



Legal and Business Affairs
BMTY7002

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*Critically analyse and review business strategies, challenges
and revenue mechanisms related to the commercialisation of
music and entertainment content on YouTube.*

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SCHNEIDER Vs YOUTUBE, LLC; GOOGLE LLC; and ALPHABET INC.; 2020, San Jose, California

In 2020 composter and Grammy award winner Maria Schneider and Pirate Monitor LTD bought a case against YouTube, Google and Alphabet Inc about copyright piracy (Tillery 2020). Schneider alleged that YouTube wasn't doing enough to protect creators from unauthorised copying and use of their work. As the largest video-sharing website in the world, YouTube is plagued with videos which infringe on the rights of copyright holders and the debate as to who is responsible for enforcing intellectual property laws is one which has been raging on for some time. In the years since its inception many have argued that YouTube facilitates copyright infringement and that it's lack of help towards the independent artists is aimed at driving advertisement revenue. The Schneider case brought this issue back into the limelight as questions were posed about the implications for YouTube's Content ID system on independent creators. Schneider has openly criticised the video sharing platform website, saying "A vast library of pirated content draws users to the site, and the growth in users incentivizes the posting of more content on YouTube, which in turn enables Defendants to reap more advertising revenue". Schneider is asking for monetary reparations and for Google to provide better tools to independent creators to aid them in policing of copyright infringement.

This is not the first time in recent history that YouTube has come under pressure for its handling of copyright infringement. In 2007 Viacom sued YouTube and Google alleging that they should be held responsible for any infringements committed by Youtube users. Viacom sought more than \$1 billion in damages and issued more than

100,000 take down notices targeting videos owned by Viacom. In 2010 the judge ruled in YouTube's favour, but so followed a number of appeals from Viacom with a settlement finally being reached in 2015 (Justia).

YouTube: A brief History

Founded in 2005 by Steve Chen, Chad Hurley and Jawed Karim during their time working for PayPal, YouTube was founded on the idea that ordinary people should have a platform to share their own home videos. Following a six month trial in which the website was attracting more than 30,000 visitors a day, YouTube officially launched in December of 2005 by which point it was serving more than 2 million video views a day. Less than 2 months later, that number increased dramatically to a staggering 25 million views (Hosch, 2009). While its success and popularity over the years has continued to grow, so have its issues with copyright infringement. Perhaps realising they had bitten off more than they could chew, a little less than a year after its official launch, YouTube was sold to Google in November 2006 for \$1.65 billion in stock. It was at this point that Google began to negotiate deals to allow for copyrighted material to appear on YouTube. It also agreed to remove tens of thousands of copyrighted videos.

Today YouTube has a staggering 1.86 billion users, more than 30 million paid subscribers and an annual revenue of \$15 billion with some videos taking less than 100 days to hit one billion views (Statt, 2020). It is predicted that in 2022 the net advertising revenue of Youtube will be an estimated \$6.06 billion (Houghton 2021).

Royalty Payouts

When a composer, singer or songwriter creates a song they automatically become the copyright holder of this work; this is known as publishing rights. Once the song or composition is immortalised in recorded format the recording also becomes protected under an additional copyright; master rights. These two types of copyright came about to ensure that people were being compensated properly for their work and there are a number of societies who work on behalf of creators to ensure that they are properly reimbursed for their work on the composition or song - PRS and PPL in the UK and ASCAP in America. Ordinarily a typical recording contract would pay out 20% in the UK, 18% in Europe and 16% for the rest of the world (Riches 2012) The average streaming platform pays out between 55-60% to the master rights holder, and 10-15% to the publishing rights holder. Unfortunately a music licence with PRS does not cover YouTube with their website stating that users of such platforms should be covered by any existing licencing agreements with such websites. Instead PRS uses a system called ICE which is aimed at ensuring composers and songwriters are compensated fairly and accurately. However, for YouTube the system only identifies videos with 2000 before distributing royalties.

According to Gareth Murphy YouTube pays out on average just 7% to copyright owners (Murphy 2021). Of all of the current DPS YouTube comes at the bottom of the pile in terms of its monetary contributions to copyright holders, paying out 0.000055p per stream. This means that in order for a copyright holder to earn the average UK salary of £27,000 their videos would need to be streamed 51.1 million times. To put that into perspective Ed Sheerans 'Shape of You' - which doesn't top the charts at the most watched YouTube Video -

stands at a view count of 5,183,447,764 (The Influencer Marketing Hub, 2021).

Youtube and the Law

For centuries people have been immortalising their thoughts and ideas in written form, but it wasn't until the invention of the Gutenberg press in the 1400's that it was possible for music to be printed at mass scale. As printing became more popular it also became more susceptible to forgery and copying so in 1534 The Printers and Binders Act banned the importation of foreign works (The UK Copyright Service). In 1710 came the statute of Anne, which was the first example of copyright belonging to an author rather than a printer. This was replaced in 1842 by the Copyright Act which greatly influenced other copyright laws around the world. There then came another issue at the turn of the 1900s with the invention of the gramophone. There were already laws in place to protect those who wrote music, but no protection for those who were facilitating the creation of the records. In the 1920's PRS was founded in response to music being broadcast on radio, and publishers finally had a society to collect royalties for them. Since then, the law has evolved to cover a wealth of material, not just limited to books and is today known as copyright law under the Copyright Designs and Patents Act (CDPA) 1988. In its essence is a simple one - if you created something you own the copyright for it, and if someone used your work you were entitled to be compensated for that use. The CDPA prevents anyone from copying, distributing, renting or lending copies, adapting and showing or playing someone's work in public without permission from the copyright holders. For a long time this was enough to protect those who were creating music but as technology advanced

and digital media became more prominent it became obvious that there were cracks in this law which was passed long before the technological advances of the internet.

