

TILEYARD EDUCATION

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Case Study

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TABLE OF CONTENTS

Introduction	3
Background and Business Model	3
Case Evaluation - IP and Article 17	5
Implications and Possible Solutions	7
Conclusion	9
Reference List	10

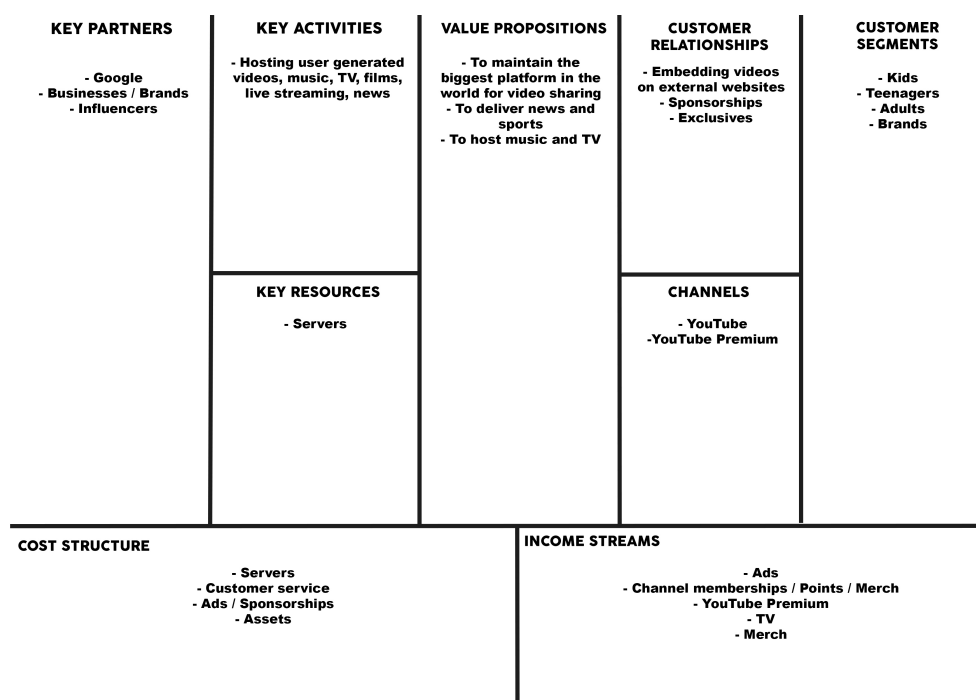
Introduction

In 2021 the music industry's revenues mainly come from streaming royalties. YouTube positions itself as one of the major platforms for music consumption, catalysing 56% of the market in 2021 (Mulligan, 2021). This case study will analyse YouTube's business model and revenue streams to frame its *modus operandi* and its contribution to the global modern music industry landscape. Some of the tools used in the analysis include lean business methods and a business model canvas. While the platform was found to be extremely agile and capable to transform itself with the changing internet regulations and trends, its attitude towards music makers has been deemed detrimental to the industry by musicians and other industry bodies, particularly regarding the safe harbour policies that have been protecting the platform in the past 16 years. The paper will outline the main issues of safe harbour, and will show the effort of European nations to implement Article 17, a new regulation policy that aims to safeguard the interest of creators. The opinion of parties pro and against Article 17 will also be analysed to understand the multiple angles of the issue. Finally, this case study will try to find a possible solution to the exploitation and unfair use of copyrights in the digital landscape.

Background and Business Model

YouTube is a video-sharing platform that was created in 2005. Its founders Hurley, Chen and Karim proved to be able to apply the lean business strategies that eventually brought YouTube to be acquired by Google in just eighteen months (Leskin, 2015). The lean business method involves valuing customers' opinion, identifying key areas that need focussing on, creating value to the customers and perfecting the business (Lean Enterprise Institute, 2021). In fact, the platform started as a video-dating website, but through customer feedback analysis it was changed to a video-hosting platform in just under two months. By September of the same year, Sequoia Capital had invested \$3.5 million, and by December YouTube was getting 8 million views a day. In October 2006, the platform was finally acquired by Google. The lean attitude proved to be YouTube's most profitable selling point: in 2007, on the same month the first iPhone was launched, YouTube came out with a mobile site. We can see similar lean changes throughout the platform's 16-years-old life, with highlights

such as the launch of Vevo (in partnership with Vivendi), the implementation of live streaming, and YouTube Music.



Using a business model canvas to analyse YouTube's model, it was found that the platform has two primary revenue streams: advertisement and YouTube Premium. The 2019 Google earnings report (Alphabet Inc., 2019) shows more than \$34 billion of ads revenue over a period of three years, with a growth of 85% since 2017. On the other hand, according to YouTube's Global Head of Music Cohen (2021), over 50 million people are currently subscribed to YouTube Premium and YouTube Music: Google was the 'fastest-growing music streaming service in 2020' (Mulligan, 2021), with a 60% growth rate. Moreover, as of July 2021, YouTube is the leading music streaming app, with a weekly active user audience rate of 56%; Spotify, the second biggest streaming platform, currently has a 31% audience rate. According to Mulligan (2021), YouTube's growth was helped by the 2020 pandemic: the lifestyle of people changed and facilitated a return to music video as people abandoned the habits developed during commutes and stopped needing music on the go.

