

Legal Case: YouTube

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1. Introduction

This case study introduces YouTube and its current services, and reviews and analyses the business strategies and revenue mechanisms related to the commercialisation of music and entertainment content on YouTube, and the implications these have on intellectual property.

YouTube is an online video-sharing platform, owned by Google. During the 16 years the platform has consistently developed new services and platforms to reach a wider audience. Currently, Youtube offers 4 services, 3 of which are available in the UK.

YouTube (Premium) + Kids

Free/£11.99 per month

YouTube is the classic and most popular version of the platform, which lets you watch videos and interact with the creators - comment, subscribe, create playlists and watch live streams for free. In addition, the paid Premium version allows users to access movies and YouTube Originals content. The Premium version costs £11.99 per month in the UK and does not have adverts; it allows the users to watch content on the background, which is not available with the free version. The Premium version also comes with the Premium version of YouTube Music - a subscription-based music streaming platform. Lastly, YouTube also has a separate app for Kids. Essentially, it is the exact same app but with some restrictions and parental controls to make it more appropriate for the younger audience.

YouTube Music (Premium)

Free/£9.99/£14.99 (family)/£4.99 (student) per month

YouTube Music is a music streaming service. The concept is similar to the main YouTube app itself - users can choose between the free and Premium version, which would decide how much access the consumer would have to services, such as background play, audio-only mode and no adverts.

YouTube Studio

Free

YouTube Studio is an app for YouTube creators. Through the Studio app, creators can upload videos, add, edit and control all the information they want to share, as well as manage their platform, comments and design. It also gives the creators an overview of their statistics - it gathers all the information regarding views and the channel's audience and their behavioural patterns. Lastly, it shows the information regarding monetisation. YouTube Studios keeps constantly improving and changing based on the new updates on YouTube's platform. The app is free.

*YouTube TV not available in the UK
\$65.99 per month

Launched in 2017 only in select markets, YouTube TV is a subscription-based streaming television service, which allows the customer to access shows on demand, or live, via smart TVs, smartphones, tablets, and other devices. It is possible to access over 85 channels through the app. The launch of YouTube TV was unexpected, given that the market already has some major companies who successfully offer very similar services (such as Hulu, Sling TV), and YouTube TV does not necessarily stand out in any way. The service is also only available in the US.

The global pandemic has drastically changed the music industry and the way we consume music and entertainment on a daily basis. With all the live events being cancelled and venues closed, most of the industry has had to operate online for over a year now. YouTube has been one of the most popular video-sharing platforms for over a decade and has enjoyed some great success, especially over the last year.

According to YouTube's Global Head of Music Lyor Cohen, more than 2 billion people go to YouTube each month to experience music (Cohen, 2020). However, rights holders, labels and artists still believe they are not getting paid for their work in a fair way. Though last year the company reported paying out more than \$2.2 billion in rights holder royalties from its ad business, with 67% of the amount directed at master rights holders, disparity exists between the platform's profits and royalty pay-out, according to The Recording Academy (Zarczynski, 2020).

Earlier in 2021, YouTube stated in their submission on the Economy of Streaming to a UK Parliamentary Inquiry that YouTube provides a platform for creators and for the music industry that they would otherwise not have, and where everyone is able to share their content with the world. According to research by Oxford Economics, 83% of the British media and music companies surveyed who use YouTube agreed that the platform shines a light on undiscovered talent (YouTube, 2021).

YouTube offices in the UK are also not keen to adapt the UK's version of European Union's Copyright Law (Article 17), following Brexit, which I will be discussing in my case study.

2. YouTube Business Strategies for Music/Entertainment Content

YouTube has explained in their submission on the Economy of Streaming to a UK Parliamentary Inquiry that their business model relies on twin engines, the first of which is advertising-supported. This is a unique ad-supported way of being able to monetise users who have not purchased any subscriptions and who are using the platform for free, whilst still generating money for the company through Content ID. In fact, without YouTube, 85% of time spent would have shifted to lower or similar value channels, according to a listening behaviour survey carried out by RBB Economics (YouTube 2021).

The advertising-supported engine is a clever way of making the most out of users who don't pay a subscription fee for the services but still visit the website. Through ads, especially targeted ads, YouTube can quickly learn what the consumer finds attractive and follow up with similar ads in the future, so the consumer would spend more time looking at the ads and even take further action, for instance, visit the advertiser's website.

