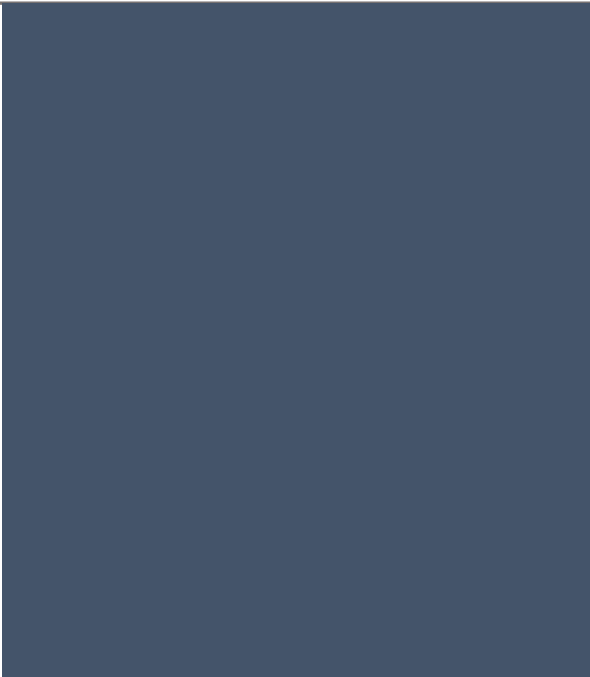




Legal & Business Affairs Assignment

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Case study

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Element 1 YouTube – Case Study

Introduction

Business strategies can have a big impact on the commercialisation of music and entertainment content on YouTube. Challenges for raising revenue from this can occur, which is why it is important to look at stakeholders and the impact on them when trying to identify intellectual property, and what this means for protecting, or making money from their work (Zhang, 2018).

Intellectual Property definition

Intellectual property covers several areas in the music/entertainment industry. Copyright is an intellectual property right which protects the work of a person and stops others from using it without the original artist's permission. The Copyright Designs and Patents Act 1988 states that for copyright to be a part of a piece of work it must:

- Fall into the categories that are protected by the Act such as literacy, films, or published editions of typography etc (Legislation.gov.uk, 2021a).
- Qualify for copyright protection within the UK; and this can depend on the author or the country where the work was first published, or for broadcast in the country that it was first broadcasted (Legislation.gov.uk, 2021b).
- Depend on the duration of the copyright within their work (Legislation.gov.uk, 2021c).

This can vary for people in different regions with the UK giving copyright protection automatically on music. However, in USA they must pay a fee to the copyright office (Copyright.gov, 2021). This demonstrates the difference in how artists can protect their work in the UK, whereas in USA they are charged to protect their work.

Types of copyright

Within music there are specifically two types of copyright attributed to a song. These are sound recordings and songs/composition copyrights. To utilise the sound recording copyright, this is the actual sound recording of the song or the "master recording" that contains a certain expression of the underlying musical composition. The rights of this belongs to the producer. However, in contrast, the songs/composition copyright belongs with the songwriter, who could be the artist. This copyright belongs to the person that creates or composes the musical work. If an artist does not write their own songs, they are not entitled to this copyright (Fishman, 2020).

An author is seen as 'the producer of the sound recording (section 9(2)(aa) CDPA (Legislation.gov.uk, 2021b), this is the person who has made the arrangements for making the sound recording (section 178 CDPA)' (Legislation.gov.uk, 2021e).

These copyright laws can stop specific things happening with artists music such as: reproducing the music, derivative works based on the music, copies being distributed to the public, performing the work publicly, performing the work publicly by means of an electronic recording or/and displaying the music publicly.

The duration that a copyright can last, is generally 70 years from the end of the calendar year from when the author dies. If there is a co-authorship, then it is 70 years from when the last known author dies (Soundcharts.com, 2021) (See Appendix 1).

How does YouTube exploit this?

Within YouTube there is a Content ID system where it can automatically detect if copyrighted music is within someone's content. However, this does not always work correctly. They also have the copyright 'Claim Mechanic' where anyone can claim a video if they deem it to breach their copyrighted material. The problem with this is there are only two options available to the Youtuber, either they have to take the video down entirely, or give the person or business that issued the copyright claim, a part of the advertising revenue.

As of February 2020, there are more than 500 hours of video being uploaded to YouTube every minute (Statista, 2021). Therefore, there is a high chance that the Content ID system does not pick up on every piece of musical work that is in other content creators' videos. This is music that is making money for other individuals, instead of the correct copyright holder.

Synchronization (Sync) rights being exploited on YouTube

On the YouTube platform, there are many different cover songs for an already existing song. They are used by many on YouTube to get a new audience quickly and being popular depending on the type of song that the artist is covering.

