

MEMES AND COPYRIGHT: ARTICLE 13, BRANDING, AND DIGITAL REMIX
CULTURE

by

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ABSTRACT

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This study investigates the impact of the EU digital copyright directive, Article 13, on memes and internet culture. Due to their transformative nature, it is tricky to fit memes into a traditional copyright framework. Article 13's filter algorithms will be coded to detect posts that make use of intellectual property, thereby complicating the use of copyrighted images drawn from film and television. This study includes a discourse analysis of news coverage of Article 13 to explore how various groups characterized the value of meme culture and the threats posed by the new directive. It also includes a textual analysis of several social media advertising campaigns that utilized memes to promote products and build brand images. The thesis argues that the degree of diversity in meme culture will be threatened due to different state-based interpretations of copyright and that the use of memes as an advertising medium will likely be undermined.

Keywords: internet memes, copyright law, intellectual property, consumer culture, participatory culture, brands, advertising

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To
My loving parents,
My encouraging friends,
My excellent colleagues and professors,
For providing your guidance, patience, and knowledge,
Thank you.

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INTRODUCTION

Consumer culture is dynamic, and it changes with contemporary developments. It is not just about the transaction between the corporation and the consumer, but building connections, telling a story, and creating loyalty. Therefore, corporations find new spaces to engage with their consumers in different ways. Social media creates an alternate environment where corporations can promote consumer choices, listen to consumers' experiences, and create a brand image (Kien, 2019). In today's popular culture, one of the best ways to create reputations is through memes. Memes are a digital media genre that is used to reproduce and launch ourselves and give our feedback into the cultural system and can spread ideas either in its original or derivative form (Kien, 2019; Shifman, 2013). The online form of memes is defined by Limor Shifman (2013) as "units of popular culture that are circulated, imitated, and transformed by individual Internet users, creating a shared cultural experience in the process." Corporations take advantage of this form of communication being created and spread quickly to build their reputation amongst their consumers (Rocha, 2017). This thesis explores how the corporate use of memes as a genre is part of participatory culture and how it is understood under different geographies' copyright laws.

Different approaches to the laws of freedom of speech and copyright alter the brands' practices of using memes. Both bodies of laws are essential to the formation of the promotional culture of these nations. Along with contributing to culture with original ideas, freedom of speech also allows people to speak their minds by drawing on, modifying, innovating, and criticizing existing culture. Memes are an important example of using an existing culture. The reasons for one's using memes vary. Ordinary people have social, political, or cultural motivations like accumulating social capital, constructing a social movement, or contributing to culture (Bennet and Segerberg, 2012; Castells, 2012; Erickson, 2015). On the other hand,

corporations use memes to market their names or services or communicate with their consumers (Csordás et al., 2017). I am particularly interested in memes as a promotional and branding tool. However, using existing culture means using others' work to express one's self and it creates a conflict between freedom of speech and copyright laws. Nations' approaches to copyright law alter the level of this conflict with their different limitations and exemptions that are critical to the freedom of expression practices in those nations. The US and the EU have very similar copyright laws yet significantly different exemptions due to their approaches. While the US has an economic-based approach, continental Europe has a more natural-rights based one. These approaches lead to modifications in their fair use exemptions under copyright law. While the US incentivizes creative work drawn on existing work by allowing with larger exemptions, the EU protects the rights of the original work's author by having a more restrictive list of exemptions.

In March 2019, the EU passed a new copyright directive called Article 13 that will bring a new content recognition system to bear on social media platforms. It will detect copyrighted materials in the content and prevent the user from uploading it. This change is critical for Internet users in the EU who want to practice their freedom of speech by using existing culture, especially memes. My thesis project specifically focuses on how Article 13's algorithmic surveillance will impact corporations utilizing internet memes for commercial purposes.

Throughout the project, the following research questions are addressed:

1. What kind of blended governmental and corporate surveillance will Article 13 bring to bear on corporations' practices of using internet memes for branding?
2. How do social media spaces in the US and the EU turn into different virtual spaces due to their different copyright laws?

3. Why is Article 13 seen as a threat to internet culture and memes despite the European Parliament's claims on protecting them and how possibly will corporations that use memes to brand themselves be caught in Article 13 dragnet?

Overall, my overall goal is to illustrate a series of cases to show the importance of internet culture, internet memes' place in this culture, the significance of this culture for consumer communication, and copyright laws' role in all these elements. I developed a comparative study between the US and the EU to find the similarities and differences in their copyright laws and how the EU's new copyright directive will bring a different dynamic to remix culture. Therefore, this study shows how the governance bodies and physical spaces themselves in the US and the EU matter in the formation of their cyberspaces. I intended to show the role of internet memes in commercial and remix culture and how it is addressed in freedom of speech context, including commercial speech. Thus, the significance of how freedom of speech is understood culturally, the impact of these different cultural understandings on freedom of speech and commercial speech, how corporations have responded to participatory culture under commercial speech, and how their response is affected by internet's infrastructure due to different laws will be analyzed. The results of this study are valuable to the industry practitioners that want to reach an audience in the EU in order to develop safer meme advertisements. It is also significant for media, advertising, and legal scholars to study how copyright law is turning into a copyright code that will lack the recognition of ambiguous and contextual content as Lessig (2004) foresaw. Instead of having court to control the access to content, the control will be coded by programmers (Lessig, 2004). There won't be a similar system to check these controls as to how the judges check the laws (Lessig, 2004).

Literature Review

This literature review aims to show past studies about how UGC and memes are becoming a genre of communication covered by free speech norms. Different levels of freedom of speech including commercial speech, advertising, and branding within commercial speech, and their space in remix culture is examined throughout the review as well. However, the characteristics of memes, the level of protection of commercial speech within the freedom of speech and being a part of remix culture raises different issues of copyright infringement under the various laws of the US and the EU. Therefore, I analyzed how the US and the EU copyright laws differ, especially the role of Article 13 on the EU's copyright law. I argue that these laws create a different set of surveillance practices than other surveillance types that are analyzed on the internet and social media scholarship. It brings various concerns like other surveillance practices do, especially on the utilizations of memes in remix culture. This review illustrates those problems and specifically focuses on why this surveillance practice is a problem for corporations to use memes for promotional communication.

The Role of Freedom of Speech and Remix Culture

Freedom of speech allows people to participate freely in public conversations and spread their ideas (Balkin, 2004). It promotes a democratic culture where people create culture by freely speaking their minds together (Balkin, 2004). Listeners and speakers within this culture interact and influence each other while expressing themselves by appropriating the work of others (Balkin, 2004). People often speak their minds by drawing on, modifying, innovating, and criticizing existing culture. However, it gets more complicated with different types of speeches

like political, artistic, or scientific speech. To understand how corporations are a part of freedom of speech, we need to unfold the phenomenon of commercial speech.

Commercial speech is a relatively new concept within US law. It did not have a legal definition and was not protected by the First Amendment until the 1970s (Wright, 1997). The leading commercial speech case was between the Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (Wright, 1997). This case started when a middle-class woman in Virginia wanted to find the best prices from the local pharmacies, but the pharmacists were prohibited from advertising the prices of prescription drugs (Winkler, 2018). Advertising was considered “commercial speech” and the Supreme Court said that it was not protected by the First Amendment (Winkler, 2018). Within this case, the Supreme Court defined commercial speech as “speech which does no more than propose a commercial transaction” (Wright, 1997). It was an important stage that the free flow of commercial information started to be protected (Winkler, 2018). Another influential court case that established the modern American approach to freedom of commercial speech is Central Hudson Gas and Electric Corp. v. Public Service Commission (Gassy-Wright, 2005). This was a case that challenged the ban against promotional advertising by a utility (Gassy-Wright, 2005). The Court referred to the commercial speech as “expression related solely to the economic interests of the speaker and its audience” (Wright, 1997). Even though these definitions brought protection for commercial speech, they are very specific. Therefore, it leaves out many commercial speech practices like product labels, consumer warnings, etc. (Wright, 1997). On the other hand, it would be wrong to assume that all commercial speech practices are solely related to the economic interests of its audience. Wright (1997) gives examples of perfume, exercise machines, hair replacement techniques, cigarettes, or athletic shoes commercials as they may relate more than economic interests like self-

improvement, relationships, mood, image, and fantasy. Although advertisements are created to sell products and services and are self-interested communication tools, Miller (2015) argues that advertisements are also created for social commentary, humor, or entertainment purposes in order to be a part of a larger conversation.

Those who advocate for free speech rights of corporations argue that freedom of speech is significant for one's self-realization, achieving different social objectives, and developing one's facilities and identities (Winkler, 2018; Gassy-Wright, 2005). They explain that commercial speech is a way to practice these as well (Winkler, 2018; Gassy-Wright, 2005). It supports the free market where consumers can find help for truthful information and the best way for self-realization of the speaker through advertisements (Gassy-Wright, 2005). However, it is not absolute protection, the US limits false and deceptive advertisements (Winkler, 2018; Gassy-Wright, 2005).

On the other hand, the EU does not have a certain definition of commercial speech. Even though both the European Court of Human Rights and the European Court of Justice declared commercial speech protection, they did not explain such protection (Gassy-Wright, 2005). While the US has pure commercial speech protection, excluding false and misleading ones, the EU has no pure protection unless the speech involves political speech, freedom of the press, or a health issue. Then, it is protected (Gassy-Wright, 2005).

Looking back the US law, nowadays, the US Supreme Court reviews concerning commercial speech protection where the subject includes "advertising, promoting, or soliciting for business" (Gassy-Wright, 2005). These three categories that a speech act may include are crucial to keep in mind. Any speech practice that aims to create a brand image and engagement with consumers can be included under commercial speech as well. Branding is a dominant form

of advertising where business entities create a personality and indirectly give their messages to their consumers. This form of advertising also includes engaging in social, cultural, and political conversations. Banet-Weiser (2012) describes branding as a cultural phenomenon more than an economic strategy. Social marketing and movement marketing are examples of marketers connecting with their consumers by participating in conversations about societal welfare or cultural movements (Andreasen, 1994; Goodson, 2012; Banet-Weiser, 2012). The Dove Campaign for Real Beauty is an example of advertisers and marketers branding the company by supporting a specific political issue (Banet-Weiser, 2012). In this campaign, Dove intended to support widening the definition and discussion of beauty globally (Banet-Weiser, 2012). Dove participated in this global conversation of critiquing artificial and unrealistic definitions of women's beauty that is opposed by the beauty industry and get involved in the politics of gender and self-esteem (Banet-Weiser, 2012). Branding blurs the line between selling a product or a service and being a citizen.

In the age of digital media, using UGC became a means for corporations to brand themselves and participate in the culture. This new genre created a new form of promotional communication: viral advertising. Viral advertising relies on audience engagement where they copy and distribute brand messages and audience labor (Erickson, 2015). Audience labor reduces the cost of production of companies' advertisements, creates a chance to reach desirable, young, and technologically literate users. Many motivations like the accumulation of social capital, desiring a taste leadership, or altruistic desire to help others encourage audience labor on the internet (Erickson, 2015). GoPro and Doritos provide good examples of how UGC, branding, and audience labor are intertwined. GoPro encouraged its consumers to share their "epic" moments on YouTube environment so that they provided ideas on how to use the product, gives

a sense that anyone can use the product to produce fun and exciting content that may go viral. GoPro received various contents from its consumers to use for its own advertising (Einstein, 2016). Doritos started “Crash the Super Bowl” commercial contest to get consumers to think and talk about the brand. With this contest, it offered the opportunity to compete to create an ad that will appear during the Super Bowl. Besides the free exposure during one of the most famous sports events of the year, the winner also got a cash prize worth \$1 million (Einstein, 2016). Along with these two examples that exemplify corporations involving in participatory culture and engaging with their consumers through UGC, Duffy (2010) gives the example of a different campaign of Dove: Dove Supreme Cream Oil Body Wash Ad Contest. Dove challenged “real women” to create 30-second commercials for Dove’s new line of body washes. Women who participated in this contest hoped their ad would be selected and premiered during the 2008 Academy Awards ceremony (Duffy, 2010). Dove enabled itself with this contest to endorse its product by giving its consumers a sense of power as individuals, as women, and as creative professionals (Duffy, 2010). These two examples exemplify how corporations become a part of participatory culture online and engage with consumers through UGC. Another advertising strategy where companies blur the line between UGC and ad on digital media is native advertising (Einstein, 2016). Instead of contests, they fit their ads seamlessly into the flow of the selected news media publications like the New York Times, the Economist, or the Guardian (Einstein, 2016). It has symbols or text that label the article or posting as advertising (Einstein, 2016). This heart of “black ops-advertising” is all about creating content that looks more like editorial than advertising that gets more consumers’ attention than traditional ones (Einstein, 2016).

Memes as a type of UGC help advertisers and marketers to brand companies. Memes' characteristics aided companies to follow what is fashionable/trending amongst their consumers, what kind of vernacular repertoire they have within their community, and what promptly emerges in that community (Zanette et al, 2019). Thus, they can communicate with their consumers by reproducing memes to create a personality, participate in their conversations, and reform their brand images (Rocha, 2017). The combination of speed, global reach, and imitative expression creates a new emotional appeal for both companies and consumers (Kien, 2019). Csordás et al., (2017) demonstrate other ways that companies use memes to promote themselves. They use memes to post information about themselves, but also to surveil how companies are positioned in the minds of consumers (Csordás et al., 2017). Memes express the creators' authentic feelings and it is a useful tool to understand how people feel about a societal issue, so companies can plan their marketing strategies accordingly (Csordás et al., 2017). The other way for companies to use internet memes is to advertise themselves. Companies imitate ordinary internet users and create memes as UGC (Csordás et al., 2017). One of the challenges with this strategy is when organizations try to strengthen their messages by building upon the popularity of other memes. Csordás et al. (2017) give an example of how companies use popular TV shows references to convey their message towards their targeted audience. This practice is called creative piggybacking and it raises copyright issues if the originator discovers the infringement (Csordás et al., 2017).

Due to the intertextual and transformative characteristics of memes, the practice of using memes for branding becomes an interesting part of remix culture as well (Lessig, 2018). Lawrence Lessig (2018) argues that democratic culture should include people having access to write with different forms of media, not just text (Lessig, 2018). These forms may include

images, clips from TV shows, films, music, and music videos. Digital technologies provide greater opportunities for people to use these different forms of media with lower costs of copying, distribution, transmission, and innovation (Balkin, 2004). Users get a chance to use these forms of media without the need for multiple devices. Music is remixed, video mashups proliferate, and blogs begin to build a culture around the idea of talking back (Lessig, 2018). Social media sites are a great example to give this opportunity to the public. With all these affordances, free speech on the internet develops its own name as internet speech. Balkin (2004) describes internet speech as ranging over a wide variety of subjects full of innovation and creativity which builds on what has come before, including most of the user-generated content out there. This speech is participatory and interactive and merges activities of production and consumption as well as cultural participation and self-formation (Balkin, 2004). Looking back to both Balkin's and Lessig's arguments, we can see memes as a part of cultural democracy which includes continuous distribution, circulation, and the exchange of bits of culture from mind to mind. However, it brings the concern of intellectual property (Balkin, 2004).

Intellectual Property Law

The World Intellectual Property Organization (2003) defines intellectual property as creations of the mind, such as inventions, literary and artistic works, symbols, names, and images. These inventions have become an important part of people's lives and turn from private properties into public goods after a limited time due to intellectual property law. This law protects the creative person's rights, but with limitations. There are different types of intellectual property law such as patent law, trademark law, trade secret, and copyright law (Vaidhyathan, 2003). Each of these laws protects different types of innovation. Patent law temporarily gives a

monopoly on tangible and useful devices and processes (Vaidhyathan, 2003). It does not cover words, texts, or phrases. Trademark law allows a company to protect its logos, designs, color schemes, smells, sounds, or container shapes that point to the product's origin (Vaidhyathan, 2003). Trade secret law protects subjects like chemicals, complex manufacturing processes, source code for computer programs, or corporate policies a secret (Vaidhyathan, 2003). The most common example of this law is Coca Cola's recipe. Finally, copyright law protects literary, artistic, musical, and computer-generated works. All these laws have different limitations in terms of either the time limit or the type of properties that are protected (Vaidhyathan, 2003).

Sunder (2012) argues that these laws affect our ability to practice cultural activities like thinking, learning, sharing, singing, dancing, joking, telling stories, borrowing ideas, inspiring and being inspired, replying, and criticizing. Internet speech elements like user-generated content mostly rely on these activities as well. Therefore, these laws do more than incentivizing innovations but regulates social and cultural exercises and who will be recognized with their creations or not. This recognition situation also plays a role in cultural and social relations including the distribution of wealth, power, and global justice (Sunder, 2012).

There are different perspectives on intellectual property laws and their influence on our culture and economy. For example, the economic approach to intellectual property would argue that it is a tool to solve economic public goods problem. Meaning that if there is a monopoly on nonrivalrous and nonexcludable intellectual properties, copying and sharing them won't be as easy. Being nonrivalrous means that it cannot be consumed like other properties. For example, Gillespie (2007) gives a comparison between books and candies. When a piece of candy is eaten, there is no way that someone else can eat the same piece of candy. However, when a book is read, it won't mean that other people cannot read it. Thus, he argues, that intellectual property as

a cultural expression cannot be consumed (Gillespie, 2007). Moreover, being nonexcludable means that intellectual property can be duplicable so that more than one consumer can enjoy it (Gillespie, 2007). Gillespie (2007) argues that the same thing cannot be applied to candy or a sandwich. However, it is more than holding the economic rights of a property. These new creations and innovations become a part of cultural change and exchange. People get to learn, acknowledge, and interpret these contributions from all around the world, construct their own products by the inspiration from the previous ones, and remake culture (Sunder, 2012).

Therefore, the economic approach fails to understand the ability of the intellectual property to structure cultural and social dynamics and affect one's ability to access knowledge. Instead of seeing intellectual property as a mere economic tool, it needs to be studied in a cultural context.

In the cultural context, the law's conception of culture alters the way intellectual property law works. Sunder (2012) demonstrates two common perceptions of culture: culture as tradition and culture as a commodity. The concept of culture as tradition would mean that culture is handed down, from generation to generation (Sunder, 2012). The culture as a commodity is seen as something passively consumed (Sunder, 2012). However, Sunder (2012) suggests a different perception that culture involves participation as a central feature. She argues that this view of culture supports participatory community and democratic culture and intellectual property laws ought to promote that participatory element (Sunder, 2012). As this thesis project analyzes the impact of intellectual property law on memes, the copyright law under intellectual property law is the central context. Moreover, the US and the EU copyright laws are compared in order to comprehend how they have different applications on memes due to their different approaches to intellectual property.