Youtube provided a platform for people to participate in the creation and recreation of content, often with little money and skill and whilst some might argue that this allows for their work to be accessed more easily, the debate over who is responsible for protecting copyright law on YouTube rages on. The sale to Google in 2006 was the result of the underestimation of the popularity of the service, and the complications in attributing ownership of copyright that came with this rise in traffic and use. There is still some debate about who has the responsibility in ensuring content uploaded to YouTube doesn't breach intellectual property laws. YouTube has argued that it only provides a platform for users and that as it doesn't actively upload potentially copyrighted material itself it can't be held liable for any infringement. It says that is the responsibility of the individual who of course is free to express themselves however they see fit.

Youtube's attempt at protecting copyright comes in the form of their 'Content ID' system. This is a system which notices if all or part of a video is similar to one which has already been uploaded. This system allows copyright owners to set up content ID blocks as they upload videos to Youtube provided that they own the rights to the work. Following an alert from the Content ID system, those who upload content which is in breach of YouTube's terms and conditions users receive notification that their upload is in violation of Youtube's Policies. From here they are presented with three options; the option to agree to the breach and do nothing, the option to split any revenue that may have been made from the upload, and the option to dispute. Following a claim, the user can have the

request against them removed by trimming out segments from the video, replacing the audio, or muting a song. Those who own the original material and opened the case have the option of allowing the content to remain online, but to add advertisement to the video so that they may generate revenue from the content. In these cases, any revenue earned from the ads goes to the copyright owners of the claimed content.

Youtube claims that it complies with the law by removing any video with legal and valid requests from the copyright owner. A video only needs to have one copyright strike in order to be removed. However, there are some exceptions. For uploads part of the YouTube Partner Program (YPP), the uploader has a 7 day courtesy period and three copyright strikes. It also requires copyright owners to submit reference files to prove that they own the copyright (Ciampa et al. 20).

The case brought against YouTube by Schneider has raised questions about how effective the Content ID system is. It was easy for me to find plenty of information on the YouTube website about the system, and the wording of the policy does appear to make it sound as though it is virtually impossible for any copyrighted material to go unnoticed. But Schneider claims that this system is only available to larger content providers such as record labels and movie studios. For the independent artist, song writer or creator the policing of any copyright violation is a tedious and time consuming effort which requires a great deal of manual work. Schneider claims that the Content ID system is set up to benefit those who are already wealthy, and therefore YouTube can no longer claim protection under the safe harbour regulation.

GDPR and Youtube

Article 13 of the EU Copyright directive has been hailed as one of the music industries most controversial topics. The act aimed to make the likes of Facebook and Youtube liable for copyright infringing uploaded material which, in turn, would result in an increase in the 'value gap' in royalties paid. Specifically Article 13 aimed to reform the safe harbour regulation of the Digital Millennium Copyright Act 1998 (DMCA) which implies that internet companies cannot be held liable for the copyright infringement of their users (Chris Cooke CMU Daily) one which YouTube has used in its defence many times. It is interesting that whilst the Safe Harbour regulation has been used across the board by social networking platforms, sections 16-22 of the CDPA cover sampling - which includes any copying of a digital recording without permission from the copyright holder. The Music industry argues that the safe harbour reform - passed in the early days of the web when its lawmakers may not have intended user upload websites to be protected - has been exploited in order to get better rates from those who own the copyright. Whilst many music rights holders were understandably backing the passing of this act, it proved to be somewhat troublesome for the tycoons of the digital media platform market. YouTube argued that the passing of article 13 would impede on free speech and had the potential to 'break the internet'. Whilst the initial draft of Article 13 as passed by the European Parliament JURI committee was welcomed by the music industry as a whole, the joy was to be short lived. Following on from accusations from the likes of Europe For Creators and BPI that the CEO of YouTube of 'ongoing carpet-bombing propaganda against article 13' (Geoff Taylor, BPI) the industry was dealt a crushing blow as the UK government announced that it has no plans to implement the law after all.

This means that platforms like YouTube will not be under any obligation to negotiate with rights holders to agree on fair remuneration of use of their work. Critics had argued that implementation of Article 13 would have made regulating uploads impossible and YouTube had said that its Content ID system may have made mistakes and blocked legitimate content. There was concern that implementing any type of filter would have been expensive for smaller companies and startups. There would also have been implications for the gaming industry, with services such as Twitch no longer being able to show videos of games. So for now, nothing changes. Presumably YouTube will still be able to use the Safe Harbour regulation when individuals or businesses question their use of intellectual property, but the Schneider case could still prompt some change. Though, for now, YouTube is able to deny any responsibility under the DMCA, the outcome of this case could insight an inquiry into its relationship with copyright law.

Summary

The internet is full of people from various industries who take differing stances on the issue with YouTube and its implications on Intellectual property laws. The consideration of article 13 in Parliament was seen by many as an opportunity for composers and songwriters to finally be able to take back some control and receive adequate compensation for their work. Without this being made into law some companies rejoiced for obvious reasons, but some individuals also favoured this decision as there would be no impediment on their creative output. Lawrence Lessig argues that perhaps it is time for us to change our thinking, and understand that the generation of YouTube users is different and communicates differently. He proposes the the solution comes in the form of a

compromise from both the copyright owners and business owners which would allow free content to grown on a neutral platform and enable creativity to develop (Lessig 2007)

Perhaps the Schenider case comes at the appropriate time, following the lead up to the discussion of article 13 the music industry has banded together and this has not gone unnoticed by those in positions of authority. Whilst the case has gained much attention and support from other independent artists it does seem as though this could be a long battle and perhaps enough has not yet been done for the creators to be successful. As of March 2021 the case is awaiting trial.

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