

Cover sheet

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Signed:

YouTube vs Article 13 (Case Study)

Legal & Business Affairs – BMTY7002

MA Music Industry Entrepreneurship

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1.0 Abstract

This paper explores the current dispute between YouTube and the new copyright directive pertaining to Article 13. The paper reflects on some of the complexities that Article 13 will have on music creators and the industry.

2.0 Chapter 1: YouTube

2.1

What is YouTube?

YouTube is a platform that regulates content and drives a culture. A wide-ranging group of people, from large production, sports, film, news, music and advertising companies, to smaller, independent, amateur, unprofessional creators upload a variety of content that the world can engage with. YouTube is a cheaper way to distribute and an alternative platform to “mainstream broadcast systems” like TV (Burgess and Green, 2018). YouTube drives a sharing and partaking culture and this culture is the foundation of its business. The platform provides a sense of community, openness, directness, freedom and exposure.

YouTube has many great benefits, especially for music creators. Music creators can make content professionally, independently or even amateurly and release it through their own personal YouTube Channel. By this they can build a following of supporters and hopefully make money through the platform. If not, it is still a platform that can be used to help build a fanbase and gain great exposure. Videos from YouTube can be shared to other social media platforms such as Facebook and Twitter for maximum exposure of their creative work. YouTube users can subscribe to other channels, upload, view, share and comment on videos.

2.2

History

YouTube was launched in November 2005, just over 13 years ago (Kosoff, 2015) and ever since has developed to be bigger and better. It went from being a site that was dedicated to amateur videos, to a site that distributes professional and unique content. Many major companies saw the promotional potential in YouTube and used the platform for business gain. Nike being a well-known example released one of their adverts on the platform and got over one million views; this was within the first year of YouTube launching as a start-up company. YouTube was also the platform that gave pop artist Justin Bieber’s career leverage and many other artists are using YouTube to jumpstart their careers and promote their work.

In 2006, Google saw great potential in YouTube and bought the company from the three founders for \$1.65 billion (News, 2006) and since then has become one of the greatest search engines in the world. In 2013, YouTube was reported to be “the world’s most popular online video site, with users watching 4 billion hours’ worth of video each month and uploading 72 hours’ worth of video every minute.” (Dickey, 2013). These are huge numbers; However, YouTube has grown to be an even greater platform since then. According to Statista, YouTube is the most downloaded music and audio app in Google Play, with over 15 million downloads in November 2018 alone – which is roughly 3 million more than Spotify – another major music platform (Statista, 2018). However, although both Spotify and YouTube are music and audio apps, the popularity with YouTube could be bent on the fact that it offers a wider variety of content – not just musical, which makes the comparison unequal and unfair.

Nevertheless, statistics reveal that 96% of 18-24 year olds and more than 50% of 75+ year olds in the US use YouTube (Statista, 2018). This Shows that the relevance of YouTube across the age spectrum is strong and that YouTube is not ageist or partial to specific users based on age – which makes it an inclusive platform with a wider demographic market.

YouTube now has 1.8 billion registered users and 5 billion videos to watch (Dogtiev, 2019) and that is with millions of indecent videos being flagged and taken down daily (McCarthy, 2018). It is needless to say that YouTube is a powerful platform that holds great influence and of course is a platform that many creatives can utilise for their own personal gain. With YouTube you have the potential to showcase your talent and get an audience of millions for free.

2.3 Commercial Use

YouTube permits their platform to be used for uploading original content and upkeeping original channels that are used to “promote a business or artistic enterprise” but they prohibit users from copying, reproducing, distributing, broadcasting or selling unoriginal content without consent from them or the copyright owners (YouTube, 2018). So as long as the content is original, and as long as they own the copyright, music creators have the liberty to upload content for commercial uses and monetary gain.

3.0 Chapter 2: Article 13

3.1 What is Article 13?

The United Kingdom has had laws in place to protect intellectual property since the Copyright, Designs and Patent act was introduced in 1998 (Copyright Service, 2000). However, this act was introduced before the empowerment of the internet and for some time current creative intellectual property has not had effective protection, which has caused many people to criticise the point of the act. It has been argued that for many music creators, the current 20-year-old copyright law is superseded and does not clearly protect work from newer creatives (Chang, 2018), such as App developers. The need to adapt the law to the new current digital age was considered essential (Khan, 2018) and the EU Copyright Directives purposed to correct this problem and create a fairer way for creators to be compensated for their work. (Digital Single Market, 2018).

A new copyright directive was proposed which contains Article 13 – a very debated aspect to the directive. The directive was passed by all state members of the EU in September 2018 and the new laws will soon be introduced to all affected parties, in order to will fulfil the aims of the directive (Bedford, Sims and McMullan, 2018).

Article 13 demands that “online content sharing service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users” be obligated to collaborate with rightsholders and take measures to ensure that users on their platforms have the permission to use their work through systems put in place by that service provider (Eur-lex, 2016 and European Parliament, 2019). This means that platforms such as YouTube are obligated to remove infringing content from their platforms and must show that there are systems in place that will protect copyrighted work. Platforms like YouTube will now become legally liable for the copyrighted content uploaded and shared on their platform and not complying to this would cause them a fine. This is a

huge problem for platforms like YouTube because a major part of their business model is based on user-generated content and with this new law they would have to block and remove a large number of this content.

In December 2018, the directive was in the “Trilogue” phase” and the European national governments and the EU were discussing the final negotiations for the plan in private. (Doctorow, 2018).