The US Copyright Law

Copyright law, as mentioned above, protects intellectual properties like literary works, audiovisual productions, computer software, graphic designs, musical arrangements, architectural plans, and sound recording but for a limited time (Vaidhyathan, 2003). The owners of these works get exclusive rights to control the copying, selling, or performing processes of their works for a limited time. These include making copies, authorizing others to make copies, creating derivative works, selling the work, and performing the work publicly (Vaidhyathan, 2003). These rights protect these authors' original works from other people copying and selling or benefitting from the same work. It is important to define what authorship means here because of the whole law built on the sense of protection of these authors' rights.

The roots of authorship go back to the 18th century. Boyle (1996) talks about Martha Woodmansee's discovery of copyright and authorship in Germany. Back then, several apocryphal tales exist about writers who were living in poverty and demanded economic compensation for their labors. This change led to debates about the concept of authorship, how we can give property rights in intellectual products, and under what grounds we should give these rights to authors. Boyle (1996) merges different perspectives and historical backgrounds of the notion of authorship. He tries to find an answer to the question of why authors are special and why copyright law seeks to protect them. Over the years, the meaning of authorship formed as a person who was an original genius and concepts of "originality" and "inspiration" became the center of authorship. On the other hand, Foucault describes authorship as a quest of a subject's point of insertion, modes of functioning, and system of dependencies on existing discourses rather than a search for an original subject (Sunder, 2012). Originality more so plays an important role in the way of representing an idea than the idea itself. Hence, while the traditional

definition of authorship focuses on the original idea, Foucault (1969) defines authorship as someone who has an original expression of an idea. This highlights the major idea/expression division and the notion of creating a single unique persona through originally expressed works. The idea/expression division provides a conceptual basis for limited property rights and clarifies what belongs to the public and what belongs to the author. Boyle (1996) exemplifies this division by dividing a book into either idea or expression that we can give the idea to the public and keep the expression to the author. It reminds us how the copyright law is built on the notion of authorship is about protecting the original expression of authors and these authors' right to copy, sell, and perform their work (Boyle, 1996).

In theory, copyright law protects the authors' original expressions for a limited time, just long enough to provide an incentive to create more. Over the years in the United States, legislations have extended this limited time from 14 years from the time of the publication to last for the life of the author plus 70 years (Vaidhyathan, 2003). This means that American copyright in a work will often last for over a century. Vaidhyathan (2003) highlights that this extension undermines the First Amendment rights to use cultural works in speech as Balkin (2004) also emphasizes. After a limited time, the work becomes a part of the public domain. Once in the public domain, the public can access and use the data, facts, and ideas within these works (Vaidhyathan, 2003). This also explains what part of these works is protected under copyright law and what part is not. According to the Copyright Act of 1976, a work is protected in all media and for all possible derivative uses as soon as it is fixed in a tangible medium of expression. That is, facts cannot be copyrighted; only the expression of those facts can be copyrighted (Vaidhyathan, 2003).

Besides the limited time of copyright law, another limitation is that it does not forbid anyone from commenting on, criticizing, parodying, making copies, referring to, and quoting from any of these works. Vaidhyanathan (2003) argues that these practices are important for our culture to improve and our democracy to operate. If we were not allowed to comment on or criticize a television show, or if a teacher was not allowed to share copies of a scholarly work with their students, or if no scholars were not allowed to get help from others work to write a new book or article, then we wouldn't have many of the constructive and cultural works today (Vaidhyanathan, 2003). This exemption is called the fair use doctrine and it allows people to use original works of authors as long as they transform the given meaning either with commentary or criticism (Vaidhyanathan, 2003). This includes scholarly works, news reporting, parodies, and reviews of books, TV shows, and movies. For instance, the leading case to define the fair use limits is *Campbell v. Acuff-Rose Music, Inc.* In this case, the copyright owner of the song "Oh, Pretty Woman" sued the rap group 2 Live Crew for parodying the song. The court decided that it is characterized as fair use since they used the original song to comment or criticize it, to some degree (Vaidhyanathan, 2003).

The EU Copyright Law

Just like in the US law, copyright law in the EU is also under intellectual property rights. They are protected under the national laws of individual states; however, they are still subjected to EU regulations (Pila & Torremans, 2016). EU law requires these states to protect the authorial works by copyright law including computer programs, photographs, and databases (Pila & Torremans, 2016). Being protected by copyright laws means that owners of the authorial works have related rights like economic rights and reproducing rights which last until 70 years after

their death (Pila & Torremans, 2016). Unlike other IP rights such as patent and trademark rights, copyright and related rights do not require an application to be enforced which may lead to the problem of identifying the copyright holders (Pila & Torremans, 2016).

Pila and Torremans (2016) suggest that when studying EU copyright law, it is important to distinguish several issues: subsistence and ownership, rights, and exceptions and limitations. The issue of subsistence and ownership clarifies what is protected under copyright and related rights, how authorial works are distinguished from non-authorial works, and how authors are defined. First of all, EU regulations explain what kind of subjects are covered by copyright and related rights. These include any subject matter that is of a protectable type, is sufficiently connected to the territory of the protecting state, and satisfies any applicable formalities (Pila & Torremans, 2016). However, copyright and related rights protect different works. Authorial works like original computer programs, databases, and photographs are protected by copyright (Pila & Torremans, 2016). On the other hand, films, performances, broadcasts, and fixations of these last three work types, and certain databases are protected by related rights (Pila & Torremans, 2016). To be able to distinguish authorial works from non-authorial works, the work must be a bounded, expressive object that can be said to have resulted from an author's free and creative choices and to have his/her personal mark (Pila & Torremans, 2016). There is a two-stage process to determine these works. The first stage questions whether the subject matter is of protectable type or not, meaning that whether it is a type that leaves room for free and creative choices. The EU law identifies free and creative choices as an objectively identifiable original expression of an author. The second stage questions whether the subject matter's creation involves free and creative choices besides a personal mark from its creator or not (Pila & Torremans, 2016). Therefore, the EU defines the creators like the ones who have work

expressing ideas with original free and creative choices that bears personal marks from the creator (Pila & Torremans, 2016). The second issue is the definition of related rights. EU law defines related rights such as exclusive economic rights, reproducing a protected work directly or indirectly, communicating a protected work to the public as a closed list of benefits (Pila & Torremans, 2016). As it was explained before, these last are protected for the author's life plus 70 years after the death of the author.

The more important issue, which is the third one, is the exceptions and limitations of copyright law. Limitations are required by the EU law in order to let third parties make temporary, transient, or incidental copies of work necessary to a technological process (Pila & Torremans, 2016). These limitations also allow third parties to reproduce and communicate parts of a work for research, news reporting, criticism or review, study, instruction, quotation, or parody (Pila & Torremans, 2016). They can be called a fair (*i.e.* proportionate) use exception. Some of the uses that the EU law permit are the reproduction of a work for private use, illustration for teaching or scientific research, quotations for critics and reviews, use for parody, or pastiche, and use to advertise the public exhibition or sale of artistic works (Pila & Torremans, 2016). To determine proportionate use in practice, there are four stages that the EU law goes through. First, it asks whether the third party has used a protected work or subject matter without permission. Then, it questions whether the use of the work involves any acts reserved exclusively to the copyright owner. Third, the legitimacy and protection of the purpose are questioned, such as using it for parody. Finally, the law questions whether the use goes beyond what is necessary to fulfill the purpose and, if not, whether allowing it fails to reflect a fair balance of competing rights and interests (Pila & Torremans, 2016). However, the EU's fair use exemption is not as flexible as American "fair use" (Hugenholtz, 2017). It does not recognize a general exception of

transformative use to enable others to transform copyrighted work into their own products like the US law does (Pila & Torremans, 2016). This causes many problems, even within the elements on the list, such as the problem of UGC and parody.

The main reason that this paper compares the US and the EU copyright laws is that the EU copyright law is recently updated in March 2019 when the EU Parliament passed Article 13. This article is a part of the EU Copyright Directive and how this directive will apply a new filter system on platforms like YouTube, Facebook, or SoundCloud where people upload their UGC freely. This filter will detect the copyrighted material in the content and prevent the user from uploading it. The member states still have two years to apply this new article to their laws, but it has already sparked many arguments about the future of participatory culture on the internet. As Lessig foresaw in his earlier piece, the EU's copyright law is an example of the transformation of this law into something more like a code (Lessig, 2004). Thus, I argue that this new code is bringing algorithmic content surveillance that will be a dragnet for the future of memes. Any internet meme that contains a copyrighted content will be caught in this dragnet even though it transforms the original meaning of the content in question.

Internet memes are a part of remix culture, therefore, part of the right of freedom of expression and information (Bonetto, 2018). As the EU Copyright Directive, including Article 13, states that the use of copyrighted material is allowed in certain conditions: quotation, parody, and incidental uses. However, under Article 5(3)(k), a parody must constitute an expression of humor or mockery (Cabay & Lambrecht, 2015). This means the result of the parody does not matter, but the intent of the creator does. When there is no humorous intent, there is no parody (Cabay & Lambrecht, 2015). It provides a little breathing space for memes. Another missing thing in the EU regulation is that there is not a clear definition of humor or mockery. Therefore,

it would fail to protect all the “humorous” memes because the notion of humor and mockery would depend on the court’s subjective view of these notions. Bonetto (2018) argues that one of the main intentions of internet memes is amusing internet users so they should be safe. However, it is not completely correct.

Not all internet memes carry the same intention when they are employed. Gehl (2019) examines the Marianas Web meme in his chapter which is a perfect example of an internet meme that does not have the intention to amuse other users but to inform them and start a conversation. This meme shows an infographic map with five layers of the internet including the surface that most of us see, the Dark Web that has hidden websites with strange, dangerous and powerful knowledge, and the Marianas Web as the bottom layer (Gehl, 2019).

Surveillance, Algorithms, and Memes

Gillespie (2014) argues that algorithms are significant for the internet and participatory culture. They manage interactions on social network sites, categorize information, decide what information to exclude, and calculate what is “trendy” (Gillespie, 2014). Hence, algorithms play an important role in shaping the internet culture for the users by shaping the content they see on their news feeds. As it turns into a legitimate knowledge logic, corporations approach algorithms for commercial purposes (Gillespie, 2014). Within the commercial culture, a big focus is on how they use algorithms to collect data from their consumers in both online and offline spaces and use this data to customize their advertisements for those consumers (Gillespie, 2014; Mulhern, 2016, Turow, 2017). Much of the scholarship about the data collection has also focused on the privacy concerns that these practices provoke (Gillespie, 2014). Corporations take advantage of the participatory culture on the internet while collecting the data (Gillespie, 2014). Consumers

are encouraged to share their data in a relationship of exchange with corporations where corporations challenge and incentivize them to share more of their private information and make them feel powerful doing so (Turow, 2017; Duffy, 2013; Gillespie, 2014). Another result of this participatory ethos of the internet is the pressure by the networked public on livestreamers and bloggers (Marwick, 2013). They feel the need to put themselves out there to self-brand and show their “authentic” self (Marwick, 2013). These discussions are all important in terms of questioning the power of corporations, algorithms, and the impact of the surveillance on consumers. However, my focus is on how algorithms are built to collect and screen information before it is uploaded and how this new form of surveillance influences consumer culture, more so emphasizing corporations’ branding actions using memes.

The term “surveillance” is introduced by Trottier (2018) as a social scientific concept to underline how collecting, processing, and acting upon information about individuals and groups of individuals. This includes policing, marketing, interpersonal relations, the workplace, and social media (Trottier, 2018). It is defined as watching over others and is performed by individuals or organizations. There are several steps of it: collecting personal data, processing that data, profiling individuals or groups of individuals, and the social consequences led to this assessment (Trottier, 2018, 464). The most well-known analytical data collection is Big Data. The term was coined by Roger Magoulas in 2005. Magoulas defines it as “the data that is too large to be utilized by traditional software platforms and analytic tools.” Analytic software turns the data into useful information by cleaning and structuring (Mulhern, 2016). At the end of this system, there is a decision-maker who converts this information into practice (Mulhern, 2016). The new filter recognition system of Article 13 is similar to Big Data in the sense of building a

new algorithm that will capture data on the internet but instead of storing it, it will screen this data and control users' practices of content uploading.

Due to solely technological data collection, this new algorithm has a potential problem of false-positive/false-negative for memes. This filtering algorithm may easily lead to blocking lawful (i.e. non-copyright infringing) content, which is called false positive. Moreover, it may also allow posting unlawful (i.e. copyright infringing) contents, which would be a false negative. False positives are the central concern of the future of memes because of their nature. Memes are mostly the re-use of other's work and if that work turns out to be copyrighted material and, even if the user transforms some elements of the material, it may still get caught in this technology's radar and cause false positives. It is important to remember that memes refer to the viral spread of the information and the term's root comes from the Greek word "mimema" which means something that is imitated (Dawkins, 2006; Shifman, 2013). Although the EU argues that they are protecting parody content, memes may not fit in every single characteristic of the parody that the EU defines. A filter technology that is fixated on catching copyrighted material would fail to recognize the difference of infringing content from memes that are nothing but legally protected. As Gillespie (2007) argues that recognition of ambiguous and contextual content cannot be coded into a trusted digital rights management system. Even though fair use is a safety valve of the First Amendment in the US, the EU's new more restrictive content recognition system would end up failing to decode the ambiguity and intent of users (Gillespie, 2007).

There are various aspects of memes as branding tools that would get caught by Article 13 dragnet. Before getting into those aspects, it is important to understand why corporations choose digital media to brand themselves and reach their consumers. Viral advertising demonstrates a new form of participatory culture fitting into digital branding. It has three major characteristics

that distinguish it from other types of advertisements: aesthetic, ambiguous authorship, and distribution logic (Erickson, 2015). These characteristics are also the reason why viral advertising conflicts with intellectual property law. The amateur aesthetic of viral advertisements brings vernacular creativity which relies on fair use principle that creators can participate in a larger meta-text (Erickson, 2015). Therefore, advertisers risk the copyright issue by using non-commercial amateur creators' work as their viral advertisement (Erickson, 2015). Not all viral advertisements are unplanned and created by ordinary internet users. Erickson (2015) argues that some companies and creative agencies manage scripting some videos and create "authentic" viral videos so they can deceive the audience into thinking the advertisement is unscripted and amateur. In order to create this deception, companies sometimes use nicknames which creates ambiguous authorship. Therefore, if companies want to claim ownership, they would need to identify themselves, then it will be against their anonymity and expose their pseudonymous authorship (Erickson, 2015). Lastly, the spreadability of viral advertisements may advantage the advertisers with the speed and the broad reach, however, any use of copyrighted work that is not under fair use exemption would require permission from the copyright holder that would slow down the process (Erickson, 2015).

Internet memes contain all these characteristics. Csordás et al. (2017) argue that they are likely to spread through homogenous communities which would require a vernacular aesthetic involving a shared sense of meaning, inside jokes, and intertextuality of a community. Memes are often created by anonymous people similar to viral advertisements' ambiguous authorship feature (Csordás et al., 2017). Like the distribution logic of viral advertisements, Green and Jenkins (2011) explain that memes also must be spreadable in order to become one, meaning that various audiences would circulate the content for different purposes and invite others to share it

within their social circles. Miltner (2018) states that the significant difference between viral content and internet memes is that users need to modify at least one of the dimensions of the content to have internet memes. This difference between them shows how internet memes should fall under the fair use exemption because of the transformation feature that they have. However, the EU fails to protect internet memes even though they are a result of a transformative activity (Bonetto, 2018).

Methodology

For the research methodology, I used two different approaches to studying this topic. First, I conducted a discourse analysis of different media outlets that have news articles about Article 13. In order to find those articles, I used Google News search for “Article 13 copyright.” I used a generic keyword to produce a wide variety of views and issues concerning Article 13. I limited the timeline between February 1, 2019, and April 1, 2019, to analyze the news around the time when the European Parliament (EP) published a press release about reaching an agreement on digital copyright rules and right after when the EP voted for Article 13. By using Google News search, rather than a subscription-based library database, my aim was to find the articles that would have been the most visible to ordinary internet audiences. I examined what these sites’ discourse was about Article 13 and what kind of visuals they used to highlight these discourses. With this study, I followed the example of Schulte’s (2013). She argues that popular culture and media outlets present different visions of the internet (Schulte, 2013). I examined different courses of media outlets and aim to comprehend how they perceive Article 13.

I looked at publications that focus on news from different industries in both the US and the EU. I included categories of general news sites, technology news blogs/magazines, legal

news journals, and music industry blogs/magazines. Article 13 has impacts on various areas that each of these outlet categories is interested to write news about. I compared these outlets' discourses and see if there are any commonalities or differences due to these different focuses. Michel Foucault illustrates that discourses are discernible in popular culture and have a powerful impact on societies (Beltrán, 2018). That is why it is crucial to see how these media outlets represent the topic of Article 13 during the chosen time frame while it is a hot topic and open to alternative interpretations (Beltrán, 2018).

The second method of research entails case studies of a pair of companies that used memes to brand themselves. I studied the companies of Spark Notes, Curology, and Albert that mostly target their advertisements towards a relatively younger audience. They are cases of companies that use internet memes to reach their audience through their social media accounts. Csordás et al. (2017) highlight that companies use cultural references like using TV show references in order to communicate a young or geek audience. The mentioned companies have examples of using visuals or short clips from TV shows and movies to create memes and convey their messages. These examples provided cases of possible copyright infringement under Article 13. Furthermore, they allow us to understand the complexities of companies using copyrighted materials to create memes for branding and, in the process, becoming involved in participatory culture.

This part of my methodology is conducted with textual analysis. As Stuart Hall argues, images and texts have a wide range of meaning and there is no fixed meaning (Beltrán, 2018). This wide range of meaning comes from viewers' interpretations (Beltrán, 2018). Therefore, decoding ambiguous meanings behind these companies' meme-based advertising approach is

necessary. I decoded the contextual meaning in these case studies and discover how Article 13 would fail to recognize the context due to the lack of human interpretation.