Legal issues of ownership need addressing in these circumstances. This depends on the way that the artist on YouTube goes about doing it. Within the copyright law in the UK, there are no licences needed to release a cover song. However, the larger markets such as North America will need a mechanical licence, with a master use licence, if wanting to release worldwide (ACM, 2021).

If the original artist is happy with the cover artist using, and uploading the cover version of their song, then they can give the artist a sync licence, meaning it is not illegal to make, and upload, this cover song (Kartceva, 2018).

However, on YouTube platform, it is very difficult to stop cover songs being uploaded without the permission of the owner of the song. This is not illegal in the UK, but as YouTube is worldwide, it would be illegal in different regions. It is not the cover artist's original work, but many artists use this practice. This practice is termed copyright infringement when performing, showing, or playing another person's work (UK Copyright Service, 2021).

How much is needed to be copied to call it an infringement?

A key test for copyright infringement, is if a substantial part is copied from a piece of work (section 16(3) CDPA) (Legislation.gov.uk, 2021f). The original owner has the right to remove the video from YouTube. However, with the influx of videos that can be uploaded, it would be difficult to manage and potentially a stressful experience for independent artists. Often, an artist will leave the videos, to create excitement for their original music.

Cover artists on YouTube, often get away with copyright infringement (Horsman, G., 2018). However, YouTube has released a statement about this issue saying that 'recording a cover version of your favourite song' does not always give you the 'right to upload' that video to YouTube. YouTube identifies potentially needing to get 'permission' from the original artist to be allowed to upload to the site (Support.google.com, 2021).

Sync licences cost the artist but are not set at a specific price. YouTube do not control this side of their site, with record labels asking for large sums of money for a YouTube cover of their song, with promotion revenues as an extra as well. If they give the sync licence for free, they normally ask the artist to make no money from it, and all proceeds in advertising revenue, streams, and downloads to go towards the label. This is legally, a 'grey' area in YouTube.

Music Licence Management is an essential part of maintaining the legal rights of various parties. Every time a song is used, YouTube must split these rights among the different owners of the rights around the globe, with everyone taking a part of the money on the way.

Masters' rights

The master recording of the song, generally, would be held by the record label. If this master recording is used in a video, then the record label would have royalties paid to them for the ownership of the recording. It can be that multiple labels, in different regions, are responsible for the rights in different territories (Support.google.com. 2021b).

Public performance rights

Because of master recordings and the composition in the songs work, these can be split into two categories, public performance rights and other rights. The Public performance rights would come under the Phonographic Performance Limited (PPL) Society, who collect royalties on behalf of the performers and record companies, for the recorded music that would be displayed on YouTube. The Performing Right Society (PRS) for music are another society that help collect money specifically for the songwriters, composers, and music publishers, as the music video would be using their lyrics or musical compositions (Ppluk.com, 2021).

How much revenue do artists get for their streams on YouTube?

The amount that YouTube pays out is based upon proportionate percentage, of advertising and subscription revenue. Competition within the streaming industry is strong, and YouTube are in a race to attract more artists to their site, which is a tactic used particularly within their industry of online video streaming. YouTube music has a large subscriber base of over 20 million paying subscribers, which should support developing artists (Times International, 2021).

With YouTube music there are 3 different ways that an artist can get paid on YouTube:	
1. YouTube music stream	\$0.00735
2. Per video stream -	\$0.00069
3. Videos monetised through the Content ID system	\$0.00087
4. Purchase of Music on YouTube. However, artists will only receive 70% of the suggested price for all songs purchased, as YouTube takes 30% as commission.	

This is a small amount of money and taking 137 streams to make a dollar on YouTube music. However, the more popular platform to watch music videos is YouTube. This would take 1449 streams to make a dollar, a difference of 1312 views/streams an artist must make on the more popular platform. This indicates that if an artist wants more money, uploading their song on YouTube and YouTube music would be beneficial (Times International, 2021).

Stakeholders in YouTube

The stakeholders in YouTube are the Users, Creators, Rights holders of music videos and copyrighted content, and Advertisers. The users are the consumers of content on the website and are actively using the site for video content. The Creators are the individuals or businesses uploading videos and music to the site for the users. In turn they receive a monetary return. The rights holders of music videos and copyrighted content are people who have specific rights within the music side of YouTube and want to protect their property. The advertisers are the people who pay YouTube to advertise their products and services on their platform. These stakeholders will be able to use and utilised the intellectual property to be able to monetise their work while also protecting it (Business model navigator, 2021).