YouTube's second engine is subscription-based. YouTube Premium and YouTube Premium Music, which are their subscription-based services, have currently got 30 over million subscribers. YouTube Music is available in 95 countries and is full of audio, videos, lyrics and other music-related content to engage fans (YouTube, 2021). By using the subscription-based model, consumers will be offered a better value (no ads, access to exclusive content). The platform can also be certain that with a monthly subscription there will be a monthly income.

By combining these two engines - advertising-supported and subscription-based - YouTube can appeal to many companies, brands, artists and labels, because consumers have multiple ways to get involved, either through ads or subscriptions, meaning that each company could tailor their needs with a particular approach, and in theory, the music industry (music publishers, songwriters, labels, collecting societies) should all receive their share of royalties and revenues.

YouTube has recently created new types of ads, such as audio ads, where the emphasis will be on the audio track and not so much on the visual; 'dynamic line-ups' are playlists which are locally relevant by country and can include travel, events, or even mood. YouTube has also released Superchat and Superstickers - messages people can buy during artists' live streams or video premieres which would be pinned on top of the 'chat' tool so the artist would be more likely to see the comment. The price can range from \$0.99 up to \$50.

Content ID

As previously mentioned, Content ID is one of the most valuable systems that YouTube uses and is extremely relevant for the music industry. Content ID lets rightsholders choose to either monetise or block UGC (user-generated content) that includes their content, whether that is the sound recording (for an artist or label) or the composition (for a composer/songwriter or publisher) (YouTube 2021). Should the rightsholder decide to monetise their content, they will have to share all the advertising revenues that have been created by the UGC. Currently, more than 95% of Content ID claims have been chosen to be monetised by the rightsholders. This new model is a chance for creators (and rights holders) to earn revenues from millions of

views their content receives. Lastly, given that the website is free for everyone to use, it can help fight against piracy and can actually make money off users who do not pay for the service.

YouTube Music has expressed in the recent years that they are keen to work more closely with the music industry and find ways to grow the revenue from music so the whole industry can benefit. When Dan Chalmers, the Director of YouTube Music, UK was asked what his message would be to the artists, managers and labels, he said “We want to be their number one partner. We want to help break more acts. We want to help promote more music, and that includes established artists as well” (Music Business UK, 2020). YouTube has signed major licensing deals with all major record labels (Universal Music Group, Sony, Warner Music Group) to further establish their relationship.

3. Revenue Mechanisms

According to the US Securities and Exchange Commission filing, YouTube generated \$19.78 million from advertising across 2020. Unsurprisingly, Google’s main growth areas were adverts (Google, YouTube) - due to the global pandemic, people had to spend more time online than ever before, both during working hours and on their days off.

YouTube ads revenues increased by \$4,623 million from 2019 to 2020. Google Search generated \$104,062 million from advertising in 2020, with the total revenues being \$182,527 million for the year (Alphabet Inc, 2020).

Revenues

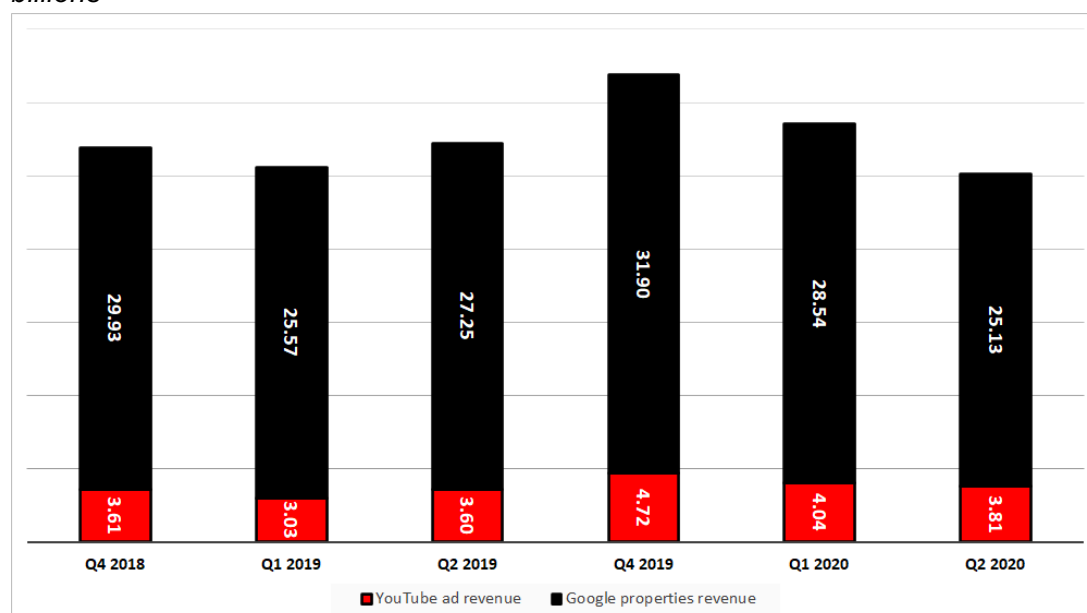
The following table presents our revenues by type (in millions).