Structure

The following chapter involves a discourse analysis of different field-oriented news outlets that narrates Article 13 from different aspects. Throughout the chapter, I focused on the main concern and values of these outlets while analyzing their comments and criticisms about the new copyright development. I zeroed in on how they presented their point of view about how this development would alter the internet space for different groups of people like ordinary internet users, small and big tech companies, activists, and creative sector. My analysis covers important individual and companies' quotes, protest and rally photos, illustrations, and videos that the news articles featured. The last chapter focuses on the companies that incorporate memes in their branding methods. It illustrates several companies that generate memes by using original content and more examples of meme utilization by remixing someone else's intellectual property. The purpose is to comprehend the significant cultural and social elements remixed in those branding memes and analyze what their space is in the EU digital copyright directive and what it will be after the filter algorithm is implemented by Article 13. Lastly, the conclusion chapter captures the broader ramifications of Article 13 for internet and consumer culture. Moreover, it addresses the limitations and recommendations for further research.

WHY DOES ARTICLE 13 MATTER?: THE DISCOURSE AROUND THE "MEME BAN"

Overview

The internet plays an important role in shaping society while providing the public a democratic environment for free speech and culture. It has been alive and changing since it first emerged. While the platform owners impacting the way that we perceive the internet on a global level, they are obliged to obey the laws on the national level. Even though it has a transnational structure, it is not perceived the same way in different regions. There are harmonization and disjuncture within different national laws like the US and EU law but there is not a single law imposed on the internet space (Schulte, 2013). Those laws are highly affected by the governments' different approaches. For example, the US has an economic-based approach whereas the EU has a natural-rights based approach (Wong, 2009). These nations' approaches alter the way that they form their intellectual property law that has a crucial effect on how the internet users produce and share their messages. While the US takes transformative nature into consideration when the law decides on what kind of copyrighted content use is fair or not, common law outside the US considers originality as the standard of copyrightability. That is why any transformative content, such as memes, parody, commentary and criticism, faces problems, especially in the EU (Wong, 2009).

After the European Parliament (EP) passed the new copyright directive, Article 13, the media drew attention to this new development as well. However, popular culture and media outlets have different visions and particular focus depending on who they are speaking to, what they value in general, how they want to be a part of the conversation about the subject matter (Schulte, 2013). Media outlets' different presentations are important to understand the general

discourse since media outlets have relative freedom and hence, relative power when it comes to determining topics, style, or presentation of discourse thereby a greater impact on society (Van Dijk, 2011). They may shape the public discussion, influence topical relevance, and manage what topic is publicly portrayed and in what way (Van Dijk, 2011). In her book, Schulte compares covers of *Time* and *Der Spiegel*, the leading US and German newsmagazine, where they represented the Internet in completely different ways. While *Time* illustrated the Internet as an experiential, expansive, and bodiless space, *Der Spiegel* displayed it as a technological education tool grounded in human studies. Even just this comparison shows how the US and the EU have different visions of the internet as space. While the US media outlets see the internet as a global space, the EU media outlets imagine the internet as a local space (Schulte, 2013). As Wong argues, the US is more focused on the economy that works on dominating global markets, protecting free-market capitalism so, it treats the internet as a global economic space for its businesses to reach out to larger audiences (Wong, 2009). Whereas, the EU is more so focused on protecting its citizens and works on shaping the internet space towards creating an EU internet. The way that the EU and the US approach copyright law and form the internet impacts how internet users experience social media.

In my analysis, I am conducting a similar discourse analysis to what Schulte (2013) has done. Instead of focusing on the differences between the US and the EU media perspectives, I examine the perspectives of media outlets from all around the world that focus on specific areas that are related to Article 13 and its filter algorithm. This includes leading news outlets, as well as more specialized publications, focused on the business and law of digital technology. My taxonomy of media outlets will involve four groups: general news sites, digital and technology blogs/magazines, legal commentary sites, and music industry blogs/magazines. I analyzed their

commonalities and differences due to these different focuses. I limited the timeline between February 1, 2019, when the EP published a press release about reaching an agreement on digital copyright rules and April 1, 2019, when the EP voted in favor of Article 13. I examined these news articles with the visuals and videos they featured, the individuals and actors they quoted, the word choices and approach to the topic, and the general value and concerns of the news outlet.

Analysis

Different news sites have particular concerns about Article 13 and the impact of its new filter algorithm that will be implemented. Despite their different discourses, one thing all these media outlets have in common is that they all vaguely acknowledge how important the internet is as a part of contemporary society and culture. However, most categories were opposed to changes that this new algorithm will have on this culture and argues that it will be a threat to it. On the other hand, some sites portrayed this new algorithm as advantageous and a fair thing for internet users, especially for the future of original content creators.

General News Sites

The first category of media sites is the general news sites/blogs, such as *CNBC*, *The Telegraph*, and *CNN Business*. These outlets have a variety of focuses on their coverage. They commonly start by informing their readers about Article 13 and the ongoing controversy about the subsequent algorithm the EU will implement in its member states. This controversy is between those who believe Article 13 will compensate artists like musicians fairly and those who

believe this article will destroy user-generated content. Their common focus is the future of user-generated content that utilizes someone else's intellectual property, especially memes.

These media outlets mostly reflect the critics' perspective of how Article 13 will harm the future for Europe's culture. The outlets use quotes from the EP members, big technology companies like Google, and digital rights activists to show a range of stances on this controversy. Most of the outlets mention Google's tweet stating that Article 13 would "harm Europe's creative and digital industries" while emphasizing their point of view (Kleinman, 2019). They build their arguments further with these quotes. For example, Ephrat Livni (2019) argues that "filters will not be able to consider all nuances of intellectual property law, which does allow copyrighted materials to be used for parody, news, and when a work is transformative" in *Quartz*.

We can better understand the user-generated content's relationship to intellectual property law by drawing on the work of media scholar Daniel J. Gervais (2009). Gervais (2009) gives insight into how forms of user-generated can be categorized in terms of how they are produced. Moreover, he explains which types might infringe copyright law or not. His taxonomy includes user-authored content, user-derived content, and user-copied content (Gervais, 2009). User-authored content is the safest type of content by the users for them to copy, upload, or perform since they authored the content. User-derived content is a complex type because the distinction between infringement of the right to make copies and the right to prepare derivative works when applying fair use is not clear. Lastly, user-copied content may fall under either infringement or fair use depending on whether it is merely copied, or it transforms the original content while copying (Gervais, 2009). Revisiting Livni's (2019) quote, it is argued that an algorithm would not be able to detect these differences that Gervais (2009) points out.

In general, these sites try to answer average internet users' questions about the implications of Article 13. As such, they focus on how popular genres, such as memes and GIFS, will be affected by the new law. Browne (2019) from *CNBC* quotes the EP as its members say that "memes, GIFS, hyperlinks, and snippets of articles will still be able to be shared freely." However, the EP's statement does not satisfy the concerns of technology companies, freedom of speech campaigners, and ordinary internet users. That said, journalists from *CNN*, *Quartz*, and *The Telegraph* refer to critics' arguments as Article 13 will "limit freedom of speech," "censor free speech," and "will kill memes and destroy freedom of expression and satire" (Kottasovà, 2019; Livni, 2019; Bernal, 2019). In general, these sites have dramatic expressions and quotes referring to how Article 13 will change the internet like "it is a dark day for internet freedom," a quote from MEP Julia Reda, "it will harm independent and commercial creators, as well as the cultures in which they operate," "it could dramatically change the internet," and "hammering a final nail in the coffin of the freedoms of the internet once promised. Yes, Article 13 is that bad" (Kottasovà, 2019; Livni, 2019; Bernal, 2019; Buyniski, 2019).

These news sites support their arguments with strong visuals that show the protestors' point-of-view. *CNN Business* uses a visual of a scene from a protest in Germany against Article 13 where a man holds a placard that says, "Error 404 Demokratie not found" meaning "error 404 democracy not found" in German (Kottasovà, 2019). This placard refers to the original HTTP 404 error code that indicated that the origin server failed to find a current representation for the target resource or is not willing to disclose that one exists ("Hypertext Transfer Protocol (HTTP/1.1): Semantics and Content"). The target resource in question is the page in the original error code "Error 404 Page not found" and changing the word "page" with "democracy" can be interpreted as the protestor arguing that the Article 13 algorithm will curtail the democratic

possibilities of the internet. Like in Lessig's argument, democracy does not only entail people voting but also includes the ability to "write" and thereby register one's opinion (Lessig, 2018). In this case, creating online content is a form of writing. By limiting this access to writing, Article 13 thereby limits the audience's ability to fully participate in the democratic process.

In addition to the protest photographs, the *CNN* article features an informative video that one of its producers Jon Sarlin narrates. Sarlin explains how tech companies will have a difficult time applying this new filter into their platforms and how memes might get these sites into legal trouble because of their use of copyrighted content (CNN Business, 2019). Then, he mentions how a supporter of the new law points out that because memes are parodies their use of copyrighted images falls within fair use exemptions (CNN Business, 2019). Even though this is not completely correct, critics argue that it is unlikely that the new automated content filter is going to be able to tell the difference between a copyright infringement case and a parody case (CNN Business, 2019). So, even if we could define all memes as parody, the new content filter would still be an issue because algorithms lack the human ability to apply cultural context. Then, Sarlin points out how this new filter requires a lot of capital, which only big tech companies have access to (CNN Business, 2019). He says that for those platforms that don't have the capital to spend, the consequences of the rule change are clear. As the big platforms could readily afford the filter, even those small platforms that could implement would be impacted by the expensive costs (CNN Business, 2019). In this case, it seems clear that big tech sites like Google that already have the financial upper hand would gain even greater power within the industry. He ends the video by saying "This (law) will change the internet as we know around the world, not just Europe" (CNN Business, 2019). With his last line in the video, Sarlin highlights the fact that Article 13's impact will be felt both inside and outside the EU.

Throughout the whole video, Sarlin highlights three important points. The first one is that this new law will not be able to differentiate the difference between legal use of copyrighted material and copyright infringement which in turn threatens the future of online speech, including memes. The critics argue that this new regulation will have a potentially chilling effect on the average user's ability to create and post content that repurposes copyrighted material. Secondly, even though big tech companies like Google seem unhappy about the new law, the costs of implementing this new filter only would be affordable by big tech companies. Startups, small to medium-sized tech companies that target niche markets, and others that don't have the resources to afford this filter would thus fall further behind. The last point is how this new law will change the internet space for the whole world along with Europe. It is not a directive that will only have an impact on the EU internet users, but it will affect how the users from around the world will engage with those in EU countries. Since internet users would be subject to a much harsher copyright environment, they would be less able to contribute to global discussions. Therefore, the internet will likely get less diverse over the years and less enriched due to the lack of different voices.

BBC also shows a visual from a protest that was also held in Germany. The visual shows a protester holding the placard has a meme saying "Kein Meme ist Illegal" meaning "no meme is illegal" in German (Kleinman, 2019). The visual, therefore the article, shows a perspective that memes are not illegal and should not be taken down due to a content recognition technology. The word and image choices are significant due to what they reference. It references the original phrase of "no human being is illegal" that goes against the phrase "illegal alien" (Johnston, 2019). This phrase describes the individuals who are in the country under vastly different circumstances (Johnston, 2019). However, it is argued that this definition mislabels immigrants

(Gambino, 2015). Actions can be illegal or criminal but not human beings (Johnston, 2019). Describing immigrants as illegal is considered as dehumanizing to them. Looking back to the transformed phrase “no meme is illegal,” it can be seen as this phrase has several connections to the discourse surrounding immigration. First of all, taking this phrase and writing “memes” instead of “human beings” shows that memes are getting a crucial recognition. Creating and sharing memes is illustrated as an activity of fair use, therefore, as an activity that is not a part of any criminal or illegal activity. The second key point is that this phrase creates a connection between the free movement of people in the immigration context to free flow of non-personal data in the meme context. It shows that Article 13 is seen as it will be impacting the free flow of memes as information that is not identifiable to any specific person. The new directive will create virtual borders in the EU’s internet space and limit meme’s mobility across the internet. Even though the internet is a global space, the laws, that are restricting the content that internet users want to share, change the experience of the internet. Hence, the users that the law applies to interpret the internet not as a global space but as a space that puts specific boundaries around them.

The placard has the Pepe the Frog character holding the sign of “no meme is illegal” with a sad face. When we take a look at this character’s history and the meaning of including it in this placard, it should be noted that the context is very important to understand why it was used. Even though it started as an ordinary cartoon character, the alt-right movement took this character and started using it as a hate symbol. The character’s creator showed his dismay at this movement using it this way and sued organizations for doing so (Swinyard, 2019). However, the backstory of Pepe the Frog being used as a hate symbol was not forgotten. Therefore, examining this placard using Pepe the Frog to fight against Article 13 requires analysis within the context. It

should not be solely assumed that it is a sign of alt-right movement support. A good example to show this importance is that the way this character is used in protests in Hong Kong. Despite the meaning of Pepe Frog in the US context, the protestors made the character as an ideological ambassador of their movement and a symbol of youth participation (Ko, 2019). Analyzing memes in social, cultural, political, and geographical contexts is critical. In this context, it should be remembered that this placard is used in Germany, therefore using Pepe the Frog does not specifically mean that it supports alt-right movement in the US. However, the way Pepe Frog has been portrayed as Adolf Hitler by adding his signature mustache on the character or an advocate of white supremacy by drawing a white hood on him like KKK members in 2016 in hateful messages aimed at Jewish users ("Pepe the Frog meme branded a 'hate symbol'," 2016). Therefore, protestors using this placard in Germany makes it a sensitive case due to the nation's history. On the other hand, the placard having references to both "no human being is illegal" and Pepe the Frog is an unusual content and it provides an example of the memes' ambiguous meanings. Moreover, *BBC* is a British media company, so we cannot promptly conclude showcasing this photo of the protest scene is a support of the white supremacy movement in this context. It demonstrates how important it is to understand the implementation of images and words. Even humans cannot be 100% sure what an image might be implying, so leaving the judgment to a coding seems to be unfair to these citizens according to their protest placards and also to the journalists who write about it in newspapers.

Russia Today's article also has a protest scene visual that shows a protestor in Germany holding a placard saying, "Article 13 kills free speech" (Buyniski, 2019). The placard also has two knives crosses behind the headline with blood on them. It demonstrates a relatively violent reaction to the new directive. The protestors in this image do not look violent or tend to harm

anyone or anything. However, the look on their faces shows that they are experiencing disappointment. The news sites that mostly use protest scenes from Germany shows the strong stance of the German people against Article 13 and its algorithm. It is reported that Germany had more protests than any other country in Europe (Meaker, 2019). Many protests were demonstrated in 45 cities and towns across the country with 40,000 protesters in Munich alone (Meaker, 2019). Having Germany in the center of this controversy seemed like it encouraged most news sites to feature its protests more than other ones. MEP Julia Reda, who was the most vocal opponent, and MEP Axel Voss, who was the law's lead negotiator, are both German (Meaker, 2019). It seems like their conflicting positions highly impacted the public discourse in Germany.

Moreover, other than using a German protest scene, *Russia Today* article uses a parody video that reviews Article 13. The video starts by asking its viewers "Do you love the internet? Isn't it totes amaze?" What about sharing the memes? You like that, eh?" and continues "Well, f*** you then, 'cause we are about to replace the internet with a brand-new experience: the filternet" (Thejuicemedia, 2018). She describes the new internet as filternet after Article 13 implements the new filter recognition system (Thejuicemedia, 2018). Then, she tells that experts' warn that this new filter could bring down all internet as we know and sarcastically adds, "If it makes our friends richer, we think that's a fair price to pay" referring to Disney, Universal, Sony, and Vivendi by showing their names on the background (Thejuicemedia, 2018). This line indicates that the new directive will mostly be benefiting big companies in the cultural sector rather than ordinary internet users and it signifies the clash between them. The video continues with a weird-looking cartoon character named Phil, supposedly personifying the new AI filter (phil-ter). This cartoon character is a modified illustration of the "Brainlet" meme. The original

“Brainlet” meme is used as an internet slang to refer to those with limited intelligence, implying they have a small brain. This modified version of the meme is a drawing of a drooling brainlet with a long neck. It began to be called “Grayons” when a user edited the image by showing the character eating crayons with the caption “Mmmm grayons” (“Brainlet,” 2017). The woman calls this character with limited intelligence “dumb as motherf*****” and tells that he cannot distinguish actual copyright infringement from legitimate content like commentary, criticism, or parody that are the exemptions to use copyrighted material in the copyright law (Thejuicemedia, 2018). The remix of this character into the video provides a meaningful addition to their criticism throughout the video.

Moreover, the woman describes the new filternet experience as expensive (Thejuicemedia, 2018). Hence, she brings up the other clash between tech giants like Google, YouTube, and Facebook and small websites that would not be able to afford to apply the new filter into their platforms. She uses phrases like “destroying Europe’s internet,” that signifies the EU’s internet as a different space, and “building a censorship apparatus that will fart in the general direction of free speech” (Thejuicemedia, 2018). By saying “fart in the general direction of free speech,” the woman means that it will damage the freedom of speech. Through the end of the video, she encourages the viewers to call their Member of the European Parliament and stop them from passing Article 13 (Thejuicemedia, 2018). Using this parody video in this news article, Buyniski (2019) shows her stance in favor of user-generated content, memes, and parody, and against Article 13. It also tells the readers how new copyright directives will turn the EU internet into a different space while benefiting the power of governments and damaging the original intention of the internet being an open platform for sharing and innovation (Buyniski, 2019).

CNBC article starts with a protest scene, also in Germany, that shows two placards held by protestors. One of the placards says “Bots haben auch gefühle” meaning “bots also have feelings” in German and next to this headline, there is a drawing of the robot character from the movie *Wall-E* (Browne, 2019). The robot character on the placard is best known for developing feelings in the movie. By itself, this placard might be interpreted as representing the algorithm as a favorable “bot” with *Wall-E* reference. On the other hand, when we look at other placards from the protests, we see that the protestors criticize the new directive as it is treating them as robots and not human beings. These protestors condemn the new law will outlaw their ambiguous content. One of the other placards that criticize this aspect of the law has the headline saying “Wir sind keine Bots” meaning “we are not bots” (Meaker, 2019). They decry the new algorithm and aim to show that as a human being, they might produce and share ambivalent content, like memes, that this algorithm would not be able to differentiate it from actual copyright infringement.

