE RIDING: COPYRIGHT, ORIGINALITY, AND THE CRISIS OF OWNERSHIP IN SHORT-FORM SOCIAL MEDIA CONTENT

~ Gunjan Iyer & Anisha Jauhar ¹

Abstract

Short-form social media platforms such as Instagram Reels, TikTok, and YouTube Shorts have transformed creative practices by prioritizing speed and algorithm-driven visibility, often at the cost of originality. These platforms encourage replication of popular formats and trends, leading to a collective creative process that conflicts with traditional copyright principles based on original expression and authorship. The article argues that this trend poses challenges to key copyright concepts like originality and fair use, as extensive content replication justified by broad interpretations of fair use risks weakening copyright norms. Minimal modifications are often deemed transformative, blurring the lines between lawful changes and unauthorized copying. Additionally, platform designs and regulatory inaction favor replicators, undermining legal oversight and exacerbating a crisis in ownership in digital creativity. The study calls for a reassessment of fair use standards to balance participatory culture and protection of creative work.

Keywords

Copyright Law; Originality; Fair Use; Short-Form Social Media; Digital Creativity.

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INTRODUCTION:

Platforms for short-form videos like Instagram Reels, YouTube Shorts, and TikTok have transformed modern creative methods by emphasizing speed, duplication, and algorithm-driven exposure instead of conventional ideas of originality. These platforms motivate users to replicate trending formats, reapply popular audio snippets, and mimic visual styles, turning creativity into a form of participation instead of innovation.² Within this ecosystem, replication is not merely a random characteristic but an essential component, prompting critical inquiries regarding authorship and ownership in the realm of digital cultural creation.³

This model, driven by replication, conflicts with copyright law, which is based on safeguarding original expression and granting exclusive rights to individual creators. The basic principles of copyright, i.e., human creativity, identifiable authorship, and clear separations between protected expression and allowable use are becoming increasingly challenged in relation to short-form social media content.⁴ Reels and comparable formats typically include the reapplication of copyrighted music, choreography, and visual sequences, obscuring the distinctions between inspiration, imitation, and infringement.

To manage these conflicts, the principles of fair use and transformative use are often called upon to justify content reproduction on social media sites.⁵ Traditionally viewed as constrained exceptions aimed at reconciling private rights with public interest, these doctrines now function within a significantly transformed technological landscape. On short-form platforms, replication is frequently described as “transformative” simply due to its presence in a different context or the incorporation of slight creative enhancements. This broad interpretation threatens to undermine the normative boundaries of fair use, permitting the ongoing systematic exploitation of creative work with minimal legal oversight.

This paper examines how short-form social media practices challenge traditional copyright frameworks by collapsing distinctions between originality and replication. It argues that the expanding reliance on fair use and transformative use in this context risks shifting copyright from a system of protection to one of permissive free riding. By analyzing short-form content ecosystems, the study highlights the growing crisis of ownership in digital creativity.

² Jean Burgess & Joshua Green, *YouTube - Online Video and Participatory Culture* (2009).

³ Julie E Cohen, *Law for the Platform Economy* (2017).

⁴ Lionel Bently & Brad Sherman, *Intellectual Property Law* (Oxford Univ. Press 5th ed. 2018).

⁵ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

UNDERSTANDING COPYRIGHT ORIGINALITY IN THE DIGITAL CONTEXT:

Copyright law has historically treated originality as a low but meaningful threshold, requiring independent creation and a minimal degree of creativity.⁶ This standard, articulated in landmark jurisprudence, presumes a human author exercising creative choice and producing a work that reflects personal intellectual effort.⁷ Originality, in this sense, functions as the foundational justification for copyright protection, distinguishing protected expression from ideas, facts, or commonplace elements that remain free for public use.⁸

In the digital context, however, the assumptions underlying originality are increasingly destabilized. Contemporary creative practices are shaped by networked environments where content is produced, circulated, and modified at unprecedented speed. Digital works are rarely static or self-contained; instead, they exist as part of an ongoing chain of iteration, remixing, and reinterpretation. The emphasis shifts from singular authorship to collective participation, complicating the attribution of originality to any one creator.⁹

Short-form audiovisual content intensifies this challenge. Reels, Shorts, and similar formats often rely on pre-existing sounds, visual templates, and narrative structures supplied by platforms themselves.¹⁰ While users may contribute minor expressive variations, the core expressive framework frequently remains unchanged. As a result, originality becomes fragmented and diffused across multiple contributors, raising questions about whether traditional originality standards can meaningfully apply to such content.

