

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

BUSINESS CASUAL HOLDINGS, LLC, )  
a Delaware limited liability company, )

Plaintiff, )

v. )

YOUTUBE, LLC, a Delaware limited )  
liability company; GOOGLE LLC, a )  
Delaware limited liability company; )  
and ALPHABET INC., a Delaware )  
corporation, )

Defendants. )

Case No.: 21-cv-3610

**JURY TRIAL DEMANDED**

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Business Casual Holdings, LLC, by and through its attorneys, Duff Law PLLC,  
states as follows:

**NATURE OF THE DISPUTE**

1. Plaintiff Business Casual Holdings, LLC (“Plaintiff” or “Business Casual”) seeks monetary and injunctive relief from Defendants YouTube, LLC (“YouTube”); Google LLC (“Google”); and Alphabet Inc. (“Alphabet”) for failure to maintain and reasonably implement a repeat infringer policy as required by the Digital Millennium Copyright Act (“DMCA”).

2. To qualify for protection under the safe harbor provision of the DMCA that insulates service providers hosting third-party content, 17 U.S.C. § 512(c), a service provider must meet a set of threshold criteria. The criteria described in § 512 of the DMCA includes a requirement that a service provider seeking shelter in the DMCA’s safe harbor provision must have “adopted and reasonably implemented . . . a policy that provides for the termination in

appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers[.]” §512(i)(1)(A).

3. YouTube's repeat infringer policy is published on YouTube's website. (Ex. A.)

4. YouTube's repeat infringer policy states: “[I]f a copyright owner submits a valid DMCA complaint through our webform, we take down that video and apply a copyright strike. If a user gets three copyright strikes in 90 days, their account, along with any associated channels, will be terminated.”

5. YouTube's repeat infringer policy also states: “If your channel is part of the YouTube Partner Program, you're eligible for a 7 day courtesy period. After 3 copyright strikes, you'll have 7 additional days to act before your channel is disabled. During this period, your copyright strikes won't expire and you can't upload new videos. Your channel will remain live and you can access it to seek a resolution for your strikes. If you submit a counter notification, your channel won't be disabled while the counter notification is unresolved. If the counter notification is resolved in your favor, or the claim is retracted, your channel won't be impacted.”

6. With respect to infringing live streams, YouTube's repeat infringer policy states: “Your channel's live streaming ability will be automatically turned off if . . . your live stream or archived live stream gets a [DMCA] copyright takedown.” Furthermore, YouTube's repeat infringer policy also states: “[I]f your account has been restricted from live streaming, you're prohibited from using another channel to live stream on YouTube. This restriction applies for as long as it remains active on your account. Violation of this restriction is considered circumvention under our Terms of Service.”

7. When a rights holder files a copyright takedown notification with a service provider like YouTube and the alleged infringer files a counter notification, the DMCA requires the rights holder to file “an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider’s system or network” within ten to fourteen business days following receipt of the counter notification. § 512(g)(2)(C).

8. As detailed below, YouTube knowingly enables repeat infringers that exploit YouTube’s repeat infringer policy to avoid termination by submitting frivolous counter notifications.

9. Under YouTube’s repeat infringer policy, repeat infringers can, and do, submit counter notifications in bad faith to YouTube to avoid termination of their channels.

10. YouTube materially benefits from its failure to enforce its repeat infringer policy by permitting repeat infringers to enjoy unrestricted access to YouTube’s Partner Program.

11. YouTube’s Partner Program enables users to monetize their YouTube channels through Google’s AdSense network. YouTube’s users and Defendants split the revenue generated to their mutual benefit on a 55/45 basis.

12. Defendants have not adopted and reasonably implemented a repeat infringer policy as is necessary to enjoy the protections for service providers given by § 512 of the DMCA.

### **THE PARTIES**

13. Plaintiff is a limited liability company organized under the laws of Delaware.

14. Plaintiff creates original documentary content that it posts on the YouTube channel that it operates located at the following domain:

<https://www.youtube.com/BusinessCasual>.

15. Defendant YouTube is a limited liability company organized under the laws of the State of Delaware with an address at 75 9th Avenue, New York, New York 10011. Since 2006, Defendant Google has operated YouTube as a wholly-owned subsidiary of Google. At all relevant times, Defendant Google has operated Defendant YouTube.

16. Defendant Google is a limited liability company organized under the laws of the State of Delaware with an address at 111 8th Avenue, New York, New York 10011. Defendant Google is a wholly-owned subsidiary of Defendant Alphabet, which at all relevant times has controlled Defendant Google.

17. Defendant Alphabet is a corporation organized under the laws of the State of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Alphabet is the sole owner of Defendant Google and controls Defendant Google. Defendant Alphabet is the alter ego of Defendant of Google. Defendant Google is the alter ego of Defendant YouTube. Defendants YouTube and Google direct all profit to, and report revenue through, Defendant Alphabet.

### **JURISDICTION AND VENUE**

18. This is a civil action seeking damages and injunctive relief arising, in part, from Defendants' failure to adopt and reasonably implement a repeat infringer policy as required by the Copyright Act, 17 U.S.C. § 101 *et seq.*

19. This Court has original subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and § 1338(a).

20. This Court has personal jurisdiction over Defendants because they purposefully direct their business activities toward consumers in the State of New York, including within this judicial district, derive a commercial benefit from their contacts within the State of New York,

and are causing injury to Plaintiff and consumers by their actions within the State of New York and this judicial district.

21. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

### **STATEMENT OF FACTS**

#### **A. Business Casual Discovers and Reports Instances of Copyright Infringement**

22. On June 8, 2018, Business Casual published an original documentary video on YouTube titled *How Rockefeller Built His Trillion Dollar Oil Empire* (the “Rockefeller Video”).

23. On June 25, 2020, Business Casual published an original documentary video on YouTube titled *J.P. Morgan Documentary: How One Man Financed America* (the “J.P. Morgan Video”).

24. On March 8, 2021, Business Casual received federal Copyright Registration No. PA0002280262 for the Rockefeller Video (the “Rockefeller Registration”), a copy of which is attached as **Exhibit B**.

25. On March 8, 2021, Business Casual received federal Copyright Registration No. PA0002280264 for the J.P. Morgan Video (the “J.P. Morgan Registration”), a copy of which is attached as **Exhibit C**.

26. The Rockefeller Registration and J.P. Morgan Registration may be referred to herein as the “Business Casual Registrations.”

27. On January 2, 2021, Business Casual submitted a DMCA takedown request to YouTube concerning a video posted on YouTube’s website by a third party, TV-Novosti (the “Repeat Infringer” or “TV-Novosti”) that illegally copied from Plaintiff’s J.P. Morgan Video (the “First Infringing Video”), a copy of which is attached as **Exhibit D**.

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