The other placard has the drawing of “One does not simply” meme that has the character of Boromir from the movie *Lord of the Rings* (“One Does Not Simply Walk into Mordor”). The original line from the scene says, “One does not simply walk into Mordor” but it turned into a popular meme where people used the screenshot of the character with the caption starting with “One does not simply” and adding a different humorous phrase depending on the context. The original line indicates the difficulties of going to this fictional place Mordor and using this phrase in other contexts also signifies that whatever the caption follows is also not a simple task to do and has obstacles. The caption on the placard in question says “One does not simply filter the internet” implying that filtering the internet has also its obstacles that could not have been done

as simple as the EP has done. Using a meme format on this placard is a sign of support for internet memes and criticism of the filter's future effect on these memes.

Quartz's article uses a metaphorical visual to support the journalist's argument. It demonstrates an image of a tangled fishing net and the caption above it says, "The net being cast could end up trapping us all" (Livni, 2019). In this visual, the literal meaning of "net" is used as a metaphor of its connotation; "internet." This tangled fishing net is an illustration of how the internet will feel tangled for its users after the implementation of Article 13. It could be also interpreted as a fishing net. A fishing net cannot store everything but anything bigger than its holes originally aimed to collect fish. Article 13's algorithm is not coded to collect and screen every data on the internet as well. It is programmed to hold the data that is found as copyright infringement due to its coding and not let it be posted. This visual along with its caption signifies what having Article 13's algorithm means for the internet. The caption expresses worry about the role of the new algorithm in deciding what internet users can and cannot do. On top of that, it could be interpreted as the algorithm is a net that will trap these users like a fishing net would do for fish That will restrict the users' range of movement online specifically including what kind of content they can produce and share. Thus, not just their content is trapped in this algorithm, but they are being trapped along with the content together. Overall, Quartz supports its argument of "casting the internet will lead to restricting its users" with this visual and caption in many layers (Livni, 2019).

In contrast to the common point-of-view of these news sites, *The Guardian* illustrates an opposition with Debbie Harry's article who is the lead singer of the music group Blondie. As a musician, she argues that Article 13 would fix a fundamental flaw in the music market as the "value gap" that is the gap between the sites like YouTube extract from music and the revenue

that the music community (Harry, 2019; Blewett & Gollogly, 2017). She describes the way these sites extract from music as “ripping off artists” and argues that Article 13’s algorithm will prevent that situation (Harry, 2019). Harry (2019) shows how passionate she is about protecting creative sectors’ interests. Therefore, she believes that this new directive will have a positive impact on the creators’ work in Europe. She identifies herself as a part of a campaign with the music community and other creative sectors. The reason for her to join this campaign is to fight to ensure that video-streaming services like YouTube pay fairly for music and other creative content that they profit now (Harry, 2019). What stands out most in this article is the headline: “Musicians like me need to fight against the giants of YouTube and Google” (Harry, 2019). This line, along with her other statements, demonstrates the clash between creators like artists, publishers, and the cultural sector and internet giants like Google, Facebook, and YouTube. The article continues with a visual of the music group Blondie’s photograph with the caption of “I know first-hand how much hard work, time and investment it takes to make music. It does not just happen” (Harry, 2019). This photograph with the caption puts a human face on this article so that the readers will be encouraged to care about the musicians. It also highlights Harry’s support for the big effort behind creating music or any original content. She calls YouTube’s and other platforms’ interests “narrow” as they are not as important as what these creative sectors value. Even though the focus is not on the memes, it illustrates an important perspective of musicians in order to understand how they see this law’s role as crucial to protecting intellectual property. They are the voice of the creative community that is in support of this law and observing how they think this law will impact the internet space for the EU is significant to this project. Thus, we can understand how they might be impacting the public discourse about Article 13 and the perspective on its new filter algorithm.

Overall, these news sites tend to speak to the average internet users' concerns that include the impact of the new law on their ability to produce content and their freedom of expression on the internet. As journalists, they value the freedom of speech and show a position that is against this law which seems to be threatening this freedom. In these publications, journalists highlight how the new directive and its algorithm will be a threat to internet culture, democracy, and the future of culture. These news coverages used visuals from either German protests that are known as the center of the big controversy around Article 13 or metaphorical visuals that demonstrate the expected situation of the internet when the new law is applied. A few cases use informative videos to simplify the meaning of its implementation to the readers. Both parody and non-parody videos use everyday language to explain the consequences of the new law for different actors like ordinary internet users, big tech companies, small websites, and the creative sector.

The audience and their values are one component to how they shape their discourse in these publications, however, who owns these outlets are worth looking at as well. Depending on if it is a stand-alone publication or owned by a major business may or may not affect their approach to the topic. Some publications are owned by major media conglomerates that would see this new law in favor of their interests. For example, *CNBC* has Vivendi and Universal as its predecessors which have activities in music, television, film, etc. and *CNN* is owned Warner Media which is a major film studio like Disney and Universal. Though, it seems like there is an autonomy of these journalists within these publications that voice their conflicting opinions in their news articles.

Technology News Sites

This category of news sites involves magazines, websites, and blogs that are mainly focused on technology and science news. These websites have a common emphasis on freedom of speech concern as it will be threatened and limited and the possible impact of this new law on smaller websites compared to big tech giants like Google, YouTube, Amazon, and Facebook. While there is a major focus on answering the question of “What is going to happen to memes?,” as the main resource of news about technology and science and involving tech companies in their audience, they tend to focus on these companies’ concerns about their future. Some of them identify themselves as a group blog that experts in technology contribute to and they position themselves within the same group of these small companies that are highly interested in technology news.

Techdirt’s article by Mike Masnick (2019) illustrates a strong opposition starting with its headline “Disaster in The Making: Article 13 Puts User Rights at a Disadvantage to Corporate Greed.” By just analyzing this headline, the conflict between corporate interests and ordinary internet users is emphasized. Throughout the article, Masnick (2019) examines the article by quoting sections of the law and adding his commentary right after them. For example, he quotes the part where the law says this directive shall in no way affect legitimate uses but then he criticizes by saying “Of course, all of that is nonsense” (Masnick, 2019). Masnick (2019) also questions how the new automated system will determine if future uploads are parody, fair dealing, or some other exception. Through the end of his article, Masnick (2019) quotes a tweet from Communia Thematic Network, which is an association that has been working on existing and emerging issues concerning the public domain in the digital environment (“About”). Communia attached a chart that analyzes what Article 13 applies to, who will be liable when it

applies, notice and stay down policy, and its upload filters (Masnick, 2019). Notice and stay down policy is different as opposed to notice and take down that takes down infringing content after it is uploaded. However, notice and stay down policy under Article 13 will block users from uploading any content that might infringe on copyright. The tweet explains the situation as “not pretty” for user rights including the cost of these filters and if not the filters, the cost licensing all works in existence (Masnick, 2019). Other than the charts that the tweet involves, this news article does not include any visuals. Masnick’s (2019) choice of words demonstrates his standpoint in this controversy as he says, “the law has all sort of problems,” “Article is a giant shrug,” and calling how this law tries to disregard user rights compared to the special privileges of few giant industries “disgusting and corrupt.” The motion “shrugging” is a representation of not knowing or being indifferent about something by raising shoulders. Hence, by calling Article 13 a “giant shrug” seems like the new directive being indifferent about its possible negative outcomes for the internet users. Masnick’s (2019) article has a big emphasis on the conflict between big industries and ordinary internet users as this new law will be giving more powers to those industries while undermining average users’ online practices.

TechRadar has a similar position to *Techdirt* when it comes to highlighting certain conflicts. O’Malley (2019) demonstrates his opinion right at the beginning of his news article with the headline of “Opinion: the EU's Copyright Directive isn’t just bad for memes – it makes Big Tech even harder to beat.” The article mainly highlights that this new law will ban “our right to meme” and the costs of the new filter for the platforms including big tech companies like Google, YouTube, and Facebook and small websites. Producing and sharing memes interpreted as a given right just like right to speech or right to vote. It may not be as essential as those rights, but people see “memeing” as a right that should not be taken away with a filter like this.

O'Malley (2019) has a very clear opinion as this new law is bad for both "our right to meme" and small websites that do not have the resources to imply the new filter. Meaning that the resources to afford this filter is only achievable by enormous corporations like Google and this difficulty will only entrench the power of these corporations (O'Malley, 2019). O'Malley (2019) says that Europe has been a symbol of freedom and progress but now it is banning our right to meme, in other words, the EU became the ultimate milkshake duck. "Milkshake duck" is an internet slang term to describe internet stars that were adored by the public before the star's distasteful and offensive past ("Milkshake Duck," 2017). The origin of the story comes from a tweet from the Twitter user @pixaledboat account that says, "The whole internet loves Milkshake Duck, a lovely duck that drinks milkshakes! *5 seconds later* We regret to inform you the duck is racist" ("Milkshake Duck," 2017). By associating the EU with the milkshake duck, O'Malley demonstrates the EU as something that people used to like but due to the changes it made in their copyright laws, which is the distasteful development in its history, people do not feel endearment to it anymore. Using an internet slang term along with the references from protest visuals throughout the news article signifies that O'Malley (2019) acknowledges the readers as an internet-savvy audience that is concerned with their ability to participate in online conversations with their content going forward. He also supports this opinion with visuals from protests. The first visual is from a protest where a protester holds a placard that has a drawing of "Is this a pigeon?" meme (O'Malley, 2019). The original meme is widely used to express confusion with a male cartoon character looking at a butterfly and asking, "Is this a pigeon?" ("Is This a Pigeon?"). However, in the placard, the original meaning was transformed into something new by depicting the man as the EU, the butterfly as Article 13, and the question as "Is this a good idea?" So, with the changes on the placard, the protestor gives the

message that the EU gave a confusing decision about passing Article 13. The following visual demonstrates the other two placards one has the hashtag #saveourinternet with the YouTube icon with a frowny face on it. Using this hashtag encourages people to embrace the internet as their own and creates unity. It also forms a convenient way for protesters to unite on both offline and online platforms. The other placard behind has 13 in a circle that has been crossed out showing protester's distaste towards the new law. The last visual, which is also from a protest, showcases one protester that shows his stance by using sunglasses rather than placards. On each lens, the number 13 is drawn that symbolically impair the protester's vision. The number 13, as in Article 13, on each lens does not completely block the vision of the person who is wearing, but it filters their vision. It signifies that Article 13's algorithm will filter the same way that internet users will feel like they are wearing blinkers like racehorses do. Therefore, users' visions get obstructed and controlled through the filter. It impairs these users' ability to participate in democracy with ambiguous content like parody, remixes, and memes since it could screen out content that would potentially qualify for fair use. The filter will have significant control over the content's movement online regarding what they get to share in a democratic culture.

Swain (2019) structures his article around ordinary users' possible questions about the new law in *New Scientist*. He explains what this new law is, what it means for the users, why it is needed, how it will affect the way users' internet experience, why it is controversial, and how it will affect piracy (Swain, 2019). Swain (2019) even chose a headline for this article as "a guide to the new EU copyright rules" and he also highlights the possible "ban on memes." This shows that one of the users' main concern is the future of memes after this new law is applied to member states. In this news article, Swain (2019) express users' criticism as this directive's rules risk killing off vibrant internet culture. Similar to other tech news sites, this one also involves a

photograph from a protest. One of the three placards that draw the attention has the “Distracted Boyfriend” meme. Since it is a bit blurred, it is hard to interpret what it is used for. However, the way that the placard features a meme in the protest against the new directive, it could be interpreted as another supporting action. The second one is a two-section placard the left side says, “How it looks to him” and has a drawing of a person who is walking with a dog. The right side says, “How it looks to us” and has the same person who is walking some giant that looks like a big lizard instead of a dog this time. For the face of this person, MEP Axel Voss’s face is inserted and Art 13 (aka Article 13) is written on both the dog’s and giant lizard’s bodies. By using a dog on the left side to describe how Axel Voss sees this new law, the protestor implies that this MEP sees the law as almost like a pet that can be a controlled easily and non-threatening situation. On the other side, using a giant scary looking lizard to describe how “we” as in ordinary internet users see this law shows that it is a threatening development for the future of these users on the internet. Overall, this placard is a criticism towards MEP Axel Voss who is the lead negotiator of Article 13. The other recognizable placard simply says “DON’T ---- MY INTERNET.” There is a black line between the words of “don’t” and “my” that is used as censorship. It can be interpreted as it is censoring the word “censor” to mean that the protestor is against the censorship that this new law will implement due to its filter algorithm. The same placard also shows ownership and a sign of embracement of the internet similar to #saveourinternet hashtag. Instead of saying “the” internet, saying “my” internet adds an emotional bond to the context and the protesters express that the internet belongs to them not the other way around.

Another tech news site that focuses on the cost of this new filter and the possible impact on the small websites is *The Silicon Republic*. Tannam (2019) follows an informative approach

to explain the new article and what France and Germany wanted from this new law. During the negotiations, France wanted Article 13 to apply to all platforms, regardless of their size, while Germany wanted it to be applied to just the largest tech firms (Tannam, 2019). Unlike the other sites, this news article does not demonstrate any visual from protests. Instead, there is only a photograph of Louise Weiss building of the European Parliament in Strasbourg, France. Moreover, Tannam (2019) voices the critics' concerns of how this law will call for expensive upload filtering systems which could cripple smaller websites compared to large tech sites. The same critics also argue that these digital systems, which are designed to distinguish between copyright infringement and legal works like a parody, are often prone to error and still in their early stages of development (Tannam, 2019). A majority of internet users colloquially called this directive "meme ban" that highlights one of the main concerns about the implications of Article 13. Since memes mostly rely on transforming others' copyrighted work, the filter algorithm interpreted as a big threat particularly to internet memes that gave the directive this colloquial name. Moreover, it helps the majority of users to understand the severity of the implications for internet culture.

Similar to *The Verge's* article, Vincent (2019) starts his piece with a visual of the EU flag but with a © in the middle of it. There is a connection between the virtual and physical space. The physical EU governance in the continent has an influence on the EU internet space that symbolizes them as one space by transforming the original flag with the copyright law. It shows that these two different spaces merge where the governance practices apply. The emphasis is on how the new law will end up restricting how content is shared online, stifling innovation, and free speech (Vincent, 2019). Vincent (2019) quotes MEP Julia Reda's tweet, who is the most vocal opponent, saying "a dark day for internet freedom." The same tweet also uses the

#saveourinternet hashtag to join the conversation that protesters participate and disseminate online (Vincent, 2019). The same critics from *The Silicon Republic* article are also mentioned in this one who argues that this directive's filters will likely be error-prone and ineffective. Moreover, it is discussed that the costs of this filter may have the opposite effect to its intent that may solidify US tech giants' power over online spaces (Vincent, 2019). This directive is initially designed to give more power to copyright holders and make these tech giants more liable for copyright infringements. However, as it was mentioned in previous news sites, these big tech companies' resources will strengthen their power over the internet compared to small platforms. On the other hand, Google proposed a scenario of how Google News would look like when the other clause of this new directive, Article 11, is applied (Vincent, 2019). This clause is also referred to as "link tax" that will let publishers charge news aggregator platforms like Google News when they use snippets of news stories. It is argued that the possible outcomes of both clauses, Article 11 and Article 13, are difficult to predict (Vincent, 2019). Therefore, Google's proposal entails a screenshot of a possible Google News screen with news not having thumbnail photos due to the new directive. However, the critics accused Google of deploying scare tactics with these proposals (Vincent, 2019). In the end, Vincent (2019) points out the conflict between activists and copyright holders. These activists include individuals, sites like Reddit, Wikipedia, and GitHub that those individuals can share information, and big tech companies like Google (Vincent, 2019). Copyright holders involve industry groups from the world of music, publishing, and film (Vincent, 2019). While the opponents argue that this new directive will hurt the creative and digital economy along with the internet freedom, copyright holders celebrate the directive and claim that voting for it to pass the parliament is a vote against content theft (Vincent, 2019).

Engadget's article summarizes all the conflicts with its headline by calling Article 13 “divisive” (Fisher, 2019). Subheading continues “The jury is out on whether this is a win for creatives or dark days for the internet” (Fisher, 2019). Fisher (2019) starts her piece by saying that this law is meant to empower creatives and news publishers, but the rules seem to be a threat to freedom of expression. This piece also mentions how YouTube and Google protested the rules and how Google argues that this directive would turn the internet into a digital ghost town (Fisher, 2019). The internet will turn into a virtual space where it still keeps the social media platforms and other sites as the infrastructure but there won't be anyone to practice those due to the restrictions. People would be discouraged to use those because they won't feel the freedom to share legal remix work. It goes with Google's proposal of how the Google News would look like as the thumbnail of news would be blank, as claimed as, like a ghost town that it seems like there is content but no face to present it (Vincent, 2019; Fisher, 2019). When it comes to this directive having safeguards for freedom of expression, Fisher (2019) points out how memes and GIFs seemed to be excluded within those safeguards. Memes are considered as an important practice of someone's freely expressing oneself and the discourse of MEPs, journalists, and internet users draws attention to that all the time. In contrast to other publication's visuals, this news article showcases a rally in support of the new directive. The placard on the visual says, “©opyright, ©reativity, ©ulture” (Fisher, 2019). The protestors use this slogan to position the concept of copyright central to culture and creativity that has social and cultural implications. Another supporter plays trumpet next to this placard. The fact that trumpet symbolizes the sentiment of triumph and celebration is an interesting approach of the supporters showing their approval (“Trumpet in C - Symbolism”). This rally does not root for the #saveourinternet movement but demonstrates support the new directive with the hashtag #yes2copyrightdirective when we look

at other photos from the same protest (Chee, 2019). The same hashtag and the yellow background with © symbol on the bottom right corner are also used by the MEPs that voted for the directive to pass (Chee, 2019). One visual from the EP meeting illustrates MEP Axel Voss, who is one of the main negotiators of the new directive, with a similar placard in front of him. While the visual shows the supporters' side in this controversy, the news article also demonstrates Google's tweet where it criticizes the new directive. Unlike the other tech news articles, Engadget has a different approach by humanizing the people who are in favor of it. Moreover, instead of showing photos of political actors like MEP Julia Reda, it visualizes the average people who champion this new development.