The platform's revenue mechanisms, however, are several: one of them is channel memberships, particularly for what concerns live streaming (especially in the gaming field), and Superchats and Superstickers, tools that guarantee users a more exciting experience during live streams for a small fee. Another revenue stream for YouTube is

the embedment of merchandise under creators' videos, in partnership with merchant sites such as Shopify. Finally, YouTube TV is the latest revenue stream for the company, with 3 million subscribers in October 2020 (Silberling, 2021). This subscription service features more than 85 top US TV channels such as ABC, FOX, and CNN, and hosts sports events as well. Although the competition (such as Hulu) presents more affordable deals, YouTube TV features infinite online storage, multiple accounts, and better audio-visual quality than the rest of the platforms (Silberling, 2021).

In its fifteen years of operation, YouTube has faced and adapted to the challenges brought by ever-evolving internet regulation policies. Just two years after the platform's launch, in 2006, a sketch by Andy Samberg and Chris Parnell called 'Lazy Sunday' from Saturday Night Live was leaked on YouTube, doubling the traffic site in three days (Leitch, 2021). After a dispute between NBC and YouTube, the Content Verification Program software was launched in an attempt to 'locate and remove' copyright infringing material (Kumar J, 2018). YouTube pioneered in a web environment that brought unprecedented issues to many sides of the entertainment industry: the second biggest challenge for the platform was in fact music. With the advent of music piracy in the early 2000s, the recorded music industry started losing its income streams. As people were not willing to pay for music anymore, YouTube also helped spread pirated music: users could download and re-upload music videos and songs on the platform for free. In an attempt to tackle the issue, YouTube partnered with Sony Music Entertainment and Universal Music Group and launched Vevo, a music video service that distributes videos on YouTube (Fitzpatrick, 2016). The ultimate goal of Vevo was to build its own platform focused solely on music videos, but YouTube proved to be hard to outweigh. According to Peter Kafka (2018) Vevo will not survive YouTube's competition in the future.

Case Evaluation - IP and Article 17

Although the platform has demonstrated to be agile and keen to adapt to industry challenges, a new controversy has risen in the past years. It is the case of Article 17 (formerly known as Article 13), a Copyright Directive aimed at ending safe harbour. This subsection will define the nature of intellectual property and the reasons why

some of the rights are fundamental in YouTube's business practices, especially in relationship to Article 17.

In music, copyright is divided into two fundamental rights in the Copyright, Designs, and Patents Act 1988 (hereinafter referred to as 'CDPA'): literary works and sound recordings. The literary works are usually attributed to the first owner of the copyright - the author (s. 9(1) *CDPA*). Sound recording rights are owned by the person who made the arrangements to record the song, or generally to the one who paid for the recording studio (s. 9(2) *CDPA*) - in most cases, record labels. Therefore, there might be more than one rights owner in the same song; when using the rights in a musical composition, the owners should be paid in the form of royalties, collected in the United Kingdom by the Performing Rights Society (PRS for Music), the Mechanical-Copyright Protection Society (MCPS) and the Phonographic Performance Limited (PPL) (PRS for Music, 2021). However, after the commercialisation of the internet in the 1990s, safe harbour was put in place. This policy grants companies such as YouTube the right to exploit copyright in creative works without being liable for its infringement (Cooke, 2017). Thus, YouTube cannot be held responsible for the content published on the platform, as the platform itself is user-based: copyright owners can ask the website to take down videos exploiting their rights, but the process is not automatic. Because of safe harbour, YouTube pays lower royalties than the rest of the companies that cannot exploit safe harbour (for example Spotify, Apple Music, and the rest of the streaming services). In fact, according to Ditto Music's (2020) royalty calculator, if Spotify pays artists \$0.44 per 100 streams, YouTube pays out around \$0.07. The music industry's complaints have always been directed at the very use of safe harbouring, a concept that was intended for early internet services providers and hosting companies, rather than user-generated content platforms. This exploitation of the concept brought labels, publishers, and collecting societies to accept low royalty deals that through the years have created a value gap in the market (Cooke, 2018), with a lot of money coming in but only a small percentage going back to rights-owners. At the time Article 13 was being discussed in parliament, influential musicians such as Sir Paul McCartney (quoted in Music Business Worldwide, 2018) spoke about the need of regulating the internet to make it 'fair and sustainable for all'. However, not everybody agreed on the efficacy of the new law: ex-head of Universal Music Group France Pascal Nègre (2018, quoted in Music Business Worldwide, 2018) argued at the time that the Article would impact musicians negatively, as a process of 'systematic censorship' would hinder their

creative process. YouTube CEO Susan Wojcicki (2018) backed up Nègre's position by stating that big hits such as 'Despacito' (Luis Fonsi, Daddy Yankee, 2017) would not exist under Article 13 as some of the rights holders in the song are uncertain. The same would apply to the rest of the musical works which feature unclear authors or rights owners. It is not only legal procedures to lead the opposition: many musicians such as Chance The Rapper are releasing music exclusively on YouTube. The historically independent Chance The Rapper was nominated for Grammys seven times, but still has no record label deal (Mama, 2019). Thus, his partake in the fight against safe harbour is less decisive as it is record labels to suffer the most from YouTube's policies. Pink Floyd also uploaded their entire discography on YouTube (Taylor, 2021). It is unclear whether the band deemed necessary uploading music on YouTube to give fans a way to listen to them for free or, but it certainly is a controversial move in the current landscape of fights for fair pay.

