



TAKE  
CREATIVE  
CONTROL

STATE OF THE

CREATOR

REPORT 2021

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# INTRODUCTION

The COVID-19 pandemic was a global crisis that touched every facet of our society. No one was immune (in more ways than one), and it has undoubtedly changed working and social norms forever. For the creator community, many of whom were already used to working from home, new and old challenges arose. The implications of the digital divide were exacerbated; unfair and anti-competitive practices in the e-marketplace targeted small businesses; access to credit grew tighter; and the outdated intellectual property laws and censorship were front and center once again. To make matters worse, Congress' efforts to help relieve the economic stress brought about by the pandemic were just out of reach for many creators.

Artists, freelancers, and other creative entrepreneurs had to quickly transition their world online—create a website, set up online payments, learn how to monetize content, and buy new equipment and software. As one author told Take Create Control (TCC), “As a writer I had the upper hand because I’ve always worked remotely and from home. But since everyone is now coming online, the market feels flooded.” Another creator lamented that the “best [online] solutions are price prohibitive,” noting that as the demand for online services increases, so did the prices. These were just some of the frustrations that we received in our recent TCC Artist Survey.

For years TCC has worked alongside and for creators of color; so when the pandemic hit,

TCC took quick action to reach out to our community to capture some of the challenges they were facing and learn how TCC could provide support. We surveyed, interviewed, and collaborated with our national network of BIPOC creators in various fields to tell their stories during the pandemic. Similar to what the rest of the nation was experiencing, the toll of the pandemic was not felt equally; however, key themes emerged amongst our creators. This report provides an overview of what we learned from the creator community at the pandemic's height and offers some recommendations to better support them in this new normal.

When the pandemic hit, many of us were confined to our homes. We sought out new ways to cope with our anxiety, fears, and uncertainty; and often we relied on the brilliance of the creator community to do just that. We read books and blogs, bought unique and specialized crafts, found new music through friends and virtual DJ sets, became experts on countless issues through podcasts, honed our baking skills with our favorite online chef, learned TikTok dances, and binge-watched innovative web-series.

We owe a great debt to our creator community who helped many of us get through this hard year. And for many in the community, they had to start over or close up shop.

We can and must do better by them when the next crisis, whatever it may be, comes along.

# THE SURVEY

The creators who participated in the TCC Survey represented multiple racial and ethnic groups and industries. Forty-seven percent of respondents identified as Black or African American. About 15 percent identified as white, while 12 and 10 percent identified as Asian American or Pacific Islander and Latino, respectively. The remaining proportion identified with two or more races or American Indian or Alaska Native. The surveyed creators represented a variety of industries including television/film, music, performance, community organizing, visual art, journalism and media/publishing.

The questions in our survey asked about challenges brought on by the pandemic, such as economic hardships and changes in the way work/art was conducted. Over half of the respondents in our survey received some economic relief from the Covid-19 relief packages. However among Black respondents, only 33 percent reported receiving relief, compared to 66 percent of white respondents. For those who did not receive any assistance during the pandemic, rent, bills and debt were the most common areas of need. When asked about how much you would need to stay afloat, the most common response was \$5,000.

About 12 percent of respondents reported struggling with technology learning curves or unreliable Internet access. When the world shut down, so did the opportunities for networking, outreach, and client development. Fourteen percent said that they had a hard time keeping audiences engaged with their online content, networking, and finding new business opportunities. While the world is slowly returning to some semblance of normality, there is far more we, as the creative community need to demand and fight for. Below are some key ways policy makers can help BIPOC creators thrive in the wake of a global pandemic and recession.

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# OVERCOMING THE DIGITAL DIVIDE

It is likely that much of work life will remain digital even after the pandemic ends. To have a fair chance at thriving in this new environment, quality Internet access is no longer an option but a necessity. Many BIPOC-owned businesses are located in and provide services to communities that typically have reduced access to broadband. As a result, many small businesses have had to consider how to best mix online and in-person outreach efforts during the pandemic to ensure they are reaching the communities they serve.

Access to the Internet is a primary concern for those living in both rural and urban communities. For example, individuals who live in poorer areas—urban or rural—tend to rely more heavily on public facilities (e.g. public libraries) for Internet access. This means that those individuals must also pay for transportation to reach the facilities, and once there, might experience weaker connections or other unfavorable circumstances—such as less privacy online. A study found that individuals living in Detroit, Michigan in “distressed, urban areas” were disproportionately affected by limited Internet access. This phenomena was only exacerbated during the pandemic as public facilities were forced to close in communities that relied on them for internet access and other critical services.

The study advocated for a range of support efforts to address this digital divide, since the one-size-fits-all approach can ignore unique challenges that individuals face when seeking Internet access.