Sound Exchange

Sound Exchange collects and distributes digital performance royalties on behalf of the artists, master rights owners and independent artists. They monitor the web broadcasts and distribute the royalties on how many times the artist's music is played (SoundExchange, 2021). This can aid record labels on YouTube to receive the correct amount of royalties per view on the music.

Digital Millennium Copyright Act 1998 (DMCA)

This American law criminalises the unlawful use of any copyrighted materials. This has wide reaching effects as websites are available globally, but the sites are bound to the country where their servers are located (MUO, 2020). This is why YouTube has introduced the DMCA into their site because their servers are located in USA (Gray, 2018).

YouTube uses copyright strikes in accordance with the DMCA to manage copyright infringement and help their users with their protection of property. With this ability, artists/users on YouTube have to prove that they meet the requirements, and if they do, they can request the video to be taken down (DoNotPay, 2021).

(See Appendix 2 for case studies)

Other platforms

Vimeo

Vimeo is a video sharing platform created in 2004, with over 80 million creators, many of them from the creative industries.

Within their business, the copyright policy is similar to YouTube. The DMCA policy, would be in effect throughout the website, and properly notify artists when their music infringes a third parties copyright, with termination for people on their site with repeat copyright infringement.

As of 24th November 2021, there is not a feature on Vimeo where a Music Artist can make royalties on their music. They advise that artists who want music on the platform, and to profit from it, then sign up for music licensing services. One music licensing service Vimeo recommended is Epidemic Sound. Here they acquire the rights of the artist's music, but pay the artist up front, and submit the artists songs to streaming platforms and other playlists on Vimeo (Vimeo Blog, 2014).

Spotify

Spotify rights to artists

Spotify rights are similar to YouTube where they ask artists who has rights to the songs created such as the public performance rights and mechanical rights, while also making sure that the song performer, recording owner, songwriter and publisher are paid as well (Castillo, 2018).

Spotify gets two classes of license for any of their music distributed: sound recording licences and musical composition licence agreement.

Recording licences

Spotify has made deals with the three large record labels: Universal Music Group, Sony Music Entertainment and Warner Music Group (Solsman, 2020).

Composition licences – performance rights and mechanical royalties

Spotify (UK) understand that PPL deals with performance rights for the performer and label, and the PRS deal with mechanical royalties that go towards songwriters and copyright owners.

When a Spotify user streams a song, it triggers both types of royalties. As the streamer doesn't own the song, it is seen as a public performance, and since Spotify has to use the composition, then the mechanical royalties are then due to the songwriters and composers (Soundcharts.com, 2021).

The amount of money that Spotify pays out

Spotify is now considered the largest streaming platform in the world. Despite this, transparency is limited about how much an artist is paid per stream. Many factors can affect paying an artist. It has been found that Spotify pays as little as \$0.0033 per stream to upwards of \$0.0054 meaning an artist on Spotify will need 250 streams to make a dollar. Spotify can pay royalties like this, because of money collected from advertisements on their platform, and premium subscriptions. Artists are paid out monthly, with rights holders paid first, then the distributor and finally the artist (if they are not the rights holders) (Business Insider, 2021).

The area a stream originates is important, with the US paying \$0.0035 per stream, whereas in Italy the per stream equivalent is \$0.0019, a difference of \$0.0016 per stream (Business Insider, 2021). Therefore, if this content was streamed in Italy the revenue would be much lower than if it was streamed in USA.

Apple music

The amount of money that apple pays to artists

Apple Music pay the same headline rate to all labels, set at 52%, which can help small and large labels. This supports artists to distribute their music in a way to suit them, with the money being the same around the industry.

They also have a set rate for all compositions, with Apple Music allowing every publisher and licensor to have the same headline rate within each country (Apple, 2021).

All information given by Apple has met many criticisms as noted by other publications. The 52% headline rate is the same as other large competitors, such as Spotify. Despite this, there is insufficient evidence to identify whether they are being truthful or deceiving the public with their findings.

Apple Music has released the amount that they pay per play rate, which is on 'average' \$0.01 per stream. This is a value based on the subscription plan and the country that it was originally played in. This includes label and publisher royalties.

This could be seen as misleading, as Apple has said that they have been able to have a \$0.01 per stream pay out on individual paid plans. But this does not include the lower costing bundles, such as: the family subscription for six people; Apple One subscription; or the student subscription, which would be taken out of the calculation. Further, the label and publisher royalties have been included into the \$0.01 per stream price which can complicate it even more, with the 52% of headline rate only applying to label/recorded music (Ingham, T., 2021).