This evolving landscape exposes a growing disconnect between copyright's individualistic conception of originality and the platform-mediated reality of digital creativity.¹¹ Without recalibration, the originality requirement risks becoming either overinclusive, granting protection to highly derivative works or underinclusive, failing to recognize genuine creative labor within participatory digital cultures.

⁶ *Fiest Publications v. Rural Tel. Serv. Co.*, (449 U.S. 340 1991),

⁷ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1, ¶¶ 30–31.

⁸ *R.G. Anand v. Deluxe Films*, (1978) 4 SCC 118.

⁹ Carys Craig, *Copyright, Communication and Culture* (Edward Elgar 2011).

¹⁰ Jean Burgess & Joshua Green, *YouTube - Online Video and Participatory Culture* (2009).

¹¹ Madhavi Sunder, *IP3*, 59 Stanford Law Review 257 (2006).

FAIR USE AND TRANSFORMATIVE USE: DOCTRINE VS. DIGITAL REALITY:

The principle of fair use plays a crucial role in copyright law, acting as a flexible tool that seeks to reconcile the exclusive rights of creators with broader societal goals, including free expression, education, and cultural growth.¹² Historically, the application of fair use has involved a contextual and case-specific evaluation, determined by factors such as the purpose and character of the use, the type of copyrighted work, the proportion of work utilised, and the potential impact on the market.¹³ These considerations assume clear instances of copying and relatively confined forms of reproduction.

Transformative use has surfaced as a judicial refinement of fair use, focusing on whether a secondary work contributes a new meaning, message, or intent to the original.¹⁴ Courts have identified transformation as a strong indicator of fairness, especially when the new work comments on, critiques, or recontextualizes the original content. Importantly, transformation was not meant to justify simple duplication or aesthetic variation, but to protect uses that significantly change the expressive purpose of the original material.

In the realm of short-form social media, the application of fair use and transformative use has significantly diverged from these foundational principles.¹⁵ Practices on platforms often view minimal changes—like a different caption, setting, or style of performance—as adequate to classify content as transformative. This broad interpretation erases the line between transformation and imitation, permitting extensive replication to fall under the protective scope of fair use.

The issue is exacerbated by the sheer volume and speed of digital replication. Fair use was created for isolated disputes, not for environments where millions of derivative works coexist at the same time. When transformative use is assumed rather than proven, fair use risks becoming a standard justification rather than an exceptional allowance.¹⁶ This alteration threatens to disrupt copyright's intended balance by favoring platform-driven interaction over safeguarding original creative efforts, thereby highlighting the increasing disparity between doctrinal aims and digital practices.

¹² *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

¹³ *Civic Chandran v. Ammini Amma*, 1996 (16) PTC 329 (Ker HC).

¹⁴ Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111 (1990).

¹⁵ Patricia Aufderheide & Peter Jaszi, *Reclaiming Fair Use* 71–75 (University of Chicago Press 2011).

¹⁶ Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1136–38 (1990).

REELS, REPLICATION, AND THE NORMALISATION OF FREE RIDING:

Short-form video platforms do not serve as impartial venues for creative expression; rather, they are intricately designed systems that prioritize imitation over originality. The configurations of Reels, Shorts, and similar formats inherently incorporate copying into the creative process, influencing both user behavior and copyright standards.¹⁷

THE ARCHITECTURE OF COPYING:

Platform functionalities consistently promote imitation through integrated tools and visibility incentives, such as:

- Audio reuse features that enable users to seamlessly attach popular copyrighted sounds to new clips.
- Templates and filters that standardize visual presentation and limit creative variance.
- Algorithmic promotion that favors familiarity, rewarding content resembling previously successful formats.

These features shift copying from an unusual action to a standard creative tactic. Users who stray from prevalent trends frequently face diminished visibility, reinforcing replication as a logical response to platform dynamics.¹⁸

DIFFERENTIATING TRANSFORMATION FROM IMITATION:

Although short-form platforms are often defended as venues for transformative creativity, the truth is more complex. Genuine transformation usually requires:

- A significant alteration in purpose or expressive meaning.
- Critical interaction or reinterpretation of the original material.
- Clear distancing from the aesthetic essence of the initial work.

