



Name: Kyarah Boon

Student Number: 1900269

Module Title: Legal & Business Affairs

Lecturer: Ian Penman

Date: 19/01/2019

Table of Contents

Introduction	3
What is Intellectual Property?	3
Content on Youtube	4
Stakeholders	6
Issues Associated with Article 17	7
Conclusion	7
Bibliography	8

Introduction

Over the many years in which the music industry has developed, the many challenges thrown up by the digital revolution is perhaps the explanation for the commercialization of the music and entertainment industry. Never before has there been so much variety of music available to so many people all over the world, and because of this, digital services are gaining traction around the world offering listeners the opportunity to discover new music, engage with their favourite artists and listen to music on the go (Jewell, 2019). With continuous rapid levels of increase in global levels in Internet and mobile phone usage, worldwide access to music is set to expand even further. As a result of this expansion, the development of licensed music markets will allow for the further investments in local musical talent, enable music businesses to develop, and according to WIPO the World Intellectual Property Organization 'it will support the long-term sustainability of the global music industry' (Jewell, WIPO, 2019). In an article written by Catherine Jewell, head of the communication division at WIPO, she discusses the topic of 'Creating Value from Music and the Rights that make it Possible'. According to Jewell, the economic value of music comes from the intellectual property rights that are associated with original work, artist performances, and the distribution of these. Jewell argues that it is these rights that shape the multitude of commercial deals that take place within the music industry on a daily basis.

What is Intellectual Property?

Intellectual property, also known as IP, describes the area of the law that refers to and protects the human creations and inventions. These include artistic and literary works, and help ensure that symbols, images, and names involved with companies or brands used in commerce are protected. The concept of intellectual property is divided into two categories; industrial property and copyright. Industrial Property, according to WIPO, includes the right licensing and patents for inventions, trademarks geographical indications and industrial designs (WIPO, What is Intellectual Property, pg. 2) Copyright covers the human creations of literary works, films, artistic works such as photographs, drawings, and paintings, and what this case study will mainly focus on, the creation of music. Rights related to copyright are highly crucial in protecting performing artists, singers, producers and broadcasters in radio and television programs (WIPO, What is Intellectual Property, pg. 2). With limited resources and increase pressure from stakeholders, companies are in need of a high return rate on their intellectual property investments and require appropriate protection for this. For an organization to not take action could result in serious threats against the success of the company.

Within the existing bundle of intellectual property rights there are four distinct types that are of greatest relevance to musicians. These four categories are divided as Copyrights, Trademarks, Patents, and Trade Secrets (Marsh & McLennan, 2019). In order to fully grasp the extent to which these intellectual property rights influence music creators and users, we need to understand these

four categories. According to Marsh & McLennan, who published an article on the topic of 'The Importance of Intellectual Property Valuation and Protection', copyright is a form of protection that is granted to authors of original works of authorship both published and unpublished. Copyright, perhaps the most beneficial type of intellectual property for artists to understand, as it creates the conditions for creators to earn a living by gaining financial return on the work where they are recognized as the author. Copyright law covers protection in the reproduction of a work through the distribution of CDs, online, or in films. This type of intellectual property also ensures that a royalty is payable to the author when their work is performed or played in public, and making their work available to the public through broadcasting and radio for example.

A trademark, according to the U.S Patent and Trademark Office (PTO), is "any word, name, symbol, or device, or any combination, used or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others." (Jacobsen & Wertheimer, 2010, pg. 210) Compared to the other categories included within the intellectual property rights, patents are of most value, cost, and difficulty to obtain. Again, as defined by the PTO, a patent is "the grant of a property right to the inventor" this provides the owner with the rights to exclude other from selling, using, making, or importing the invention. Patentable items mostly include object or possesses and excludes more abstract items such as the idea of the invention. Lastly, the fourth type of intellectual property of trade secret, is defined by March & McLennan as "business related information that a company or individual uses or to which they possess exclusive rights." A trade secret is a unique form of intellectual property, as it does not have a defined time scope. However, once deemed as a trade secret it will provide the owner with an economic advantage thus creating value for it (Marsh & McLennan, 2019). Trade secrets in the context to music creators would be the customer lists or its fan base. These also include the prices, which they charge for performances and their supplier list (Pearson, 2019). Seeing as an artist's entire revenue stream comes from they're tickets, albums, merchandising and digital downloading, which is based on intellectual property, having the ability to commercialize and enforce these rights is highly important.