The news sites, blogs, and magazines under this category mostly analyze how science and technology are changed. These changes include scientific and technological development along with legal changes that initially aim to reshape the technological experiences. Another important aspect of these sites is that they tend to speak to an audience that understands the tech language and the possible impacts of the newest developments. The audience does not include average internet users but individuals that are involved with the tech enthusiasts. Especially in the case of these sites' focus on the conflict between the tech giants and small websites, the journalists try to answer these small website owners' concerns. These sites care about small companies' ability to innovate and grow and in order to help with that, they provide the latest news for them with the answers to the companies' possible questions. Their voice could be seen as cyber-libertarian because of their approach to the formation of the internet. In cyber-libertarianism, the goal is not to have obstacles and restrictions while reaching information (Jurgenson & Rey, 2014). On the contrary, Article 13's algorithm creates an obstacle and these media outlets' cyber-libertarian approach supports minimum government interference that is in

favor of not having the filter algorithm of Article which is posed by the EU governance.

Moreover, they value how technology affects culture. So, they speak to ordinary internet users to explain how new developments will change the way they use the internet, express themselves in it, and get the best out of it. Along with the conflict between big tech companies and small websites, there was an emphasis on the conflict between the future of freedom of expression, specifically including memes, and the new copyright directive.

Legal Commentary Sites

The third category of this analysis is the media sites that focus on legal news and commentary including copyright and digital rights news. They are mostly run by legal attorneys, digital rights activists, influential commentators, and non-profit groups. These sites mostly explain what Article 13 means for the EU internet's future, how its algorithm works, and what internet users should expect from it. These users include ordinary users, small websites and companies, and big tech giants. Similar to the previous categories, the legal commentary sites also focus on the importance of freedom of speech and the future of the internet.

The National Law Review acknowledges that people refer to this law as a “meme ban” similar to Tannam (2019) from *The Silicon Republic* (Daniel, 2019). Daniel (2019) uses memes as an example to clarify the possible results of Article 13 on the internet. He also explains that arguably memes should be covered by parody defense but the automated methods, as known as the filter algorithm, will not be able to tell the difference between legitimate and infringing use of third-party copyright (Daniel, 2019). That is true that whether all memes should be covered by parody defense or not because not all memes may have parody characteristics. It does not mean that it cannot be a legitimate use of copyrighted material, but it should be noted that there are

non-parody memes that are still fair use. Daniel (2019) shows the common concern of algorithms' lack of ambiguous content judgment that will cause a problem for internet users' content. A crucial part of this news article is the part that MEP Axel Voss is quoted that he refers to the internet as a space for free expression and it should remain the same after the new directive (Daniel, 2019). However, if the law is criticized to be a threat to practices of free expression such as memes, Voss's argument would not satisfy the critics. This news article seems to be expressing the opponents' concerns rather than who would be benefiting from the new directive's algorithm.

IPWatchdog demonstrates the conflict between copyright holders and freedom of speech advocates. While the copyright holders' reaction was positive to the new directive announcement, MEP Julia Reda and other critics argued that this directive is unworkable, over-protective, and limits freedom of speech (Nurton, 2019). Nurton (2019) refers to Julia Reda's blog post where she says, "This law will fundamentally change the internet as we know it—if it is adopted in the upcoming final vote. But we can still prevent that!" and the hope to prevent the new directive is emphasized by writing the last sentence in bold. Preventing the law to be passed was still an option since Nurton (2019) wrote his piece before it passed the EP. Reda is a part of the critics who claim that this new directive will be changing the internet space and experience for its users as the *CNN* producer Jon Sarlin mentioned in the informative video (CNN Business, 2019). The piece did not visualize the protest in Germany, but it still mentioned how young people held a demonstration against it on February 16 (Nurton, 2019). Even though the news article tries to hold an informative approach that does not show an opinion, the way that Nurton (2019) bolded Reda's statement in the text creates a focus on the critics' side.

Similar to these news sites, *Electronic Frontier Foundation (EFF)* shows its stance in this controversy more clearly. Cory Doctorow (2019) encourages his readers to take action to stop Article 13 repeatedly throughout the news article by contacting their MEP to vote against the law to pass. It is similar to what the parody video did in the *Russia Today*'s article but with a different approach (Buyniski, 2019; Thejuicemedia, 2018) While the parody video had a sarcastic tone, this piece has a more worrisome and serious tone to encourage its readers to take action. Unlike the other law-oriented sites, the *EFF* article has a strong visual of a drawing of a giant angry-looking robot figure that has the EU flag on it and having the copyright symbol (©) on its antenna, hands, and eyes (Doctorow, 2019). The robot walks in a city that is a demonstration of the EU internet space. This visual portrays the EU as a monstrous thing for the "city" that it is moving in and sending bolts of lightning from its "copyright" antenna. This robot having its eyes as the copyright symbol indicates that copyright law blinded this robot to function to only detect possible copyright and does not see anything else. The way that this illustration chooses a robot figure rather than anything else creates a dystopian scene where the technology, as this robot, oppresses the society in the EU. Like other sites, the *EFF* article also illustrates the details of the controversy and emphasizes the negative consequences of Article 13 by mostly writing them in bold. Doctorow (2019) explains that this controversy started with divisive Article 13 that became a flashpoint for public anger and drew criticism from the world's top technical, copyright, journalistic, and human rights experts and organizations. The big concern about only big tech companies being able to afford the costs of the new filter is one of the main focuses of Doctorow (2019). He also writes that "Filters assume that the people who claim copyrights are telling the truth, encouraging laziness and sloppiness that catches a lot of dolphins in the tuna-net." (Doctorow, 2019). This tuna-net metaphor is similar to what the

Quartz article visual demonstrates (Livni, 2019). The big worry is while it is hoped that filters will catch tuna (copyright infringing content) in its net, it will highly likely capture dolphins (legal works) instead. This analogy refers to the coexisting living environment of tuna and dolphins that swim together in the ocean. It has been a problem for the fishermen that only try to catch tuna but accidentally capture dolphins as well. The same situation is associated with copyright-infringing content and legal use content as well. These two types of content exist together that it would be difficult to capture only one and not the other just like in tuna-net analogy. By employing an environmentalist analogy of familiar issues, Doctorow (2019) make it more relatable for its readers. This metaphor is helpful to readers who are not as familiar with technological terms as they are with environmental issues and get them to understand the importance of possible problems that will occur by the algorithm. Moreover, it brings two issues together that people have relatively less control over compared to other controversial issues. Even though the new filter algorithm will be completely formulated, it will be tricky for internet users to predict the results, especially when it comes to online content using copyrighted work. Similar to environmental issues, people try taking precautions to avoid the unwanted outcome, however, the results can still be problematic just like the tuna-net example.

The other main focus is on answering the question of whether Article 13's opponents only want to save the memes or not. Doctorow (2019) claims that memes are not the only concern of opponents but “save the memes” movement is catchy enough to get people to talk about the things that filters will struggle to cope with, specifically incidental use. As Daniel (2019) in *The National Law Review* and Tannam (2019) in *The Silicon Republic* also points out, the original aim of this directive is not blocking memes but more so filtering illegal use of copyrighted content. Along with the colloquial name “meme ban” referring to this directive, “save the

memes” and “save the internet” movement names also help people understanding what the majority of protesters are opposed to and trying to protect. These names are used interchangeably while referring to this movement. It is similar to the colloquial name “meme ban” when the directive is the subject of conversation. They all demonstrate the medium that the majority of users concerned about. On the other hand, Doctorow (2019) preferring to point out “save the memes” instead of other options goes along with the whole theme of his news piece. The similarity between the slogan “save the memes” and “save the whales” is complementary to the other ocean-related issues.

As I explained earlier, Doctorow (2019) explains that even human moderators would struggle to figure out whether content, like memes that are a part of incidental use of copyrighted images, crosses a line from fair dealing into infringement. That is why it is expected that filters would have the same struggle with this issue. Doctorow (2019) adds a funny story to highlights the absurdity of MEP Axel Voss’s assurance about how filters would be able to distinguish memes. Voss claimed that the algorithm can distinguish memes on the basis that a Google image search for "memes" displays a bunch of memes (Doctorow, 2019). He is relying on the simple algorithm of Google showing accurate results due to keyword research. It does not mean that it captures all the memes on the internet due to different word choices while uploading the meme content. However, basing the argument that filters will not have an error when it comes to differentiating ambiguous content on a simple Google search result is not assuring for the critics.

Similar to Doctorow (2019), Glyn Moody (2019) also has a blunter approach with his word and visual choice in *CopyBuzz*. The headline says, “Article 13 is not just criminally irresponsible, it’s irresponsibly criminal” (Moody, 2019). From the start, Moody (2019) shows that he is opposed to this directive by calling it irresponsible and criminal. It continues with a

ransom photo that a small part of it is zoomed in via a magnifying glass. Through that magnifying glass, the only thing that can be read is “price is ... 1 million” (Moody, 2019). The visual choice along with the journalist’s stance in the controversy shows that the directive seems to be “kidnapping” the websites as a hostage and asking the expensive filter to be applied on their platforms as a “ransom.” Moody (2019) mostly shows the conflict between the “impossible, irresponsible, and lazy” law-making and everyone who will be negatively affected by it. New artists that rely on exposure, websites that have to apply this algorithm that does not even exist yet to their platforms which will filter every possible medium like text, music, audio, images, maps, etc. and activists who are tied to particular event or days that cannot afford a delay due to filter process will all be negatively affected by the new directive (Moody, 2019).

On the right column of the page, the hashtag #saveyourinternet is written repeatedly along with the hashtag #deleteart13. There is also a featured video that is posted by *CopyBuzz*’s YouTube account *FixCopyright* about the possible negative outcomes of Article 13 is also attached under these hashtags (Moody, 2019). In this video, it is argued that even though this directive is designed to keep big businesses liable for copyright infringement, they are the ones who are around the table to make this decision to have this law. In reality, this will be benefiting a couple of big US platforms and big US content companies (FixCopyright, 2019). These companies include record labels and the video shows some news articles from music news sites like *Digital Music News* and *Music Business Worldwide* that details how much music industry earns just from advertising revenue (FixCopyright, 2019). Even though the music community was complaining about not getting paid fairly, the video tries to prove otherwise as the music industry already makes millions of dollars every day through streaming (FixCopyright, 2019). This new filter is criticized that it will only make it impossible for most other companies to

compete, make the freedom of users and the choice of creators to upload content on non-US platforms disappear, and therefore, making big businesses even bigger (FixCopyright, 2019). Overall, the big concern is that the new proposal will only empower the big US platforms who already have the resources to implement the new filter. In the end, the video says that this is threatening freedom of expression and new forms of creation and asks for help from the viewers to support the #saveyourinternet movement (FixCopyright, 2019). The news article by Moody (2019) and the video by *CopyBuzz* complement each other in terms of encouraging their reader and viewers to stop the new law to be passed in the EP, keeping in mind that the video was posted in January 2019.

Unlike the other news sites both in this category and in other categories, *CopyBuzz* has an interesting approach by stating facts about how much music industry earns and how this would be a fair trait in terms of losing freedom of expression and having music community earning more money, disregarding the value gap concern. It still argues that this new filter will only reinforce big companies' power, but it also distinguishes the origin of those companies. The other news sites highlighted as the big tech giants will have an advantage in this situation but none of them pointed out that non-US companies would suffer from this development. Even in the video, it showed logos of only European creative industry companies to signify the support for non-US/European creative sector.

The news sites in this category identify themselves as the leading resource of legal news. Other than ordinary readers, they also target legal and business professionals as their audience. Since these sites use the online platform to reach their audiences, they also offer news about digital legal news mostly regarding online intellectual property including copyright, trademark, and trade secrets, and technology development that impacts user privacy, free expression online,

and digital innovation. Especially *EFF* shows its connection to prominent internet scholars in many ways. It explains that they use the expertise of leading technologists, activists like Cory Doctorow who is copyright law and technology activist and wrote many books about it, and attorneys to defend free speech online, fight illegal surveillance, and support freedom-enhancing technologies (“About EFF,” 2019; “About Cory Doctorow,” 2006). *EFF* also has connections with Lawrence Lessig who has a big role in shaping the conversation about copyright in the digital age and free culture. The fact *EFF* represented Lawrence Lessig in his lawsuit with Australian record label Liberation Music shows how deeply *EFF* values freedom of speech and fair use rights.

Same with *CopyBuzz* that it gets help from the contributions of professional journalists, members of Copyright for Creativity (C4C), and guest bloggers including academics, policymakers, digital rights activists and thinkers like Glyn Moody who contributed to academic discussions of the web with his book *Rebel Code: Linux and the Open Source Revolution* that shows the evolution and significance of free software and open-source movements (Cock; “About”). These media outlets show a close connection to the academia that uses the help of scholars and experts from digital media law, free speech, and functioning democracy. As the resource of legal news, these news sites champion freedom of expression and provide perspective from its advocates to the readers. Since these advocates value everyone’s free speech rights and fight against injustice that will harm this freedom, they mostly emphasize the future negative outcomes of this directive as it is not benefiting every internet user, specifically ordinary users. They also have a common goal of explaining the article to their readers because they think that the law is too vague for people to understand which would end up impacting their

experience in the internet space. They show their point-of-view by emphasizing the possible negative outcomes and by arguing that this law will impact this space dramatically.

Music News Sites

The last category has news sites that deliver news from the music industry. Since one of the biggest concerns of the music community is piracy, most journalists on these sites or members of the music sector express support and praise towards the new directive and its algorithm. It is crucial for individuals in the music sector that their work is protected, and they get paid fairly. Therefore, any development that strengthens this protection is central to their values. Therefore, while the other news sites mostly feature opinions of activists, lawyers, and tech companies, these news sites assure their audience including musicians, individuals from record labels and music bodies that this new development will be advantageous for them.

Stassen (2019) wrote a thorough analysis in *Music Business Worldwide* that has quotes from many important actors in the decision-making process around Article 13, including MEP Axel Voss and individuals from the music community such as chairperson Dr. Harald Heker from GEMA, the German society for musical performing and mechanical reproduction rights. This news article mainly features the voices of those in support of this new directive. Therefore, it reflects the beneficial side of the directive, especially for the music community. Chairperson Heker says that they welcome the agreement and thanks to directive, authors will finally get paid fairly for the usage of their works (Stassen, 2019). Along with Voss, Andrus Ansip, the European Commission's Vice-President for the Digital Single Market, is also a supporter of the new directive (Stassen, 2019). Ansip tweeted that he thinks the new directive is a major achievement for Europe (Stassen, 2019). Moreover, Anders Lassen who is the president of

GESAC, the European Authors' Societies, states that this directive was long-awaited for the creative sector. The GESAC's Director-General also emphasizes that the new copyright directive is a major achievement for the creative sector despite the pressure of tech giants like Google and YouTube against the directive until the very end (Stassen, 2019). Overall, Stassen (2019) demonstrates the big conflict between the big tech companies that Article 13 aims to force them to be held liable for copyright infringement on their platforms and the music community along with the creative sector that is not paid fairly by those companies. In contrast to this position, however, there are members of the creative community's rightsholder organizations that argue that Article 13 will risk leaving European producers, distributors and creators worse off instead of helping them (Stassen, 2019). It is argued that it will be detrimental for the new artists who want to upload their works for audience evaluation, reaction, and want to start building a fan community. The algorithm will impair the ability of the fan communities to share these artists' work with other members. Therefore, Article 13 will be harmful to the future of new artists that want to reach a larger audience.

Similar to *Music Business Worldwide*, *Music Week* brings up the perspective of the music industry on the controversy about Article 13 along with the concerns about freedom of expression. Similar to how Harry (2019) pointed out in *The Guardian*, Andre Paine (2019) quotes MEP Voss as he says that this directive will open the way to fixing the music industry's value gap. One particularly interesting part of this news article is the part where Paine (2019) highlights how the creators accuse YouTube and Google of misinforming the public about Article 13's implications for freedom of online speech. On the other hand, Voss argued that the rights of creators needed to be weighed against competing rights of expression (Paine, 2019). Therefore, the concerns about free expression are not unnecessary. However, the news article

does not focus on this concern as much as it does on the benefits of the new directive for the music industry. Paine (2019) also expresses Article 13's aim to force companies like YouTube to take responsibility for copyrighted content.

Daniel Sanchez (2019) on *Digital Music News* starts his piece with the headline "Critics Decry "A Dark Day for Internet Freedom" as European Parliament Approves the Copyright Directive." The subheading repeats the statement by saying while critics dubbed the day when the new directive passed as "a dark day for internet freedom" whereas multiple copyright organizations praised it (Sanchez, 2019). Sanchez's (2019) word choices of "decry" and "praise" shows the strong point-of-views of both sides in this controversy about Article 13. Although Sanchez (2019) explains the reasons behind both side's opinions, he mostly quotes individuals from the music and creative industries such as Executive Chair of IMPALA, Chief Executive of PRS for Music, and Chair of ICMP Global Board. On the other hand, Sanchez (2019) also quotes (or explains the position of) MEP Julia Reda, who was the parliament's most vocal opponent to Article 13. While the individuals in music sector characterize the new directive as a landmark for Europe's creators that will produce a more fair and functional market for their work, the opponent MEP Reda states that the result in algorithm will endanger a free internet by failing to distinguish legal re-use of content, such as parody, from outright piracy (Sanchez, 2019). The critics of the new directive also involve major tech companies, most notably Google, that got extremely involved with anti-copyright directive campaigns arguing that this will lead to censorship due to the directive's filter algorithm (Sanchez, 2019). That is the reason why opponents, especially MEP Reda, call the aftermath of Article 13 "a dark day for internet freedom" (Sanchez, 2019).

The Music Ally article displays an approach where it shows the expected reactions from both music bodies and tech associations with internet activists. The freelance journalist Stuart Dredge (2019) explains how music bodies have welcomed the new directive while others have shown their concerns similar to other music news sites' journalists. He does not add further commentary from others like big technology companies or activists about the new directive. Instead, he only summarizes both points of view in the main controversy (Dredge, 2019) The only statement mentioned in this piece is YouTube where it argues that the new directive may harm Europe's creative and digital economy (Dredge, 2019).

While the general news sites value the general internet experience, technology news sites worry about small tech companies, and legal commentary sites focus on freedom of speech. Music news sites are the only ones that show the possible positive implications of the new directive for the creative sector. As a part of the music community, copyright's value is different to these journalists and possibly to their audience members. The music industry has suffered greatly from piracy when peer-to-peer sharing sites like Napster emerged along with the advanced technology that made copying files easier for an average internet user. Thus, the higher standards of protection for copyrighted content has long been a high priority. Moreover, members of the music community carry particular credibility in the creative industry. It is not only because they fought against piracy to protect musicians' profits and creative value, but they are also associated with art history deeply. Their incorporation with different creative industries like film and performance arts gives the music community additional credibility. Besides, the music community provides a diverse platform for everybody from amateur to professional musicians, and every entity in between inclusive small companies to large corporations. It enables expression for all.