It also provides a one-time discount of up to \$100 on a computer or tablet for eligible households. Government intervention of this form is necessary because while private Internet providers could offer discounts or promises to continue service during the pandemic, this type of action is inconsistent, unreliable, and is not offered by all providers. And, the consolidation of participating telecommunications providers threatens Internet access of individuals who have come to rely on those providers for Lifeline discounts.

Going forward, the FCC must ensure that eligible individuals are aware of this program and how to take advantage of it, so that the families most in need of the program’s discounts receive them. The American Library Association recommends that the FCC require participating providers to promote the EBB Program through their own marketing channels, and that public library staff be trained to help individuals sign up for the EBB program. The FCC should consider this suggestion, and continue targeting communities and facilities that directly communicate with individuals who are most likely to be eligible.

# THE ALGORITHM, CREATOR VISIBILITY & FAIRNESS IN THE DIGITAL LANDSCAPE

Many creators acknowledged the over saturation of the digital marketplace during the pandemic, which made it difficult to engage with fans and for their creations to be seen. With more online content, questions about how search algorithms are being developed and presented to viewers began to rise. While already a popular phenomenon before the pandemic, social media platforms became even more important for artists to share their work. However, simply posting content does not guarantee views.

In Safiya Noble's book, *Algorithms of Oppression*, she explains how online algorithms not only prevent certain content from being seen but can also reinforce negative stereotypes about women and people of color. Because many algorithms are simply what the "majority" wants, these negative stereotypes are maintained. She writes, "If the majority rules in search engine results, then how might those who are in the minority ever be able to influence or control the way they are represented in a search engine?" The algorithms themselves are a product of a white patriarchal system, which result in algorithms that are far from neutral.

These algorithms also impact small businesses that rely on online marketing to

reach new audiences. In order for businesses to have a fair chance in the marketplace, they need to be seen in the digital marketplace. Many small businesses rely on search engine optimization (SEO) efforts to maximize their reach. Other social media platforms like Facebook and Instagram serve as key outlets for ad placements. However, there is very little information about how these algorithms are set up, which leaves small business owners in a vulnerable position when working with these social media giants.

Additionally, discussions surrounding social media algorithms should stem not just from a news and misinformation perspective, but from an antitrust perspective. Social media algorithms directly tie to maximization of profits for social media companies, but at the expense of users whose content is newer and not monetized. Small steps like this are necessary to ensure that as the social media user base inevitably grows, platforms are not directly or indirectly suppressing users without their knowledge, and without providing information that business owners can use to navigate the space with intention.

Intellectual property (IP) ownership is another way for creators and business owners to protect their creations and ensure

they are rightfully paid for their creations. Intellectual property was, historically, intended as an economic incentive to encourage innovation and artistry. And while intellectual property law was not born in a digital age, it is critical today. However, there is a large information gap when it comes to IP law and how artists and creators should utilize it for their benefit.

The notion that a creator should protect his/her creations by registering for IP protection feels obvious, but as is often the case, the devil is in the details. The processes to register can be complex, and they are never free. Furthermore, what should be protected can be unclear, even more so with digital content (Can you trademark a dance?)

For example, to register for a trademark at the U.S. Patent and Trademark Office, an applicant's fee depends on the filing option the applicant uses, how many applications are filed (only one can be filed per mark), and how many classes of goods the applicant wants the trademark to cover. For example, if an individual wants to file one mark via the TEAS Plus filing option, but wants to use that mark for two classes of goods, then that individual must pay \$250 in filing fees for each of the two classes of goods—\$500 in total. This does not include fees that might be added on if the applicant applies to revive an old

application, renew an expired application, or send a letter in protest to an application decision. And while trademark applicants are not required to work with a lawyer, applicants who do so are more likely to have their trademarks published than those who do not.

The copyright registration process is more affordable, but protection still requires a \$45 fee for the electronic filing of one work by a single author, and the cost increases if the filing is done via paper. For some in the Black and older community, online applications may be a barrier. Advocates for equity in the copyright registration system have spoken out against the fees imposed by the Copyright Office, and emphasized the burden that it puts on creators, particularly those who need to register multiple works.

Patents are a significantly more complex and more expensive arena. Patent search, filing, and examination fees can easily exceed \$1,000. This, in addition to maintenance fees that a patent owner must pay to keep the patent active cause the cost of holding a patent to increase every year—these fees can range from \$2300 to well over \$12,000. Studies have shown that some small business owners have chosen to forgo patenting their creations altogether because of the costs of the patent application process. And, while inventors can opt to skip certain steps

## FEES

\$250

Cost for filing for a TEAS Plus option

\$45

Cost for copyright registration fee

\$12K

Or more in patent fees

of the patent process in order to lessen the cost (e.g. skipping the patent search), this disadvantages that inventor because the search provides insight into whether or not the inventor should continue pursuing a patent at all—skipping this step could waste the inventor’s time and resources.