Conversely, much viral content consists of nearly identical reproduction with minimal variation such as changed settings, facial expressions, or captions.¹⁹ These modifications seldom impact the fundamental expressive nature of the original work, complicating their justification as truly transformative under conventional fair use criteria.

¹⁷ José van Dijck, Thomas Poell & Martijn de Waal, *The Platform Society* 24–29 (Oxford University Press 2018).

¹⁸ Taina Bucher, *Want to Be on the Top? Algorithmic Power and the Threat of Invisibility*, 39 *New Media & Society* 30, (2017).

¹⁹ Amy Adler, *Why Art Does Not Need Copyright*, 86 *California Law Review* 313, 332–35 (2018).

FREE RIDING AS A SYSTEMIC RESULT:

The aggregate impact of platform-driven replication is the acceptance of free riding.²⁰ Original creators face the burden of innovation, while replicators gain from existing visibility and engagement without making comparable creative contributions. Attribution practices are often inconsistent, and financial benefits tend to flow disproportionately toward those who replicate instead of create.

This situation arises not from individual malice but from structural design. By linking success to replication, platforms encourage a redistribution of value away from original creators. Copyright law, which focuses on isolated instances of infringement, struggles to tackle this widespread and systemic exploitation, permitting free riding to become a normalized and largely unchallenged aspect of short-form digital culture.²¹

PLATFORM RESPONSIBILITY AND THE EROSION OF COPYRIGHT BOUNDARIES:

Although user actions are frequently portrayed as the main catalyst for copyright violations on short-form platforms, this viewpoint fails to acknowledge the significant influence of platform governance and design. Platforms do not simply host content; they actively determine the environments in which creative activities develop and disseminate, thereby affecting how copyright standards are perceived and enforced.²²

PLATFORM DESIGN AND COPYRIGHT INCENTIVES:

Short-form platforms motivate behaviors that hover on the edges of copyright adherence. Notable design choices consist of:

- Algorithms driven by user engagement that incentivize the replication of popular content rather than original creativity.
- Integrated remix tools that normalize reuse without necessitating awareness of licensing or legal understanding.
- Discovery systems are based on trends that emphasize familiarity and redundancy as indicators of significance.

These attributes align commercial objectives with extensive replication, subtly prompting users to partake in legally ambiguous activities while portraying them as valid creative expressions.

²⁰ Julie E. Cohen, *Between Truth and Power*, 90–94 (Oxford University Press 2019).

²¹ Neil Netanel, *Copyright's Paradox* 53–57 (Oxford University Press 2008).

²² Julie E. Cohen, *Law for the Platform Economy*, 51 UC Davis Law Review 133, 166–170 (2017).

SAFE HARBOUR AND PLATFORM IMMUNITY:

Legal frameworks concerning intermediary liability further complicate the accountability of platforms. Safe harbour provisions shield platforms from responsibility for user-generated content if they fulfill minimal compliance obligations, such as addressing takedown requests. Although these protections were intended to promote innovation and free expression, they also protect platforms from the cumulative consequences of widespread infringement.²³

Consequently, platforms financially benefit from the extensive circulation of copyrighted content, while rights holders carry the responsibility of enforcement. This imbalance diminishes the deterrent effect of copyright and shifts accountability away from the entities most capable of implementing comprehensive protections.

THE SILENCE OF REGULATION:

Regulatory approaches to copyright issues facilitated by platforms remain disjointed and mostly reactive.²⁴ Lawmakers and courts have struggled to modify existing legal doctrines to fit environments characterized by algorithm-driven curation and mass participation. In the lack of definitive regulatory direction, platforms effectively adopt a quasi-regulatory function, establishing informal standards concerning reuse, attribution, and transformation.²⁵

This absence of regulatory oversight permits platform behaviors to reshape copyright boundaries through default actions rather than intentional policies. Over time, this erosion risks normalizing a limited view of ownership, one influenced more by technological ease and commercial interests than by legal principles.

REEVALUATING FAIR USE IN THE ERA OF ALGORITHMIC VIRALITY:

The growth of algorithm-based creativity presents essential inquiries regarding whether current fair use laws can adequately address modern forms of cultural creation.²⁶ Fair use was established during a time of isolated copying actions and personal evaluations, not for venues where duplication is automated, scaled, and driven by design incentives.