Conclusion

Based upon the large audience that YouTube has, and with the UK chief executive of Universal Music mentioning that 70% of his artists music is listened to, and watched, on YouTube, this only accounts for 5% of the company's revenue (The Guardian, 2021). This shows that YouTube could have a better pay per stream so that the artist would have improved income. YouTube pays less than other competitors despite having the most consumers on their whole service which makes it alarming that they cannot pay artists more.

YouTube should implement a new, stronger licensing system as suggested by the European Union and UK Parliament, which would allow artists to have a larger amount of the royalties from advertisements. It is also noted that PRS was concerned, between the years of 2016 and 2019, with content being ripped/stolen more on YouTube than any other streaming platform (The Guardian, 2021) The only concern about this, is that YouTube has said that following such stringent legislation could make it difficult to follow, and potentially lead to blocking music to prevent getting into legal battles (Committees.parliament.uk, 2021).

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Appendix

1.

Contract

A contract is a 'legally binding process' by one party to fulfil to another party in return for something desirable for the first party also known as a consideration (Practical Law, 2021).

The requirements for a contract:

The offer: This is to show the reason as to why this contract is being created. The offer has to show clearly that all parties understand what the standards are, if the offer is not clear then the contract could unclear for a court to enforce it.

Acceptance: This is when the person receiving the offer agrees to the conditions and requirements that have been asked of them in the offer. The acceptance must be voluntary and not forced upon a person.

Consideration: This is what a party will pay to complete the contract. This is not always money however a majority of the time it is. Overall, consideration is the value of something. If you offer your talents or work, then that is an example of giving consideration.

Legal consideration: This refers to the intention of each party. If friends and family have arrangements, they are never intended to be legally binding so they do not intend to sue the other if the other does not do what they said they would. A contract has to have a legal intent to it. The contract must also follow laws and regulations in the country that the contract was created and exists.

Competency: The person entering into the contract must be competent to do so. This means that they are over the age of 18, they have the correct mental state to understand what they are signing. They also have to be not influenced/impaired by outside influences such as drugs or alcohol.

If the artist is under the age of 18 then most record companies will want their parents to sign an inducement letter which makes them legally responsible for anything that might go wrong in the contract such as breaches from their son or daughter (Practical Law, 2021a).

Different types of terms

Express terms – these are terms that have been agreed with by both parties involved and can be in writing (preferably) or orally, it can be a mixture of both in some cases.

Implied Terms – this is by a statute or a custom.

The difference between a representation and a contractual term:

Any kind of statement that a party has intended to be binding within the terms is either a warranties or conditions.

- Condition – this is vitally important as it goes to the root of the transaction, it is a major term within the contract. A breach in a condition can lead to a termination of the contract for the artists party and claim any damages that might of arise (Law.jrank.org. 2021).

- Warranty – this is less important however it is an assurance or a promise in the contract and a breach of that can give rise to a claim for any damages caused (Practical Law, 2021b).
- Innominate term – this is if the remedy for the breach in the contract depends on when the effect of the breach happened. If the breach deprives the innocent party of the whole benefit of the contract then there is a serious breach within the contract and the remedy will be for a breach of condition (Practical Law, 2021c).

A statement that a party did not intend to be legally binding but has been placed in the offer is a **representation**.

2.

Case studies

Article 13

Article 13 was created to try and hold services, such as YouTube, responsible for what their users upload such as copyright protected movies and music. This would mean that YouTube would need to pre-emptively license copyrighted materials, which their users could upload, but that YouTube described it as being an “impossible feat”.

This means that YouTube would have to block existing videos and new uploads from creators within the EU. This would also affect streamers on the site as well with multiple copyrights within online games such as the music, code, and dialogue (Fox, 2019).

This was eventually resolved with YouTube winning in a Court ruling, indicating that platforms are not able to be liable for users uploading unauthorized material, although have responsibility for removing or blocking access to a video through their Content ID system. However, the court ruled that “online platforms do not themselves make a communication to the public of copyright protected content illegally posted online by users” (Haeck, 2021).

PRS vs YouTube

There have been disputes in the past between PRS who collect money for the artists in the UK and YouTube themselves. PRS found out that the problem had started from Google who were not willing to pay more than the small rate that they had already given, while also having higher payment terms (Topping, 2009). Google had stated there was a problem with the fees that PRS had put on their music. The problem with this argument overall is that there is a multimillion-pound company that demands musicians to find another way to find a Profitability Business Model, versus a rights agency that is stuck in a music business cycle before the internet and cannot understand that it cannot make as much money as traditional broadcasting.

They came to an agreement; however, this was more favourable in YouTube’s favour than PRS with the power shift in the music industry being revealed with platforms being larger than music organisations (Marshall, 2009).