	Year Ended December 31,	
	2019	2020
Google Search & other	\$ 98,115	\$ 104,062
YouTube ads	15,149	19,772
Google Network Members’ properties	21,547	23,090
Google advertising	134,811	146,924
Google other	17,014	21,711
Google Services total	151,825	168,635
Google Cloud	8,918	13,059
Other Bets	659	657
Hedging gains (losses)	455	176
Total revenues	\$ 161,857	\$ 182,527

(Alphabet Inc, 2020)

The graph below shows the quarterly YouTube ad revenue vs Google properties revenue from 2018 to 2020. In Q4 2018, YouTube’s ad revenue was \$3.61 billion, compared to 2020’s Q2 \$3.81 billion. The largest quarterly revenue from YouTube ads happened during the last quarter of 2019 (\$4.72 billion).

YouTube ad revenue by quarter vs Google properties revenue, Q4 2018 – Q2 2020, USD billions



(Alphabet Inc, 2020)

4. Intellectual Property

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. (World Intellectual Property Organization, 2020). The four most known intellectual property types are trademarks, copyrights, trade secrets and patents. IP covers a vast range of activities and plays an important role in both cultural and economic life (World Intellectual Property Organization, 2020). There are multiple laws to protect different rights - some of which may vary regionally.

In the music industry, intellectual property and its ownership and rights is often a vague subject. From the musical point of view to licensing rights, there are often things that can be interpreted differently by various people, or lack of communication which makes it difficult to always get it right. There is no global joint system when it comes to logging or checking the correct ownership rights that would be accessible for everyone in the industry. This is something that not only YouTube, but the whole industry has struggled with for years.

YouTube has set up an algorithm with the help of Content ID, which automatically tracks any copyright claims. YouTube and the content's rightsholders can then either monetise, flag or block the claim. Rightsholders also have the opportunity to claim these manually. If you receive a copyright strike from YouTube for one of your videos this means that it has been removed from the community following a complete and valid legal request from the copyright owner asking YouTube to do so in compliance with the Digital Millennium Copyright Act (Business & IP Centre, 2021). If an account receives copyright infringement claims more than 3 times, their account will be blocked.

YouTube has stated that only 1% of overall claims have been disputed (Dredge, 2016). However, there has been criticism around whether the system actually works as effectively as they claim it does. Given that over 400 hours-worth of videos are being uploaded to YouTube every minute, it does not come as a surprise that sometimes claims can be flagged falsely. In the last few years, record labels have stated that they have to hire too many people to manually claim rights, and that it is costing them too much.

On the other hand, artists enter the discussion from a different angle - they feel that it is the publishers and labels who often abuse the copyright claim tools. In February 2020, a musician Rick Beato (with around 2 million subscribers), who creates videos on YouTube for educational purposes (tutorials, music theory lessons, music industry talks etc) explains in his video (Beato, 2020) how he had received a copyright claim and his video was demonetised, even though his video was about teaching a Mixolydian scale. He was demonstrating an example of a scale by playing a snippet of John Lennon and Paul McCartney's song, "She Said She Said." Under a copyright law, if something has been created for educational purposes, it can be used for free. However, Sony Music manually claimed 66% of the revenue made by the video. As this claim was being made manually, it seems that the label was purposefully looking for people with a bigger following to find ways to create these claims.

There are currently discussions ongoing in the UK Parliament with regards to the economics of music streaming, the IP law and how Brexit will affect the industry, and big companies have been asked to write a report to explain their operations. In their report, YouTube stated that they continue to invest in new innovative resources and technologies to combat piracy and to help prevent copyright infringement; they are constantly working on using greater features and tools whilst still making sure it would not disrupt the customer experience, the creators and the content (YouTube, 2021).