DOES FAIR USE SUIT PLATFORM-CENTRIC CREATIVITY?

Short-form platforms turn copying from an unusual activity into a standard creative routine. Within these contexts, applying fair use on an individual basis becomes unfeasible. The sheer amount of

²³ Daphne Keller, *Who Do You Sue*, 49 Stanford Law Review 193, 201–205 (2017).

²⁴ Julie E. Cohen, *Between Truth and Power* 181–185 (Oxford University Press 2019).

²⁵ Jack M. Balkin, *Free Speech is a Triangle*, 118 Colum. L. Rev. 2011 (2018).

²⁶ Julie E. Cohen, *Law for the Platform Economy*, 51 UC Davis Law Review 133, 175–178 (2017).

derivative material surpasses conventional enforcement methods, while algorithmic promotion obscures the connections between specific instances of reuse and potential market damage. Consequently, fair use may become practically unassailable, functioning more like an assumed right than a legally validated defence.²⁷

ADJUSTING ORIGINALITY AND TRANSFORMATION:

To rethink fair use, a more refined perspective on transformation within digital realms is necessary. Transformation should not be automatically presumed solely because content appears in a different platform or takes on an alternative performative style.²⁸ Instead, greater focus should be placed on whether the secondary work changes the expressive intent of the original, adds new significance, or engages in critical reinterpretation.

Furthermore, the standards for originality may need adjustment to acknowledge creative work undertaken within the constraints set by platforms, while avoiding the extension of protection to merely derivative creations. This equilibrium is crucial to avert excessive protection and the dilution of substantial authorship.

ALTERNATIVES FOCUSED ON POLICY:

Merely altering doctrines related to fair use is insufficient to tackle the structural copyright issues arising from short-form platforms. Therefore, policy-driven interventions are essential to address the extensive and systemic characteristics of digital replication. One possible solution involves establishing licensing models at the platform level, wherein platforms engage in collective or micro-licensing agreements with rights holders.²⁹ Such systems would recognize that reuse is a fundamental aspect of platform operations and ensure that original creators are compensated when their works contribute to viral phenomena.

Enhancing attribution and transparency measures represents another crucial action. Platforms could be mandated to clearly indicate original sources and provide visibility into the creative lineage within user interfaces.³⁰ Improved attribution would aid in maintaining authorship acknowledgment and strengthening originality norms, even when financial compensation is minimal.

²⁷ Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harvard Law Review 1105, 1136–1139 (1990).

²⁸ Cariou v. Prince, 714 F.3d 694 (2d Cir. 2013)

²⁹ Daniel Gervais, *Collective Management of Copyright in the Digital Age*, 48 Vanderbilt Journal of Transnational Law (2015).

³⁰ Jack Balkin, *Free Speech Is a Triangle*, 118 Columbia Law Review 2031–2034 (2018).

Lastly, increasing algorithmic accountability could reduce the incentives for excessive copying. By modifying recommendation systems to favor meaningful transformation rather than mere imitation, platforms could diminish free riding while still supporting participatory creativity. Collectively, these policy strategies present a more viable balance between access, innovation, and ownership in the era of algorithm-driven virality.

CONCLUSION:

Short-form social media platforms have transformed the landscape of creativity in terms of how it is created, shared, and valued. By integrating replication into their design and algorithmic visibility, these environments challenge the fundamental principles of copyright law regarding originality, authorship, and ownership. As this article illustrates, practices that emphasize imitation over innovation create considerable pressure on established copyright systems, especially when mass replication is frequently defended by broad interpretations of fair use and transformative use. The growing reliance on slight modifications to assert transformation threatens to undermine fair use as a significant legal protection. Instead of acting as a limited exception meant to balance individual rights with public interest, fair use in the realm of short-form content often serves as a primary defense for extensive reproduction. This change facilitates a systemic situation where original creators face the challenges of innovation while others disproportionately reap the benefits of algorithmic promotion.

In the end, the ownership crisis within short-form digital culture is not just a legal outlier but a fundamental outcome of creativity driven by platforms. Tackling this issue necessitates a reassessment of copyright standards that recognizes participatory digital practices while maintaining the core principles of originality and creative effort. Without such a reassessment, copyright risks losing its protective role and instead becoming a model of permissive exploitation influenced more by technological design than by legal purpose.