However, the Directive Copyright in the Digital Single Market containing Article 13 (that was then renamed Article 17) was voted by the Members of European Parliament on the 26th of March 2019 (Music Business Worldwide, 2019). In the European Union, rightsholders are now protected from unfair use of copyright on YouTube. On the other hand, as the United Kingdom left Europe in 2020, Article 17 was not implemented in its legislation, issuing a series of complaints by publishers, royalties collecting societies, and other notable industry members (Stassen, 2020). According to IMPALA (2020, quoted in Stassen, 2020), many British members of the Parliament supported the directive, and the United Kingdom had in fact voted in favour of the Article. However, no changes are being brought forward at the moment.

Implications and Possible Solutions

The implementation of Article 17 in the European states sits in a wider panorama of controversial campaigns against digital music providers. Particularly, the lack of support by the United Kingdom could set back the progress made by associations the likes of Ivors' Academy and Musician's Union. The two institutions started a campaign (called #BrokenRecord, #KeepMusicAlive, or #FixStreaming) to change the way streaming royalties are paid to artists (Musician's Union, 2021). The movement has spread to other countries as well: in the United States, for example, the Union of Musicians and Allied Workers (UMAW) launched a campaign called 'Justice at Spotify'

to increase royalty payments and transparency in the platform's practices (Union of Musicians, 2021). The scope of Article 17 is not far from these associations' aims: regulating the rights of musicians in the digital era. At the time the Article was being proposed to the Parliament, the critiques came mainly from internet users worried about the possible censorship that the new directive could have put in place. However, the reform implies the institution of new licensing deals for copyrighted content that both the platforms and the rightsholders have to sign before uploading to the internet (Music Business Worldwide, 2021). The implementation of the Article thus fosters a new digital workplace that can help creators (among which we also find independent, unsigned musicians) earn a living through their art, on the very platform that now hinders their independence. Before streaming as we know it was conceived, Kusek and Leonhard (2005, pp. 2-3) hypothesised a future where music is 'like water', a commodity that can be accessed by anyone, anywhere, and at a fair price. It is interesting to see how the authors suggested record labels to adapt to the new marketplace and monetise P2P file sharing, a reality that was based on music piracy and the necessity to make music more accessible. Kusek and Leonhard (2005, pp. 127-136) compared the music industry to the reality of cable television, which was fought by broadcast and television networks. When cable television started generating workforce and money, it was quickly welcomed to the system, bringing incredible growth to the industry. Similarly, the music industry needs to find new licenses to facilitate YouTube as a global attractor for artists who can sustain their business through content creation. In order to do so, all governments need to comply with the demands of publishers, artists, and music associations.

YouTube is one of the staples of the internet, with more than two billion active users (GMI Blogger, 2021) and positioning itself as the people's go-to streaming platform. Although the implementation of Article 17 might help artists feel more secure about the platform's effort in safeguarding their rights, some users may feel restrained from creating content. If the competent bodies found a solution or a licence to allow creators to use content freely and make YouTube responsible for the use of synch copyright, the platform could expand its reach even further, increasing its revenue streams and supporting musicians as well. In this way, more musicians would try to push their songs onto the platform and into users' videos, while content creators could retain their creativity without fearing repercussions.

Conclusion

YouTube was inserted in a fast-paced virtual environment sixteen years ago, and it not only brought innovation to the market, but it was also able to change with it and learn from customers and competitors. However, the platform remained still in front of the changing modern music market, and refused to comply with the requirements of the new digital era. Musicians and primarily record labels remained a victim of the lack of alternatives, and had to accept unfairly low royalties deals in fear that their content would be exploited without their consent. In 2021, artists are being exploited in any possible way by record labels, streaming platforms, social media, and any medium that was initially meant to help them. YouTube could be the platform to change things around for songwriters and independent artists by raising its royalties payouts and getting licenses to allow its creators to use copyrighted material legally, thus generating and giving back revenue. However, the proposal and implementation of Article 17 ended safe harbour, and YouTube is now liable for its users content in many European countries. The United Kingdom and the rest of the world are still far behind, as the users of the platform fear for their freedom of speech. If the Article was to be implemented naturally, YouTube could still allow its users to publish copyrighted material by paying the licenses itself. In this way, users would feel secure in using the platform, and record labels and musicians would be incentivised to create more content.

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