Article 17

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive), symbolising the "copyright revolution" at the European Union level, was adopted by the European Parliament and the Council of the EU on 17 April 2019 (Ferry, 2020). The aim of this law is to guarantee an efficient marketplace for copyright. It extends existing European Union copyright law and is a component of the EU's Digital Single Market project.

Under Article 17, content-sharing platforms (such as YouTube and Vimeo) can be taken to court for making copyright-infringing content available to the public, even where it has been uploaded by their users (Robert, 2020). Nevertheless, musicians, creators, publishers support the law, explaining it would give them more power to get credited for their work. The Copyright Directive will start being enforced in the EU by national courts from 7 June 2021, 2 years after it came into force.

YouTube has said "While Article 17 is still in the local transposition process (and therefore no tangible effects can yet be ascertained), we are concerned that any overbroad implementation of legislation of that type may lead to vague, untested requirements that could result in online services needing to over-block content to mitigate potentially significant legal risk," (YouTube, 2021). I believe that YouTube is aware that it has still not established a secure system which is guaranteed to work every single time when it comes to copyright infringement, therefore the

company knows that under the new law it might face unlimited court cases. The UK Government has still not decided whether to enforce a similar law in the United Kingdom.

5. Conclusion

YouTube is one the most popular websites in the world, with more than 2 billion visitors visiting the website each month. YouTube's business model relies on two engines: advertising-supported and subscription-based models, which can monetise both people who use the website for free as well as people who pay for the subscription. A big issue YouTube has been facing over the years is the copyright claim, and with the Article 17 coming into force in a few months' time, YouTube still needs to find a consistent and a transparent way of claiming copyrights and paying royalties for creatives.

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Bibliography

Alphabet Inc (2020) 'Form 10-K For the Fiscal Year Ended December 31, 2020' Available at: https://abc.xyz/investor/static/pdf/20210203_alphabet_10K.pdf?cache=b44182d (Accessed: 4 March 2021)

Biato, R. (2020) 'The Music Industry SCAM to Ripoff YouTubers (Rant)' [video] Available: <https://www.youtube.com/watch?v=uHh8nPj5SDY> (Accessed: 15 March 2021)

Business & IP Centre (2021) 'An Introduction to YouTube Copyright' Available at: <https://www.bl.uk/business-and-ip-centre/articles/an-introduction-to-youtube-copyright#> (Accessed: 4 March 2021)

Cohen, L. (2020) 'Why Marketers Should Care About the Music Industry's Latest Transformation' Available at: <https://www.thinkwithgoogle.com/intl/en-ccc/marketing-strategies/video/music-industry-changes/> (Accessed: 15 March 2021)

Dredge, S. (2016) 'YouTube Defends Content ID Following Music Labels' Criticism' Available at: <https://musically.com/2016/04/25/youtube-defends-content-id-following-music-labels-criticism/> (Accessed: 8 March 2021)

Ferri, F. (2020) 'The Dark Side(s) of the EU Directive on Copyright and Related Rights in the Digital Single Market.' China-EU Law J Available at: <https://doi.org/10.1007/s12689-020-00089-5> (Accessed 15 March 2021)

Music Business UK (2020) 'Music Business UK' Available at: <https://www.musicbusinessworldwide.com/files/2020/03/MBUK-Issue-10-Q1-2020.pdf> (Accessed: 4 March 2021)

Robert, B. (2020) 'Complying With Article 17 of the EU Copyright Directive' Available at: https://www.termsfeed.com/blog/eu-copyright-directive-article-17/#What_Is_Article_17 (Accessed 15 March 2021)

Wikipedia (2021) 'Directive on Copyright in the Digital Single Market' Available at: https://en.wikipedia.org/wiki/Directive_on_Copyright_in_the_Digital_Single_Market (Accessed 15 March 2021)

World Intellectual Property Organization (2020) 'What is intellectual property?' Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf (Accessed: 8 March 2021)

YouTube (2021) 'Written Evidence Submitted by YouTube' Available at: <https://committees.parliament.uk/writtenevidence/15322/pdf/> (Accessed: 15 March 2021)

Zarczynski, Andrea (2020) 'Music Industry Faces Untapped Payout Opportunity On YouTube' Available at: <https://www.forbes.com/sites/andreazarczynski/2020/11/23/music-industry-faces-untapped-youtube-opportunity/?sh=3ab87e101364> (Accessed 4 March 2021)