The same values apply to Debbie Harry in *The Guardian* article where she repeatedly emphasizes what a big advantage it will bring to musicians if piracy is policed more strictly. They have not mentioned anything related to memes. However, they expressed their stance in the context of intellectual property and popular culture. From their perspective, the common sense is that musicians and creators should be paid fairly, so emphasizing this point in the discussion about Article 13 is necessary for them and their reader group. They treat digital space as an alternative platform for these creators to reach their fans and run their businesses in the music sector. Thus, any development that will make this a fair situation is a phenomenon that needs to be praised from their side.

Discussion

The media outlets analyzed in this chapter all point out one way or another that the internet and social media are spaces to practice free speech and participate in culture through different mediums. These discourses support Balkin's argument of how the internet provides a space for people with new affordances to express themselves (Balkin, 2004). Although there were different concerns emphasized in Article 13, they all had one thing in common: they agreed that internet culture is a crucial site for societal interaction and this new law will change internet culture in the EU. Thus, it will impact the perception and the formation of social media space in the EU in comparison to the US.

Each category of media outlet has a different focus in their news pieces due to their main values and concerns. The general news sites mostly spoke to ordinary internet users' concerns about their future user-generated content, specifically memes. The main criticism in these publications was towards the lack of human judgment that would be able to interpret ambiguous

content, however, the new filter would not be able to do thereby would not distinguish legal use of copyrighted content from infringement. Since these outlets also target average people, they mostly highlight the medium of memes. It is because internet memes lately became an important and cultural online communication form that average internet users utilize to express themselves. Whereas the technology news sites show a cyber-libertarian approach. They prioritize having little to no obstacles while reaching information. Therefore, these sites worry about small websites' future after the implications of Article 13 for the internet that will possibly bring greater obstacles for the small websites. These sites do not focus on a specific medium but more so emphasize the new law's technical details. Legal commentary sites, on the other hand, act as freedom of speech advocates and mainly have their news pieces focus on questions of free expression. They also used the colloquial term "meme ban" to refer to the new law and value memes as a communication form that should be protected under freedom of speech. Therefore, their academic and legal experts demonstrate the conflict between free speech activists and copyright holders. Lastly, music news sites zero in the music medium as their journalists speak for members of a music industry that prioritizes copyright law and explains its importance by copyright to questions of creative protection.

WHY AND HOW DO COMPANIES MEME?: MEMES IN BRANDING CULTURE

Overview

Companies have always found alternative ways to utilize trends to communicate with their consumers. The alternatives that they use to build connections are more than advertising mediums but more so a part of their branding strategies that they create a persona that their audience can feel connected to, taking a part in the development of culture, media, and the internet. As Banet-Weiser (2012) argues, branding is ambivalent in that it is different than commercialization and marketing. It is deeply cultural. Through branding processes, companies take part in developing discourses on the internet which entails creating immaterial things like feelings, affects, personalities, and values. Thus, the relationship between producer and consumer is not solely economic and standard where the consumer is a passive actor. Moreover, it does not mean that there is no community because producers profit from it. Banet-Weiser (2012) explains that she disagrees with the definition of ambivalence as “failure of a relation.” Instead, she sees ambivalence in brand culture as “potentially innovative” that the meaning that individuals create through consumption often extends beyond economic goals to social and cultural levels. One of the means of doing so is by creating internet memes. As a unit of popular culture that circulates among internet users, internet memes help people to keep up with the current events with jokes and public opinion about it, transmit cultural values, and create a space for social and cultural connections. The appropriation of memes into the branding the process has made the overall phenomenon of branding even more ambivalent. (Banet-Weiser, 2012).

Companies respond to popular culture by participating in conversations, creating their memes, and forming a humorous persona. Milner (2016) explains that companies converse with publics by using hip-hop slangs and playful GIFs which mirrors the perceived communicative

content and form of their target demographics. The popular #thedress conversation back in 2015 and how companies responded to the trendy controversy about it is a good example of how they participate in their audiences' conversations involving memes. The #thedress controversy was about a striped dress in a viral photo and whether it was white and gold or blue and black. Thousands and millions of internet users participated in the controversy by telling what colors they see the dress and by creating user-generated content, including memes, to express their thoughts about the conversation. Multiple companies including Denny's, Pizza Hut, JCPenney, M&M's, Miller Lite, Guinness, Dunkin Donuts, Lego, and Hellman's Mayonnaise found creative ways to connect to this memetic moment to mention their brands in humorous and vernacular language (Milner, 2016).

The second way for companies to brand themselves is by creating their own memes by using vernacular memetic language regardless of whether there is an ongoing conversation on the internet or not. In this context, companies mimic the common language employed by internet users by captioning their images to create memes. The companies can either use the same caption or modify the caption depending on their new meme's context. The image or the message might be different, but the caption format stays pretty similar. Therefore, other users recognized what the new meme is referencing or from which kind of memetic language it is inspired by. Milner (2016) gives the example of the Dr. Pepper Snapple Group that produced a collection of image macros that feature their own brand Sunkist Soda and used memetic captions in 2013. An image macro is a digital media that involves a photograph, or an image superimposed with a caption or catchphrase. The earliest captioned image consisted of a dressed cat photograph with a caption says: "What's Delaying My Dinner?" by American photographer Harry Whitter Frees in 1905. However, it was not called an "image macro" by then, the term was first coined in a forum called

Something Awful (“Image Macros,” 2012). This visual format was not anyone’s property and turned into an internet expression and took part in the online public domain. Dr. Pepper Snapple Group capitalized on well-known memetic catchphrases and inside jokes for their marketing campaign to get digital buzz across the Internet (Milner, 2016). They did not participate in a particular ongoing conversation, but they got their memes out there for people to see and share.

Similar to Sunkist Soda's example, there are other companies today that use the same strategy to create memetic content in order to either start a new conversation with their audience or just to develop a persona that people can remember them with. Gucci recently had a #TFWGucci campaign to market their new watch collection by hiring special illustrators to create original memes about the collection. Similarly, Netflix has been using its social media platforms and its own smartphone application to promote its name and its original streaming content through memes. Along with participating in conversations that require popular culture knowledge, Denny’s also post memetic content on its Twitter account to engage with its consumers. These examples involve content, like photos of their own products and services, that would not bring any copyright issue into the situation.

However, there are other cases of companies utilizing memes for branding which still have transformed messages but with copyrighted images. These cases raise concerns about copyright law. As a part of remix culture, memes are employed by transforming an existing culture to convey a message to internet users. This transformative and imitative nature may cause problems for the creator. It is even more problematic when the creator is a company and create those memes for branding. Even though they may not be directly earning money from those memes, their indirect commercial purposes may undermine its fair use factors. In the US, if those memes do not harm the economic interests of the image’s copyright owners, have a

transformative nature, and qualify for the fair use exemptions list, they are protected. In the EU, the fair use exemption is trickier and not as flexible as the US copyright law. Especially with the new development in the law with Article 13 and its new filter algorithm. Memes' characteristic of transforming existing work and ambiguous content would likely be a problem for the EU internet. Companies' memes in their ambivalent branding practices are particularly crucial to study, especially in terms of their place in culture.

In this chapter, I investigate both of the ways that companies seek to create internet memes. The first section will showcase the companies mentioned above, Gucci, Netflix, and Denny's, that use original content to form memes. The examples from these companies will demonstrate a different promotional approach where the social media post is not solely advertising a product or service. It is more so aiming to create a relatable persona for the target demographic that would be encouraged to follow the companies' other posts. The second section will feature three other companies that also use memes to connect with their consumers but through transformed/mutating memes: Curology, Spark Notes, and Albert. Meaning that they participate in the popular meme culture but in this case, they modify someone else's intellectual property and signify a different message with the premise of promotion. I aim to use textual analysis to show the intended messages and context in these memes that Article 13's filter algorithm would not be able to distinguish it from copyright infringement. I also intend to explain the reasons why they should be considered fair use and protected.

Analysis

In this analysis, the categories I use sort memes based on the copyright status of the elements they use. These elements include the images they choose, the memetic phrases they

customize, the remixed popular culture conversation they participate in, and the initial products and services they highlight. It is also important how they transform these elements and which aspects of the elements they modify. One thing that these companies have in common is how they leverage memes to get their brand names out on social media and present their persona to their audience.

Original Content Memes

This category comprises companies that remix memes by recreating them. They capitalize on the structure, the idea, and the joke behind it and present it in a new way. These companies incorporate the popular culture elements in the images they either create or own and the modifications of popular phrases that the internet community is familiar with. By taking this approach, they take a safe path on producing and sharing memes and brand themselves within the meme-using community. Unlike the companies in the second category that mostly transform the message but not the visual drastically, these companies participate in trends with their original creative content.

Gucci's #TFWGucci (That Feel When Gucci) campaign is described as an art project in the digital space where they line up memes featuring the new Le Marché des Merveilles collection of watches. In this project, Gucci commissioned international meme-maker artists like Amanda Charchian, Olaf Breuning, Less and Christto & Andrew (Gucci, 2017). These artists already have a reputation on Twitter and Instagram, and they were given images of the new watch collection for them to turn into memes. The goal was to have these artists to create original memes with the given images to help their consumers to express themselves online. They showcased this art project on their website along with sharing on their Instagram account. Each

meme post has a caption that tells a short story of the artist, what inspired them to create the meme, and what their original work style is. Therefore, the memes give more insight into the meme and the artist and help them to relate to these memes in case they do not get the message just from the image macro.

The origins of TFW comes from the internet slang “I Know That Feel Bro” that is an expression to convey empathy towards or agree with someone else’s feeling or opinion (“I Know That Feel Bro,” 2011). Gucci took this expression and communicated with its viewers to both promote its new watch collection and create a bond between its consumers. One of the examples in this meme-art project is inspired by another meme called Arthur’s Fist. The original meme features a screen capture from a children’s television series *Arthur* where the protagonist Arthur holding a clinched fist. This meme often accompanied by captions describing infuriation and frustration. The Gucci meme that was inspired by Arthur’s Fist was created by Derek Lucas with the help of New York-based photographer Benjamin Langford who reinterpreted the meme through his lens. Lucas’s meme captures a guy wearing the same yellow sweater and jeans as Arthur in the TV show wears, holds a clinched fist with flowers, and on his wrist, there is a watch from the new collection. The caption says, “When your girl doesn’t notice your watch” and indicates the campaign hashtag “That Feel When your girl...” The new watch being close to the center of the photo and the highlighting caption draw the viewer’s attention to the watch. The image macro does not give any traditional advertising information about the watch but still promotes it in a humorous way. The story caption ends by saying, “For #TFWGucci, a #LeMarchédesMerveilles watch on his wrist and a bunch of flowers in his fist, Arthur is still frustrated.” Explaining that they recreated Arthur in real life but this time, he shows frustration over a girl who does not notice the new Gucci watch he is wearing.

A second example from this campaign has the artist John Trulli taking on another famous meme structure: “You vs. The Guy She Told You Not to Worry About.” This original meme structure is a series of captioned images comparing two male subjects or fictional characters side-by-side, with the one on the right being the more desirable suitor of the two (“You Vs. The Guy She Told You Not to Worry About,” 2016). The earliest known tweet is posted by the twitter user @AmBlujay in 2015 where the user compared two male subjects. In 2016, the meme spawned many repetitions where people featured popular culture references and it became viral (“You Vs. The Guy She Told You Not to Worry About,” 2016).

Trulli takes this structure and inserts two images of different watches inside male subjects, one is more desirable compared to the other one. The caption goes, “Me vs the guy she says I shouldn’t worry about” that personifies those watches like the male subjects or fictional characters in the original structure. The left image that demonstrates the “Me” part in the caption has a mundane watch. The right image that is “the guy she says I shouldn’t worry about” shows one of the watches from Gucci’s new collection that is worn by someone along with a coat and other accessories to complement the look. Compared to the left image, the Gucci watch showcased is fancier, more attractive, and is the “more desirable suitor” of these two images. The meme attempts to promote the new watch collection by comparing it to a regular watch image in a popularized meme structure.

Unlike Gucci’s one-time meme campaign, Netflix has a different approach that uses memes on a more regular basis. It creates memes by using screenshots or short video clips from its shows on its Twitter and Instagram accounts. These shows are either Netflix Original Series or TV network shows that Netflix has the distribution rights. One example that features an original Netflix series has images from Grace and Frankie. This meme post is sent from Netflix’s

Twitter account on February 1, 2020. It is a comparison meme captions “January 1 vs. February 1” and has two different images from the show. Both images have Grace, a character played by Jane Fonda, in completely different presentations. The left image that is supposed to illustrate January 1 shows Grace saying, “We all really need to start drinking less...” while the right image shows her being drunk and asleep on a table with three margaritas in front of her. It is a reference to “Expectations vs. Reality” memes that showcase a series of images and videos featuring a side-by-side comparison illustrating an obvious discrepancy (“Expectations vs. Reality,” 2015). By remixing this meme format to compare the first of January with the first of February, the meme touches on one of the most commonly broken New Year’s resolutions. The character from the show also known for her scenes where she occasionally drinks a margarita. So, playing with that trivia and transforming this meme structure with original tv show scene captures help Netflix to create an original meme to connect with its audience.

Along with the social media platforms, Netflix also uses its smartphone application to showcase some of its shows through memes, mostly comedy shows like *The Good Place* and *The Office*. Most people associate memes with humorous content, which is likely why Netflix uses this strategy to promote its comedy shows. Besides Netflix’s original content, the streaming platform leases other TV shows and movies. Therefore, when they promote these shows by using screen captures from the shows and movies, it does not violate copyright laws. For instance, in Netflix’s smartphone application, there is a section called ‘Coming soon’ that promotes new series or current series’ upcoming episodes and seasons. So, when they released the date for the new season of *The Good Place*, they used a screen capture from the show where the character Eleanor, who is played by Kristen Bell, wears a sash saying “Best Person” on it. On top of this image, the caption says, “What my wife thinks she looks like the one time she takes out the

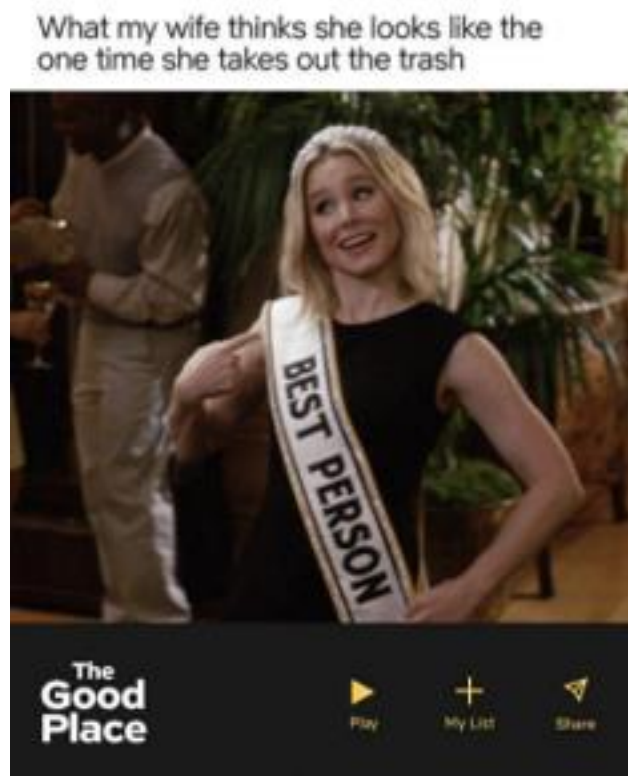


Fig 1. Netflix *The Good Place* Meme, [online image]. Retrieved from Netflix Smartphone Application

trash” (Fig. 1). The caption has no relation to the plot of the show or the background of the character, but the imagery and the caption creates a humorous meme even for the average Netflix user unfamiliar with the show. Since this content is featured in its app where subscribers can see, the main goal is not the gain new subscribers. Instead, it promotes different shows to keep its subscribers use their service. It maintains its entertaining persona along with social media posts.

Denny’s is another example of a company that creates original memes to engage with its followers. It uses different platforms like Twitter, Tumblr, and Facebook to connect with different audiences. Denny’s is known for capitalizing on memes that help it to create a funny persona on Twitter. These social media accounts are managed by the advertising agency Erwin Penland since July 2013 (Taylor, 2015). Erwin Penland’s Director of Strategy Kevin Purcer

explains that their main goal is to create little conversations that would provide memorable moments for the audience that they would enjoy in a diner. Denny's CMO John Dillon explains that the agency creates as a tone of a person who "you can literally sit down next to at a diner and have a conversation with" (Taylor, 2015).

Denny's Twitter page has many tweets that replicate the look and feel of meme formats. One of the most iconic ones mimics the "Zoom In" trend. The format instructs the viewer to zoom in on a specific location on the image for them to find another instruction to look somewhere on the same image. It continues until the viewer finds the punchline or the message written in tiny text ("Zoom In," 2017). This format started when Twitter user @SNCKPCK posted a photograph of a dog with the caption/instruction "zoom in on the nose." A tiny text on the nose instructs the viewer to look in the bottom left corner, another text in that corner tells them to look in the top right corner, and the final message in that corner says, "you are beautiful."

Similar to the original format, Denny's tweets a photo of pancake with butter and syrup poured on top of it. It instructs its followers to zoom in on the syrup. Tiny text captions on the photo instruct the viewer to look at different corners of the photo and in the end, it leads the viewer to look in the butter where it says, "has this distracted you from overwhelming existential dread lol." It got significant attention from Twitter users and media. Denny's CMO Dillon sees this tweet as a part of the company's strategy to stay relevant on the internet. He says, "It's critical that our content be current and relevant to the conversations that are happening across America." This quote offers a great example of how companies strategize their social media posts to participate in popular culture. Similar to Gucci and Netflix's examples, Denny's uses a

similar approach to the memes where it follows what people currently use to communicate online and adapts its promotional messages into that format with their own content.