Content on Youtube

Youtube is transforming music. With access to streaming services we now have the ability to listen to music anytime, anywhere, and as often as we desire. However, for today's consumer, just listening to music is simply not enough. People's passion for music is now fuelled by visuals, and this is coming to life on arguably the most popular content sharing platform in the world known as Youtube. Youtube, the video-sharing platform primarily based in California United States, has drastically changed and revolutionized how we listen and discover new music. Founded in 2005 by Chad Hurley, Steve Chen, and Jawed Karim, and discovering what a major success Youtube is, Google bought the site in November of 2006 for \$1.65 billion (NBS News, 2006). Youtube is

now operated as one of Google's subsidiaries. There is certainly a lot to be said about Youtube and the overall level of success it has reached. It truly is an invention of the 21st century with over a billion users all over the world. Youtube has allowed for the public to connect with their favorite artists on a deeper level, such as through the access to concert footage. But in a world where any individual has the ability to create and share videos online, the music and entertainment industry is facing new types of music content creation and therefore modifications to the laws that protect artists had to occur (Anderson, 2018).

Youtube has the largest audience compared to any other streaming services, which presents huge opportunities to the creative community. This, however, has raised many concerns within the music industry as it has been argued that companies like Youtube have abused the concept of 'safe harbor' in order to get better rates from labels and publishers in comparison to their rivals like Apple Music and Spotify (Music Business Worldwide, 2018). Due to this, Youtube has been accused of copyright infringement, which is therefore a violation to the intellectual property laws enforced in protecting these content creators who are using Youtube as a platform. Based on this, on April 15, 2019, the European Council composed of government ministers from each of the 28 EU member states, voted to adopt the 'Directive on Copyright in the Digital Single Market' into EU law as passed by the European Parliament (Reynolds, 2019). This law known as Article 17, formerly known as Article 13, is part of the Copyright Directive that passed in the European Union with the intent 'to better protect creativity and find effective ways for copyright holders to protect their content online' as written in a statement by Google (Google Support, 2019). Article 17 applies only to Online Content Sharing-Service Providers (OCSSPs) and in a book written by Marius Schneider called 'Intellectual Property Rights, the New Currency', an OCSSP is 'a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organizes and promotes for profit-making purposes' (Schneider, 2019).

In an article written by Chris Cooke, published by Complete Music Update, Article 17 seeks to reform the safe harbour that states that online platforms and companies cannot be held accountable for the copyright infringements of their users (Cooke, 2018). This would increase the liabilities of user-upload sites, and according to Warner Music Group CEO Stephen Cooper, this could have a material effect on closing the 'Value Gap'. The value gap is the difference between the value that these platforms acquire and the value they pay creators, therefore significantly reducing the amount of money composers and performers earn from their creativity. A quote from Cooper stated "This is the only way to conclusively close the gap between the revenue Youtube generates and what songwriters, artists, publishers, and labels make in return" (Music Business Worldwide, 2018). This value gap is considerably one of the largest issues that artists are facing in creating a revenue mechanism with their creations, UK Music CEO Michael Dugher said, "These EU copyright changes are aimed at ending an injustice that has seen Google's Youtube and other

big tech firms ripping off creators for far too long” calling out Google for “behaving like corporate vultures feeding off creators and investors” (UK Music, 2018).

Many like Dugher, stood behind this new copyright law; even celebrities encouraged the European Parliament to support Article 17. In an article published by Music Business Worldwide, Paul McCartney wrote a letter in order to express his concern in upholding the mandate on Copyright and Article 17. McCartney wrote:

‘The value gap jeopardizes the music ecosystem. Today some User Upload Content platforms refuse to compensate artists and all music creators fairly for their work, while they exploit it for their own profit.’ – Paul McCartney

This statement demonstrates how platforms like Youtube are the cause for the value gap that is within the music industry and how the proposed Copyright Directive and Article 17 would address this problem and ‘assure a sustainable future for the music ecosystem and its creators, fans, and digital music services alike’ (Music Business Worldwide, 2018).

Stakeholders

Article 17 of the Copyright in the Digital Single Market Directive does not only concern those who create content, but also requires the European Commission to ‘organize stakeholder dialogues to discuss best practices for cooperation between online content sharing service providers and right holders’ (European Commission, 2019). This dialogue will consist of a series of meetings, with the objective to hear stakeholders’ views and have a discussion on possible practical solutions for the application of Article 17 (European Commission, 2019). These meetings will include discussions regarding online content-sharing service providers and what actions need to be taken against unauthorized content where all relevant parties and safeguards for users will be taken into account. The outcome of this dialogue, according to the European Commission, will ‘feed into the preparation of the Commission’s guidance on the application of Article 17, referred to in the directive (European Commission, 2019). This strategy should so provide the Commission with input on creating appropriate guidelines which ‘balance fundamental rights and the use of exceptions and limitation’ as the concept of upload filtering has been introduced and is now an obligation as Article 17 has been passed.

Issues Associated with Article 17

Now that article 17 has passed, member states have until June 12, 2021 to implement the new Directive into their national laws (Richardson & Cornell, 2019). Even though this article will be extremely beneficial for individuals who use Youtube as a platform to distribute their creations, various concerns have been raised. Mainly, how certain 'vague' terminology used in the Directive will be interpreted which was recently expressed in a joint statement from the Netherlands, Poland, Finland, Luxembourg and Finland (Richardson & Cornell, 2019). Germany has also raised serious apprehension regarding the use of algorithms in identifying filters that will be implemented, stating that the effective endorsements of upload filters is a violation against the coalition agreement and that this copyright directive is "a grave threat to freedom of expression" (Global Network Initiative, 2018). Another issue that has been raised is the UK forecast in leaving the EU before the implementation deadline. If this were to happen, it would appear that there is no obligation for this directive to be introduced into the UK law. Due to this, it is unclear whether the UK will decide to bring this national law in line with the directive (Richardson & Cornell, 2019).