To alleviate the cost-burdens of IP protection, some scholars have proposed some promising solutions. One solution would be to have the government establish “in-house” attorney networks to offer legal assistance to applicants. Another solution is to grant more rights to unregistered works and, in turn, reducing the rights of registered works, so that creators who cannot afford to register works are not significantly disadvantaged alongside those who can. The Writers Guild has made a similar suggestion—proposing that the requirement that creators register their copyrights at all be eliminated as a prerequisite to filing a copyright infringement lawsuit or obtaining damages.

An additional proposition is for the Copyright Office to freeze all copyright registration fees during the pandemic. Other entities have paused fee increases, interest increases, and other normal practices to accommodate challenges due to the pandemic, the Copyright Office should follow suit.

## THE CASE

## FOR THE CASE ACT (2020)

The Copyright Alternative in Small-Claims Enforcement (CASE) Act was passed in 2020. The bill creates a new small claims board designed to ensure that individuals and small businesses can defend their copyrighted work without the huge costs of going to federal court. In general, copyright litigation occurs in the federal courts. The costs of federal litigation have discouraged many creators from litigating their copyright infringement claims. For example, a 2011 survey found that the median cost for a party to litigate copyright infringement through to an appeal was \$350,000. This new system could be more favorable for creators who want to enforce their IP rights without spending too much on federal litigation.

The bill is still a substantial step forward because it addresses the costliness of the copyright litigation process and establishes an avenue for artists to enforce their copyrights without taking a huge financial risk. It allows creators defending against an infringement accusation to make their case without the risk of owing a large amount in damages. As the Copyright Office works through implementation it is critical that they are intentional in their outreach to BIPOC creators. Solutions like the CASE Act and continued conversations about the high costs of IP protection and enforcement, must continue in order to ensure that equitable access to IP ownership remains a priority in the creative industries.



# CONCLUSION

The creator economy is one of the sectors most at risk from the COVID-19 crisis, and the damage will have reverberating effects. Arts, culture, and creativity are one of three key sectors (along with science and technology and business and management) that drive regional economies. Creators curated spaces and provided services that helped us cope with the challenges of the pandemic. These past two years highlighted the critical role the creator sector plays in our well-being and how its importance extends far beyond its direct economic function. Lasting damage to the creator economy will drastically undercut our culture and quality of life.

As such, policy solutions to promote its recovery should be informed and centered by the unique needs of creators - especially those working from/for under-served communities. In order for the creator economy to survive, this nation, its states, and its cities need a large-scale holistic recovery strategy. This strategy must be bottom-up, but supported across the board. It should be led locally by public-private partnerships of municipal governments, arts and cultural organizations, economic development and community groups, philanthropy, and the private sector, with support from government and philanthropy at the state and federal levels as well as large corporations.

Federal recovery measures should include more substantial support for arts, cultural, and creative entrepreneurs, as they do for other impacted industries. Greater support for creative workers, many of whom are self-employed, freelancers or have non-traditional business structures, is also required. In addition to inclusive forms of financial support, many creators need technical and administrative support and training. Reduced real estate prices—stemming from COVID-19's impact on retail and commercial real estate—may create a window of opportunity in which cities and urban centers can incentivize reduced and shared rates for spaces to create.

Cities and urban commercial business districts can support creators by making studio, gallery, kitchens and small-scale performance spaces available to them in neighborhoods and districts where there is increased vacancy due to COVID-19. This would benefit cities beyond the walls of the spaces, as places such as independent music venues often also double as incubators for entrepreneurship, help strengthen community bonds, attract and retain creative workers, and serve as nexuses for a region's creative economy.

For the creator economy to survive and thrive, a broad-based recovery strategy is needed. This strategy should deploy new and creative solutions informed by the lived experiences and challenges of creators.

# ACKNOWLEDGEMENTS

## **About the TCC's The Series:**

Take Creative Control Launched "The Series" to highlight the unique challenges that black and minority creators, artists and entrepreneurs faced during the early stages of the COVID-19 pandemic. We received dozens of stories from entrepreneurs, artists, and shop owners about how they have had to adapt because of the crisis, what support they received, if any, and what assistance they will need in the future.

## **About Take Creative Control (TCC):**

TCC empowers creators of color to thrive, advocate, and effect change. We are a creator-informed and creator-focused knowledge and network-building organization developing a multicultural community of creator-advocates. Our work is centered on creators of color whose livelihoods depend on effectively sharing, protecting, and monetizing their work. With education, resources, and community-building, we aim to empower these creators to advocate against policies and practices that impede their ability to tell their stories, compete in the economy, and build community.