A different example from Denny's customizes "If You Can't Handle Me at My X, You Don't Deserve Me at My X" which is a snowclone, or modified version, of the phrase "If you can't handle me at my worst, you don't deserve me at my best." The source of this quote is unknown, but it is often misattributed to Marilyn Monroe. With the rise of online dating apps, both the original and transformed versions started to be used on personal profiles. In late March and early April of 2018, which is the time when Denny's also tweeted the meme that used the phrase, image-based variations began spreading on Twitter. The snowclone says, "If you don't love me at my" and continues with an unattractive image of the subject. The second part goes, "then you don't deserve me at my" which is followed up by an attractive image of the same subject ("If You Can't Handle Me at My Worst," 2015). Denny's takes this snowclone and uses a two-panel image macro with different potato photos. The left image, which is supposed to be the unattractive one, is just a plain potato while the right image that is presented as the attractive one is Denny's French fries. It subtly showcases its own product with the help of a trendy meme snowclone.

These companies embrace internet culture to connect with their audiences on social media platforms. Some companies like Gucci plan a one-time campaign to adapt their branding strategies into this culture and other companies like Netflix and Denny's draw on internet culture more consistently to establish a quirky social media persona. Both Netflix and Denny's take a common approach by becoming fluent in the meme-using community's language and culture to connect with them on a more friendly level. Audiences use memes to comment or criticize Netflix's shows and movies, and Netflix answers back in a similar tone. When Birdbox was

released on Netflix in December 2018, internet users began a conversation about it, including by creating memes that referenced the show. Netflix's social media team began retweeting and promoting their favorites (Beer, 2019). Another example of Netflix responding to internet culture is when the "Netflix and chill" phrase went viral in the summer of 2014. It has been used as a code phrasing for hooking up and quickly went viral as a meme caption (McAlone, 2015). As a response to this new slang term, Netflix launched a new DIY product called "The Switch" that dims the lights, silences incoming calls, orders takeout, and turns on Netflix ("The Switch"). This product commonly referred to as "Netflix and Chill Button" that sets up the stage for the ones who want to "Netflix and chill" (Plante, 2015). Similar to Denny's case, Netflix makes sure they stay relevant in online conversations, especially the ones it is the topic of. Both Denny's and Netflix capitalize on youthful meme-using community's vernacular language and ongoing topics and respond with memes.

These three companies are important cases that show a common tactic for staying in touch with consumers on the internet through a relatively new format. They strategize their social media accounts to participate in the popular culture conversation by adjusting their content into meme formats similar to other internet users'. It helps them to stay up to date, maintain an entertaining online persona, create or join a new popular conversation, and encourage their consumers to relate more closely with the brand. Notably, however, they take a less risky approach concerning copyright by using their own intellectual property.

Transformed Memes

In contrast to the original meme strategy, some companies create memes by modifying others' intellectual property. Similar to the previous cases, these companies also aim to join the

conversation in the meme-using community and stay relevant. I refer to these memes as transformed memes. However, Lantagne (2017) defines them as “mutating memes” which consists of visual images that reshaped beyond these images’ original meanings and act as an original form of communication. The mutating meme examples in this analysis involve cases that feature screen captures from popular TV shows, movies, or popular meme visuals. These companies remix these elements with other cultural components to generate a new meme to share with their audience. In SparkNotes’ examples, the memes remix portions of books, memetic images, popular culture jokes, and meme formats in order to take part in online conversation within the targeted audience members while still signaling its service of helping with literature classes in school.

In Curology and Albert cases, the memes use similar cultural components. Similar to SparkNotes, their memes tend to feature visuals taken from popular TV shows and movies or from memes that have previously been popularized. Their common approach is capitalizing on memes, customizing their format and phrases, and remixing popular culture elements. By doing so, they alter their messages to adapt to trends, so the followers can more easily relate. While these remixes are protected in the US with their transformative nature, Article 13 in the EU might change the situation for these companies’ memes due to its filter algorithm.

SparkNotes

SparkNotes is a resource for students to help them understand books, write papers, and study for tests (“About SparkNotes”). Surprisingly, it first started as a matchmaker software with the name TheSpark which was later renamed Pimpin’ Cupid in 1999 (SparkNotes, 2006). The founders realized that the site’s user base was made up mostly by high school and college

students. In response, they added academic resources, called SparkNotes, to the website to build traffic. These included online literature guidelines and book summaries of novels like *The Scarlet Letter* and *A Tale of Two Cities*. In 2001, Barnes & Noble becomes the only acquirer of SparkNotes, and a year later, SparkNotes literature guides went on sale at Barnes & Noble stores nationwide. Along with literature guides, they also added test preparation books for the college entry exams like the SAT to their editorial list (SparkNotes, 2006). Today, they have short guides for students on their website, but they sell expanded guidebooks at Barnes & Noble stores and online as well. Not only do they sell guides for literature, but they added math, biology, history, and other subjects to their list. Their guides include quick quizzes for students to test their retention before the test (“About SparkNotes”).

Like most companies, SparkNotes uses social media platforms like Facebook, Twitter, and Instagram to drive traffic to its website. On these social media accounts, they engage with students by posting updates, helping them with their school work notifying them about what is new on the website (“About SparkNotes”). Another way that it engages with its followers is by creating memes that reference plots from novels or present situations that these student followers can relate to. The most common approach is to take screen captures from sit-coms popular among high school and college students, such as *The Office*, *Parks and Recreation*, and *Brooklyn 99*. The memes are usually in the image macro format, where an image from the program has a caption right above or below it. In other cases, SparkNotes writes a caption to memes that are already in image macro format to help followers understand the intended message.

The first example features a scene from one of the first episodes of *The Office* where Dwight, a character played by Rainn Wilson, is looking through window blinds with a serious, determined face. The caption reads “the green light: *shines* Gatsby:” (SparkNotes Official,

2019) It refers to the famous F. Scott Fitzgerald novel *The Great Gatsby*. One of the main characters, Jay Gatsby is a young and mysterious millionaire who throws extravagant parties in his mansion every Saturday night. He lives across the bay from Daisy Buchanan, who he is deeply in love with. At the end of Daisy's dock, there is a green light that Gatsby spends many nights staring at it. This shining green light is frequently mentioned in the background of the plot. It becomes a very iconic part of the story and Gatsby's love and hope for getting back together with Daisy, who has married someone else. SparkNotes' meme is thus a humorous reference to this significant detail. It uses Dwight's scene from *The Office* to imitate Gatsby's feeling whenever he sees the green light. The social media post also supported with a caption saying, "happy friday old sports!" SparkNotes treats this post as a friendly post that would invite the followers to engage with it in the comments (SparkNotes Official, 2019). The "old sports" is also another reference from Fitzgerald's novel, as Jay Gatsby repeatedly uses the phrase "old sport" in the story. Instead of using a standard format that would just share brief information about classic novels that are assigned to students to read for literature classes, it uses a popular media format that would make those students engage with the context in a more entertaining way.

The second example uses a collage of two screen captures from the American sitcom *Parks and Recreation*. The images feature Ron Swanson, a character played by Nick Offerman, talking to a camera. The subtitles included in the first image read, "I have been forced to do many things I don't enjoy," and then in the second image continue, "like writing things down and speak with people." (SparkNotes Official, 2020). The image macro has this caption to express the true message of the post: "coming back to class after a 3-day weekend." In this example, the meme doesn't convey information about a novel. Instead, it attempts to keep

SparkNotes current and relevant in a similar manner to Denny's use of the "zoom in" format. The post was shared on Tuesday, January 21, 2020, which is right after Martin Luther King Day. The timing shows how SparkNotes wants to be a part of the popular conversation online where students likely complaining about going back to school after an extended weekend. Ron Swanson's line originally is not about going back to school, but it fits the situation by alluding to common school activities like taking notes and discussing course material. This makes the meme relatable for the students by giving them a feeling of being heard and understood.

Another meme example features a different sitcom, *Brooklyn 99*. The image in this meme shows Jack Peralta, a character played by Andy Samberg, in the police station where he works. The subtitle in the image reads, "Gruesome murders are the cornerstone of my charm." The caption beneath reads: "frankenstein's creature's tinder bio." (SparkNotes Official, 2019a). The meme references the classic novel *Frankenstein* by Mary Shelley, which is about a monster/creature who seeks revenge on his creator, Victor Frankenstein. In the book, the creature ends up killing Victor's younger brother, best friend, and wife. SparkNotes chose a playful approach to illustrate this story of the character about the creature with the caption. It remixes a quote from a police officer, who solves "gruesome murders" in the show, with the trendy meme caption "tinder bio." By using the commonality between a police officer and a novel character, SparkNotes gives trivia about a classic novel and entertaining its followers and showing them that they can enjoy literature while learning. SparkNotes also adds its commentary to its meme by writing "we don't know who needs to hear this, but killing everyone your creator ever loved is not a personality trait" under this Instagram post (SparkNotes Official, 2019a). This caption for the post benefits from another well-known memetic caption "I Don't Know Who Needs to Hear This." It is originally a phrase used to state advice, opinion, or suggestion ("I Don't Know Who

Needs to Hear This,” 2019). By mashing these different internet culture elements up, SparkNotes shows how it is relatable in the online meme culture and still can keep guiding its student audience.

In terms of fair use considerations, SparkNotes’ memes check all the right boxes. They do not involve any acts reserved exclusively to the copyright owner of the chosen images, which is NBC Universal in all three cases. Instead, they create parodies classic novel plots or relatable student problems that should be protected under the law, and it does not compete for the right and interests of the copyright owner. However, to understand the purpose and the context of the meme, there needs to be a human judgment to realize the in-joke. The new filter algorithm of Article 13 will be coded to catch any copyright infringement which means any copyrighted work that is not shared by the copyright owner. In this case, the algorithm will highly likely see these posts as infringement due to the lack of human decision to understand the popular culture reference.

SparkNotes’ memes exemplify the intertextual nature of the meme as a medium. In these examples, memes are built out of cross-references to classic novels, popular TV shows, established meme formats, and trendy catchphrases. They include elements that are copyrighted and elements that fall into the public domain. One of SparkNotes’ main products is based on novels. It publishes summaries and study guides for those novels. If it was not for those novels, SparkNotes would not have products to sell. However, some of the novels referenced are works that fall into the public domain, such as *Frankenstein* (1823), while some of them are not, such as *The Great Gatsby* (1925). Depending on whether they are part of the public domain or not, it changes the meaning of SparkNotes using these novels. If it is part of it, then it is safe to cross-reference those novels, but if it is not, then it would be analyzed under the fair use exemption.

The other components in these remixed memes are visuals or references from popular TV shows that are owned by media corporations like NBC Universal, standard meme formats like image macros which became a common internet expression, and catchphrases and witty messages that are also commonly used as internet slangs. SparkNotes utilizes these different parts of internet culture and different parts of intellectual property to create an intertextual meme to communicate with its audience. Due to its wider reach to people, these memes can circulate faster and broader compared to an average user's meme. Yet, the filter algorithm's possible limitations would be a threat to this fast transmission and discourage the company to create transformed/mutating memes.

Companies' communication forms work as a mirror where people tend to look for culture that they like reflected in brands' communication (Holt, 2004). Memes as cultural units are an easy way to reflect that culture to the people. However, original memes and transformed/mutating memes reflect culture through different experiences. While the former has more of an indirect approach by altering the aesthetic, the message, and the context of cultural elements, the latter carries cultural references more directly with the help of intertextuality. For example, Gucci hires artists to present their interpretation of memes and other internet culture references. This rendition of the artist influences the viewer's experience of decoding the message because the signifier is altered due to the artist's interpretation. Viewers may make sense of this original meme differently. Some of them may not even get the intended message. On the other hand, SparkNotes uses references to TV shows by using a scene capture in its meme. Seeing the exact scene may help the viewer to recognize the reference right away and the message may go across faster. However, when this transmission is reduced due to technical limitations, it becomes problematic for companies that try to add new elements to internet

culture. It is also problematic for ordinary users and the internet culture that miss out on these new elements.

SparkNotes targets student demographics that would need help with literature classes and uses more than its website to reach this demographic. The social media platforms that students mostly use seem to be a helpful alternative for SparkNotes to connect to those students and get their name across. Along with the platforms, the communication form plays an important role for them to get their target segment to relate to the company. As one of the Web 2.0's most popular media forms is memes, SparkNotes takes advantage of that and speaks in that form. Besides, it populates those memes with content, drawn from TV, that students are likely familiar with. Csordás et al. (2017) explains that it is one of the common strategies of companies using popular TV show references to convey their message to the target audience. Therefore, students recognize the images or references and may end up developing an interest in what SparkNotes has to say to them. It talks about students' common interests or complaints, gives trivia about classic novels that these students might end up needing to read for school, and creates a friendly tone for an academic subject which usually does not come across as informally to students. Even the way that SparkNotes does not capitalize the words in its captions helps with creating a friendly and entertaining persona similar to how McDonald's breaks the grammar rules with its slogan "i'm lovin' it." However, the company would be likely to face limitations if it happened to post the mentioned posts in the EU internet when Article 13's filter algorithm is implemented. The complex context within those memes would not be able to pass this filter due to a lack of human judgment.

Curology

Curology is a custom skincare brand that was founded in 2014. It prescribes customized skincare products for its consumers by asking them to answer questions about their skin, sending photos, and getting them a personal provider (“Why Curology”). After all of these steps, consumers receive products that have a custom formula for their skin conditions. One of the ways Curology tries to create a sense of community for its consumers is by fostering discussions of their skincare processes. It encourages them to share their stories on social media with the hashtag #curologyjourney that starts a whole conversation about their journey with other community members and promote the name to other social media users (“Community”). Curology uses many social media platforms to engage with its consumers including Facebook, Twitter, Instagram, YouTube, Snapchat, and Pinterest. It synchronously posts the same content on these accounts, including its meme posts that give brief skincare advice and provide amusing content.

One interesting example on its Instagram account is a post where it joined the trend of sharing “Baby Yoda drinking soup” memes. The original meme is a reaction image macro from the American Star Wars Disney+ television series *The Mandalorian* where the character Baby Yoda comfortably drinks from a mug with both its hands on it. Many people have compared this image to other moments from the culture of people drinking warm beverages such as people drinking hot chocolate during Christmas or sipping tea while gossiping (“Baby Yoda Drinking Soup,” 2019). Curology used the image macro and inserted a white bottle that says “Curology” on it. Inserting the Curology bottle in the image in the place of soup is a creative way to simulate the same soothing feeling as Baby Yoda has while comfortably drinking soup. The caption for the post goes, “Are we too late?” with hashtags about Baby Yoda and its memes like

#babyyodamemes, #yodamemes, #starwarsmemes and other hashtags implying the humorous goal of the post like #dailyhumor and #laughsdaily (Curology, 2020). These hashtags show that one of the Curology's purposes of sharing these memes is to stay connected to its followers and community by providing enjoyable content. The caption also indicates a question about whether they are too late to join the trend or not. Again, similar to Denny's example, Curology has a social media strategy to stay relevant and join the current conversation which, in this case, is the recent show *The Mandalorian*'s most popular character Baby Yoda.

A different example in Curology social media posts takes an existing meme and changes the caption to give a different message in the same reaction image format. Curology takes the "Drakeposting" meme, which is a reaction image macro featuring two screenshots of Drake's music video for the song "Hotline Bling." The image on top shows him holding his hand up to the side of his face while looking disgusted; the lower image features him pointing to the right while looking happy with an expression of approval ("Drakeposting," 2016). The general concept for this meme is to insert an image of something next to the image on the top to show disdain for it and another image next to the image below to show approval. Curology took this concept and wrote "Chemicals" next to the image of Drake looking disgusted and "Water, also a chemical" next to the other image below (Curology, 2019). The social media post is supported by a caption explaining that the consumers should not fear the word chemical as not all the chemicals are bad for them. They are not telling their followers to stay away from all chemicals but encouraging them to make sure they know which chemicals they should avoid, and which chemicals are healthy for their skin. The post includes hashtags like #chemicals, #chemicalfree, #chemicalfreelife, #chemicalfreeskincare, #chemicalfreebeauty, and #cleanskincare to connect the post to the broader conversation about the importance of chemical-free skincare (Curology,

2019). It also adds the hashtags #drakememe and #drakememes to insure it posts alongside other “Drakeposting” memes and their audience.

Another meme example from Curology’s account has a similar approach to SparkNotes. This meme features a scene from the old sitcom show *Friends*. The moment captures Ross Geller, a character played by David Schwimmer when he accidentally overdid it with his spray tan. Since it is not an image macro that has a text on it, the post is complemented by a caption by Curology under the post saying, “Put on last year's tanks and shorts only to realize you're the color of Paper! Snow! A ghost!?” (Curology, 2020a). In this post, Curology encourages its followers to consider the impact of tanning on skin health. It uses the “Paper! Snow! A Ghost!” reference from *Friends* when Joey Tribbiani, another character played by Matt LeBlanc, goes on a game show called “Pyramid.” In the show, contestants try to guess the right words from certain categories. When it was Joey and his partner’s turn, their category was “Things you find in your refrigerator” and the word he needed to guess was “cream.” He gives the answers “paper,” “snow,” and “a ghost” every time his partner says, “It is white!” The line became an iconic *Friends* quote. The rest of the caption explains how tanning either from the sun or tanning beds is not healthy for skin health and fake tanning, similar to Ross’s tan, would be a healthier option for their followers.

Similar to the chemical-free skincare meme, this post does not directly advertise any of Curology’s products or services. Instead, it is more focused on building the company’s larger brand image. With the help of memes and popular culture references, its posts encourage its followers to think about tanning and its impact on skin health. Therefore, it reinforces the idea of valuing customers’ health, which is central to Curology’s brand image. Using hashtags like #selftan, #skincaretips, #sunlesstan also helps Curology to draw other internet users’ attention to

this skincare conversation and get tips and opinions about the subject, Moreover, other hashtags like #friendsmemes bring more participants in the meme-using community into the discussion.

What Curology does differently than SparkNotes is that its memes are not based solely on TV shows but come from a variety of contexts. The “Baby Yoda Drinking Soup” meme might be the most complicated one of all because it does show a Curology product on the image.

However, promoting Curology’s entertaining persona and participating in a trend puts this post in a grey area. Many internet users customize memes by writing different captions or changing the images and then share them on their social media accounts. Their motivations for doing so include the satisfaction of being a part of a trend, being a member of a larger community, and having one’s voice heard. Curology did something similar, but in a manner meant to showcase their products. By adding the “Are we too late?” message, the company emphasized its active role in online conversations. However, since the coded algorithm would not be able to distinguish these purposes behind the post and perceive the post as Disney’s intellectual property, it would possibly mark this meme as a copyright infringement. The same scenario would likely occur in other posts where the meme remixes screenshots from someone else’s copyrighted work, not to create a replica of it but to develop Curology’s brand image further.