Conclusion

Article 17 has a main purpose of achieving justice to all interests at stake, which based on the thorough research and information provided above has managed to achieve this. The flexible criterion within Article 17 is what allows for individual solutions, ensuring that no protected legal positions are 'disproportionately restricted' (Schneider, 2019). However, as mentioned above, this has led to a certain type of tension within the system regarding the article that will need to be assessed in practice.

To conclude this case study, it is evident that Article 17 of the Directive on Copyright in the Digital Single Market is going to greatly benefit content creators who use Youtube as a platform to publish their work. With this article being implemented in 2021, the music and entertainment industry is getting closer to its goal of closing the 'value gap' that is the value that these platforms acquire and the value which they pay creators. Article 7 contains a number of strong incentives, which have the ability to further develop filtering technologies.

Bibliography

Anderson, Matt. "Why Music Content on YouTube Is about More than Music Videos - Think with Google." *Google*, Google, June 2018.

Camilla. "Updates on Article 17 (Formerly Article 13) - YouTube Help." *Google - Youtube Employee*, Google, 2019.

Cooke, Chris. "Campaigners Say Free-Speech Loving YouTube Should Pass on the Music Industry's Article Thirteen Arguments Too." *Campaigners Say Free-Speech Loving YouTube Should Pass on the Music Industry's Article Thirteen Arguments Too | Complete Music Update*, 18 Mar. 2019.

Cooke, Chris. "YouTube Does Yet More Article Thirteen Dissing." *YouTube Does Yet More Article Thirteen Dissing | Complete Music Update*, 2019.

Crellin, Jo. "What Does EU Article 17 (13) Mean for Content Marketing?" *Econsultancy*, 6 July 2019.

Ingham, Tim. "Warner and YouTube Sign New Deal... 'under Very Difficult Circumstances'." *Music Business Worldwide*, 5 May 2017.

Jacobsen, Thomas M., and Albert I. Wertheimer. "Modern Pharmaceutical Industry: A Primer." *Google Books*, Google, 2010.

Jewell, Catherine. "Creating Value from Music – the Rights That Make It Possible." *Creating Value from Music – the Rights That Make It Possible*, 2020.

Keller, Paul. "Article 17 Stakeholder Dialogue (Day 1): Same Old, Same Old." *International Communia Association*, 2 Jan. 2020.

Marsh, and McLennon. "The Importance of Intellectual Property Valuation and Protection." *The Importance of Intellectual Property Valuation and Protection*, 2019.

Music Business Worldwide. "Sir Paul McCartney Tells European Parliament: Vote through Article 13 to Ensure a 'Sustainable Future for Music'." *Music Business Worldwide*, 4 July 2018.

NBC News. "Google Buys YouTube for \$1.65 Billion." *NBCNews.com*, NBCUniversal News Group, 10 Oct. 2006.

Pearson, Lara. "Is My Music Intellectual Property?" *Brand Geek*, 15 Oct. 2019, www.brandgeek.net/is-my-music-intellectual-property/.

Pehako, Alexandra. "How Youtube Has Changed the Music Industry." *Music For A Better World*, 3 Jan. 2016.

"Proposed German Legislation Threatens Free Expression Around the World." *Global Network Initiative*, 13 Jan. 2019.

Reynolds, Matt. "What Is Article 13? The EU's Divisive New Copyright Plan Explained." *WIRED*, WIRED UK, 24 May 2019.

Richardson, Fionnuala P., and Clare A. Cornell. "Latest Update: Publication of the New EU Copyright Directive and Discussion on Implementation: European IP Blog." *Finnegan*, 28 May 2019.

"Stakeholder Dialogue on Article 17 of Copyright Directive." *European IP Helpdesk*, 2020.

Stassen, Murray. "Article 13 Gets Final Approval from EU Council." *Music Business Worldwide*, 15 Apr. 2019.

Stassen, Murray. "Copyright Directive Talks Conclude - Music Business Responds Ahead of Reviewing Final Article 13 Text." *Music Business Worldwide*, 15 Feb. 2019.

"UK Music Chief Slams Google as 'Corporate Vultures' as Figures Show Google's €31m EU Lobbying Bid." *UK Music Chief Slams Google as "Corporate Vultures"*

as Figures Show Google's €31m EU Lobbying Bid - UK Music, 2019, UK Music Group.

“Understand YouTube Rights Management - YouTube Help.” *Google*, Google, 2020.

WIPO. “What Is Intellectual Property?” *WIPO World Intellectual Property Organization* , 2019.