Similar to SparkNotes, Curology targets a younger audience between the ages of 13 and 29 that is likely to be on social media platforms during their free time (“How Curology Makes Its Marketing as Personalized as Its Product,” 2018). Curology reaches this audience and tries to create a community through the popular communication form: memes. It is not the only format they use to channel their message to this audience, but it still helps them to stay current and relevant with their younger demographic. Curology’s meme content varies due to what the target demographic is more interested in. The company also gets help from popular TV show

references like Friends, however, it also takes the common meme templates and turned them into new meme posts by adapting their subject. For example, the way that Curology communicated different skin care tips with the help of ongoing meme trends and hashtags enables the company to join conversations surrounding the tagged topics. Moreover, it encourages its community to participate in skincare related conversations with the help of hashtags. With these encouraged consumers who share their stories and celebrate the results of their customized skin products, the engagement stays alive with a contribution to the related skincare subjects (“Community”). By doing so, Curology earns free exposure of its brand image and products within internet users, however, it is more complicated than that. Those consumers feel like a member of a community where they can share their intimate stories, they gain a sense of empowerment while sharing those self-improvement stories and feel comfortable talking about skin health.

Curology case is a valuable source to understand the nuance between purely copying an intellectual property and utilizing it with another property that creates a remix culture. On top of that, the Curology case demonstrates a memetic approach to sustain a community through memes. As one of the main goals is to create a community and encourage them to share their stories and opinions, memes help this company to achieve that. It is argued that memetic language reflects a unique and creative digital literacy. Moreover, when someone adds their version of a well-known image, template, or a clip, it signifies membership in a larger community that enjoys the same body of popular culture (Shifman, 2013). Memes play a significant role as cultural blocks in shaping values in a contemporary digital culture that media scholars, business entities, and cultural studies students can analyze and get a better sense of this culture’s development (Shifman, 2013).

Albert

Albert is a financial service app from the Albert Corporation. It is focused on offering financial advice and encouraging its consumers to make changes while helping them track their everyday spending and budget (Perez, 2016). Albert's financial advice includes applying for a lower-interest loan to pay off credit card debt, reducing car insurance payments by changing insurers, and making smart investments (Perez, 2016). In order to make these recommendations, it works with partners who offer loan quotes or investment advice and provide insurance quotes. With these partnerships, Albert keeps the app free to encourage more people to download it. In doing so, Albert expands its data collection by gaining access to those people's financial data. It is a strategy similar to companies encouraging their consumers to be more transparent with their private information. In this case, Albert supplies free financial tips and guidance in exchange for access to their customers' data. Co-founder Yinon Ravid explains that the majority of people between the ages of 20 and 40 do not save money and Albert helps them save a few dollars (Perez, 2016). To promote the app, Albert reaches these consumers through its social media accounts on Facebook, Twitter, and Instagram. It shares memes similar to SparkNotes and Curology where it uses references from popular sitcoms and trendy topics. Since it targets an audience segment between the ages of 20 and 40, the sitcom references in these memes are different than SparkNotes and Curology memes, which target a younger demographic. The addition of these memes to the customized financial guidance helps Albert create a likable and friendlier brand image than other financial service companies.

The first example from Albert is a meme that uses a screenshot from *The Simpsons*. It captures a moment from the "King-Size Homer" episode where a relaxed Homer Simpson uses a broomstick to operate his computer from the couch. The line reads "What I thought WFH would

be like” (Work From Home). Albert posted this meme during the pandemic when many people have been forced to work from home. It expresses a disappointing feeling that WFH is not as relaxing as some people may have thought. The caption for this meme says, “Opportunities are endless when you WFH! Sir Isaac Newton *only* discovered gravity and calculus when he was under quarantine in the 17th century. What are work from home goals?” (Albert, 2020b). The post offers trivia about another period of quarantine in history to appear relevant to the ongoing situation. The post is not promoting any particular service offered through the Albert but instead, it is developing a brand image that centralizes what its customers value and feel related to.

The second example is another meme where the image macro has a caption that expresses a feeling or reaction towards a specific situation. In this example, the image features a scene from the 1990s sitcom *Seinfeld* where the characters Jerry, George, and Elaine jump up and down together with excitement and happiness. This moment supports the tagline of “TFW you survived January” (Albert, 2020a). Similar to Gucci’s #TFWGucci memes, it takes the “the feeling when” trend and adjusts the content accordingly. Albert posted this meme on January 31, 2020, when it made the most sense for the followers. The caption for this post says, “congratulations, you made it through THE LONGEST MONTH IN HUMAN HISTORY” (Albert, 2020a). Albert shows that it listens to what its customers feel, care, and talk about on social media and responds with the same vernacular language that they use: memes and catchphrases. Therefore, Albert maintains its likable persona that centralizes valuing customers’ social conversations.

The last example from Albert is a meme that also contributes to the “Baby Yoda Drinking Soup” meme trend (Albert, 2020). In this case, Albert emphasizes the Yoda meme’s similarity to a meme from several years earlier where Kermit the Frog sips a cup of tea (Cooper,

2019; Daley, 2019). Kermit's meme was originally named "But That's None of My Business" and it is used to express sarcasm towards an insult or disrespectful remark said towards a specific individual or group. The image macro usually features captions to poke fun at a wide range of questionable behaviors in everyday social situations ("But That's None of My Business," 2014). Therefore, "Baby Yoda Drinking Soup" meme is also used for situations when the user wants to express criticism towards an action that strikes them as insulting. Capitalizing on this meaning, Albert uses the line: "When someone suggests Postmates..." The rest of the line continues on the caption, "... but I have food at home bc I'm saving money" (Albert, 2020). Postmates is a food delivery app where its users can order food from restaurants and cafes. Thus, suggesting someone eat from Postmates would be equivalent to suggesting spending money unnecessarily when they could be saving money by cooking at home. As one of Albert's major goals is to help its users find ways to save money, the meme suggests that they should not listen to the suggestions about Postmates. It collaborates this message with the common interpretation of Baby Yoda's face, which is that he is expressing a passive-aggressive sense of judgment. With his comfortable-looking clothes and soup mug, he also resembles a person in loungewear, staying home, and having food delivered. Hence, all these elements complement each other.

The Albert shows the same approach to creating memes as SparkNotes and Curology does. It takes advantage of classic TV shows, standardized meme format, and popular trends. The first example illustrates an image from *The Simpsons* that is owned by 20th Century Fox Television (which is now owned by Disney). Employing a meme from 20th Century's intellectual property might cause issues for the algorithm. The algorithm will likely detect this image as copyrighted content and mark it as infringement even though it seems to meet the requirements of the EU fair use exemption. The same thing goes for the meme that uses a scene capture from

Seinfeld. In 2019, Viacom bought the cable rights of *Seinfeld* (Raina, 2019). So, Article 13's filter would probably bring issues for Albert that its post would be taken down due to using Viacom's intellectual property. Albert's main goal might be to get more people to use their application so they can expand their data collection and use it for various reasons like selling information to insurance companies, however, it does not mean that their actions on social media have solely economic purposes. While it is aiming to grow their business, it also acts as a participant of contemporary culture and online communities. It contributes to the internet culture and provides an alternative communication platform for people to learn more about financial stability. It is the same scenario with the last meme example that repurposed the "Baby Yoda Drinking Soup" meme. The lack of human judgment in the coded algorithm will impair the ability to participate in online conversation by using transformed/mutating memes due to false-negative errors.

As Albert's Co-founder Yinon Ravid explains this financial service app targets a demographic involving young adult mobile users between the ages of 20 and 40 (Perez, 2016; PYMNTS, 2016). Capitalizing on meme culture and internet slang terms help Albert to engage with the younger part of this demographic. For the older section of the target demographic, the content in the messages is adapted to be relevant to them. Even though the audience between the ages of 30 and 40 might not be as fluent in internet slang terms and meme culture as the 20-29-year-old market, they are still somewhat familiar with the shared content (i.e. preferred TV show references and images) and the memetic social media posts of internet culture. Therefore, the context of Albert's messages is slightly different than the previous examples. Using pop culture references from the 1990s helps Albert speak to a relatively older audience demographic compared to SparkNotes and Curology. These Albert examples highlight the importance of

memes as a language in popular and internet culture. Memetic language needs to have a certain familiarity with subcultural standards. Albert's target audience involves young adults and subcultures within this demographic that do not share the same standards with the other subgroups. Thus, it is beneficial for Albert to generate memes with different content that various subsegments would be familiar with. It provides these groups to have an alternative communication platform to exchange ideas within their "meme hubs."

It is difficult to adapt memes to copyright law requirements due to their intertextual and imitative nature, especially when they are used as a promotional medium. It is not as simple to say that the only goal behind these memes is a commercial transaction. The way that companies' memes take place in internet culture is more ambivalent than that. Their memes enrich contemporary culture and generate connections within online communities. Their consumers find a relationship that has more than economic exchange but cultural values as well.

Discussion

In this chapter, I intended to demonstrate the commonalities and differences between companies generating their original memes and companies that transform/mutate existing culture to create new memes. I also studied the various features in different cases under transformed/mutating memes as well. There is no standard formula to create a meme and it may need a thorough analysis to interpret the intended message, the cultural elements that are remixed, and the purposes behind those memes. What they have in common is that these companies generate these internet memes to communicate with their targeted audiences. However, while doing so, whether it is on purpose or not, they contribute to internet culture in significant ways. Along the way, they carry different cultural references that are specifically

important for various subcultures. What they do differently is the way that they generate those memes. While original memes are created with a different interpretation of cultural elements and remix different parts of internet culture that are part of the online public domain, transformed/mutating memes are created by repurposing someone's intellectual property and remixing parts of the same domain. However, the properties that they remix and the way that these companies evolving them differs.

The situation where copyright owners like Disney, Universal, NBC, and other big media companies do not request these memes to be taken down is similar to how companies approach viral marketing. While IP owner companies benefit from the free publicity from their audience when they share posts about those companies, the copyright owners also benefit from the memes as they serve as free publicity for their content. Similar to how NBC Universal's content is copied in memes in many examples above, Disney's content on a standardized meme model serves as promotion for Disney. When the content like Baby Yoda from Disney's *The Mandalorian* turns into a well-known meme template, it forms a subculture for the audience as well. Both the meme template and the TV show content helps the audience to engage with meme better because they already have a high recognition among social media users. Curology and Albert offer a good example with their utilization of the "Baby Yoda Drinking Soup" template. Disney, the copyright holder, is known for being militant about its intellectual property. However, in the case of Baby Yoda memes, Disney did not send cease and desist order for the memes. It is a high possibility that these memes featuring this cute character provide free advertising for *The Mandalorian* and Disney+ streaming service helped Disney and hold it back from taking them down (Mellor, 2019).

When we take a step back to look at these examples and how they re-use images, we can see that they are not used in their original context, but to deliver the new meaning through varied internet communities. They mutate/evolve the original image rather than creating a replica. Thereby it should not be treated legally as an act of copying (Lantagne, 2017). These memes are unique and do not fit in the traditional framework of intellectual property, especially when it comes to adapting copyright law into new technologies like the EU's Article 13. It is because memes might "look hauntingly like the familiar stuff of copyright" (Lantagne, 2017). These transformed/mutating memes play an important role as a record of ongoing social values and debate in the cultural conversation and allow communication between different groups on a level that is otherwise difficult to achieve.

Especially when it comes to companies using this kind of memes and the inherently commercial purposes behind those messages, it might harm to interpret the commercial implication too broadly to stop the memes. Speech by private individuals and companies might be weighted differently but these actors are still participants of the popular culture. Banet-Weiser (2012) argues that drawing a sharp distinction between them is not helpful when it comes to understanding the "continuum of cultural participation" where the language and lexicon of companies now play a crucial role. Therefore, it is important to study the role of companies' memes and why they should be protected because branding messages have become a core part of contemporary culture. They speak to individuals' values, reiterate cultural components, and create communities where they also encourage creativity.

The possible outcomes that I pointed out are a potential threat to the remix culture where memes and reappropriation play a big role. As companies have become a significant part of the culture and memetic media, their messages are also subject to gatekeeping and control. In the

case of the EU, this gatekeeping will come from Article 13's filter algorithm. This filter will not only impact the companies on an economic base, but it will impact the transmission level of internet memes that are powerful agents of globalization. Therefore, not only the economic impact but the cultural and social impact of this law's restriction on internet meme utilization by companies should not be ignored. It will be limiting the process of memes getting translated, customized, and distributed across the globe because it will exclude the EU internet.

CONCLUSION

The purpose of this thesis was to analyze the significant implications of copyright law for internet culture. I specifically focused on comparing different copyright laws in the US and the EU and their impact on companies' participant role in the internet culture while utilizing memes. With the new development (Article 13) in the EU copyright directive, I zeroed in on the possible ramifications for the future of internet memes, specifically the ones that are generated by companies for commercial purposes. More specifically, I focused on transformed/mutating memes that evolve someone else's copyrighted work and creates a meme that has a different meaning than what the original work has. I do not privilege this type of meme over original content memes, however, I aimed to show the different, yet important, place of these memes in popular culture. My thesis is designed to analyze how the type of surveillance introduced by Article 13 will impact the way companies utilizes memes for branding purposes, how this surveillance turns the US and the EU social media spaces into different virtual spaces, and why Article 13 is seen as a threat to internet culture. I argue that the memes that companies utilize are not solely commercial, instead, they make broader social and cultural values to internet culture.

During the first part of my study, I conducted a discourse analysis to study the general discussion surrounding this new development. I aimed to understand what different groups impacted by changes to copyright law value when it comes to online expression. I analyzed different field-oriented news outlets and how they presented this development. I paid attention to their choice of pictures, phrases, metaphors, and quotes to represent their interpretation of this new development. I investigated the references behind these elements and the individuals' connection to the subject matter who wrote those news articles. It helped me to understand what values and concerns they have in common and why. As a result, these outlets showed that they

all acknowledge the impact of the new copyright development on the internet culture. However, depending on the fields they cover, these outlets also focused on different problems Article 13 might pose. While a few of these outlets championed the new directive and argued that it will be beneficial for the creative sector, the majority of the outlets criticized it from various perspectives.

The main concerns were about the future of average users' freedom of online expression, the diversity of internet culture, small companies' ability to grow or even exist, and the unfair advantages given to the big tech companies. Memes are specifically fundamental to the first two concerns. The way that memes quickly spread makes them particularly valuable in many of the social, cultural, and political conversations that occur in online spaces. However, the transformative and imitative nature of memes introduces a degree of ambiguity that algorithms are ill-equipped to deal with. So, the new directive's filters were seen as a major threat to online expression. Lastly, it would threaten the diversity of voices heard online by reducing the contributions made by EU users to the global internet. Overall, it was mainly argued that Article 13 will turn the EU internet into a more restrictive space by limiting the free flow of memes.

My second analysis examines companies that incorporate memes into their branding strategies. Some of them generate memes with original property whereas others create memes with others' copyrighted work. I chose companies that target a relatively younger audience who are familiar with meme culture and online expression. I conducted a textual analysis of examples of both original content memes and transformed memes. Even though the latter examples transform the original meaning of used copyrighted work by altering the caption, inserting different images, or using a different cultural reference, they are more likely to be marked as an infringement. It is because of the fact the new algorithm would not be able to distinguish the

transformative nature. Moreover, I analyzed what these examples had in common and how they diverged.

In the second chapter, I examined why memes are significant for various groups in internet culture. Each group of news site emphasized Article 13's impacts on these groups from a different angle and explained why audiences should care about it. The target groups included average internet users, information technology workers and enthusiasts, digital activists, creative sector workers, and the music community. However, the sites did not cover the significance of memes and the possible outcomes of Article 13 for consumer culture, including what impact it might have on marketers and consumers. The third chapter helped me to fill that gap and analyze why memes have become important for them. Both chapters illustrate the centrality of memes to contemporary internet culture, including how people define the internet. Memes appear to be a particularly important phenomenon when people think about free expression. This study also shows that memes have been commercialized in that they are now subject to the commercial dynamic of copyright policing and intellectual property enforcement. Moreover, they have been turned into a medium of promotional communication where companies use them for advertising and branding purposes. Memes have become especially significant to how branding works in the context of social media and internet culture.

There can be various interpretations of messages that are impacted by the knowledge of the viewer. The message that is encoded might be different than what the receiver decodes. Therefore, my analysis of decoding meme examples was limited to my prior knowledge of the references of cultural elements and research. A different researcher may interpret different meanings from the same primary texts. Further research could build on my findings by examining a broader collection of memes or by using a group of researchers to work toward a

common interpretation. Moreover, to better understand the intended messages that companies encode in their memes, future studies could address insight into these memes' production from companies' industry analyses. In addition, studies could focus on consumers' perspectives. Furthermore, case studies from different EU member states could be addressed in future research to determine the implications of Article 13 for EU internet culture in a more localized way.

Based on the conclusions of this thesis, the advertising and marketing practitioners in Europe, or from other regions that want to expand their efforts in Europe, should consider how Article 13 will impact their use of memes, especially if these practitioners plan to repurpose someone else's copyrighted work. Moreover, legislators that take part in the digital copyright law-making process should reckon the implications for remix and internet culture. That is because memes are specifically tricky to be fit in traditional copyright law frameworks and governance bodies should pay attention to it (Lantagne, 2017).

Throughout the thesis, I meant to show the importance of these memes in both contemporary and consumer culture and the way that companies' memes create an ambivalent relationship with their audience that is more than economic exchange. Banet-Weiser (2012) explains this complicated relationship between companies and consumers. She covers how companies utilize new technology and social media like user-generated online content and viral ad on social media. Moreover, she also emphasizes on how this creates an affective exchange between companies and consumers. Due to the year the book was published, the book is missing out the newer genres on social media, especially memes. I intended to address this in the literature. I also highlighted the role of copyright law and what we lack when we rely on coded algorithms rather than human judgment (Gillespie, 2007, 2014). A growing number of scholars have recognized the role algorithms play in shaping internet culture as it surveils users and

shapes their news feeds. However, this thesis focuses our attention on how algorithms are also increasingly shaping what is published online in the first place by screening out certain types of memes and prohibiting their circulation through the EU. Moreover, this development will likely undermine the democratic possibilities of remix in the EU and beyond.

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