3.2

Effects on YouTube and the Music Industry

Article 13 in its totality may cause many changes to the internet and the music industry as we know it. Here are some of the main changes that are steaming such controversial debates, particularly around YouTube:

Currently institutions like YouTube make tonnes of money by providing a platform that gives access to creative work made by others. However, it been argued that those who originally make the creative content are not being compensated fairly. Article 13 benefits artists, musicians and publishers because it favours fair use of creative work and could grant them compensation for whenever their work is used and shared on websites (Schranz, 2018).

YouTube may have to pay rightsholder for creative work which they have made available to the public and will have to make appropriate changes to their model that will stop content that infringes copyright from being uploaded onto their website (Vincent and Brandom, 2018). All in all, this means that creatives will have more power over their intellectual property and potentially an increased revenue. However, it leaves YouTube in turmoil because they will be forced to rethink their whole business model that relies on user- generated content where people have creative freedom and expression to share.

Article 13 may also prevent people from altering copyrighted creative work and sharing it unless consent has been given. This means that remixing a song, creating covers, using a picture from a person’s music video and creating a meme may be deemed as a breach of copyright and YouTube may have to ban such content from being uploaded (Bedford, Sims and McMullan, 2018). This could in effect change a whole culture. Remixing, covering and spoofing songs for comical parody is music culture and many aspiring artists use these as tools for recognition. Besides upcoming artists, many well established artists engage in this culture too.

YouTube is against this new law and believe that it could negatively affect subscribers, incomes, and the creative freedom of content creators. Usually in copyright infringement cases, content will be taken down after a rightsholder has made a request but with the new legal framework, YouTube will be forced to take personal responsibility for copyright protection and will have to use filtering systems to block copyrighted content and YouTube have been incredibly vocal about their opposition (Reynolds, 2018).

YouTube has been promoting their page titled “#saveyourinternet” where you can watch a video from YouTube, projecting their objections to the directive. In the video Matt Koval, from YouTube urges people to recognise that Article 13 “threatens hundreds of thousands of creators, artists and others employed in the creative economy.” (YouTube Creators [Creators Academy], 2018). Susan Wojcicki, CEO of YouTube insists that whilst they “support the goals of article 13, the European Parliament’s current proposal will create unintended consequences that will have a profound impact on the livelihoods of hundreds of thousands of people.” (Wojcicki, S, 2018).

The new directive has attracted split opinions across the sector. Some are strongly for it, whilst others are against it. Amongst the group that oppose the legislation are websites and internet presences who

believe “the laws will mark the end of “meme” culture and user-generated content.” And Wyclef, a famous R&B musician agrees to this by saying that Article 13 “will hurt rather than protect artists” (Bedford, Sims and McMullan, 2018). However, other influential figures in music, including Paul McCartney have sided with the directive, saying that it will ensure a more “sustainable future for the music ecosystem and its creators, fans and digital music services alike” (MBW, 2018).

3.3

The Future

The future is still unclear. There has been a petition from those who oppose the new law that has over four million signatures attached to it. Among these four million are other great influential figures, such as internet pioneer Vint Cerf and Tim Berners-Lee who created the Web (Doctorow, 2018). The European Union has attracted great opposition

The future of creative content sharing seems uncertain at the moment. There is not enough research or evidence to know what the outcome of Article 13 will be or how it will affect the industry. However, contingent on what has been discovered through the above research, it is predicted that a shift to more original content being shared is proceeding. There are many music creators flooding social media with the hopes of gaining recognition and building a following. Now, with Article 13, it pushes music creators to be new and original and forces people to pay more attention to originality. However, those who rely on the culture of altering and remixing creative work may struggle.

The future of general users will be affected also when Article 13 comes into effect, as general users may lose interest in content being shared with the new limitations and favourite videos may have to be taken down. For those who own blogs, there may not be an automatic filtering system in place and extra care about what is being uploaded must be exercised, otherwise fines for copyright breaches will be imposed and this could be months in prison or a fine of up to £5000 (Jones, 2018). This shows that being original now will be incredibly important.

One suggested solution to avoid becoming legally liable for breaking copyright laws is to block EU user-generated content from being uploaded to websites. However, this is incredibly unfair and in fact stifles creativity rather than protecting it, which is the absolute opposite agenda for this new copyright law.

Although many are challenging the directive and believe that it is harmful to the creative industry as a whole, Axel Voss a member of the European Parliament said, “I am convinced that once the dust has settled, the internet will be as free as it is today, creators and journalists will be earning a fairer share of the revenues generated by their works, and we will be wondering what all the fuss was about.” (Schranz, 2018). Maybe there is some light at the end of the tunnel and the world just needs to go through it, to see it.

4.0

Chapter 3: Conclusion

One of the main concerns reached after conducting research on this matter was what this all meant for upcoming artists who share covers and remixes to boost their careers. Copyright is important, but creative freedom and speech is also important.

Although musicians may not be receiving revenue from their copyrighted content that has been distributed on YouTube, many of the users sharing content are not making money from it either. What about those users who just enjoy being creative? or who just want to show their gift and build a brand,

a platform, a following? Or who just enjoy a good song and want to add a creative idea to it or pay tribute to it? It is agreed that users should not use copyrighted work for profitable gain and yes that must be addressed, but however, not every user is infringing intellectual property this way.

It has not yet been affirmed how YouTube is going to identify and remove infringed content, but it is obvious that computer systems are unable to judge human/music culture – which would be content such as memes and parodies. This means that content that is not in breach of copyright may still be flagged as unlawful and blocked from being uploaded, which then causes fear that there will be many hiccups before things get smooth again.

However, it is concluded that despite the reservations made in this conclusion pertaining to the new copyright law and its effects on YouTube, failure to pay artists and music creators fairly for their work has consequences. The industry could possibly face hardships by not focusing on ways to fix this problem and if music creators are unable to earn a deserving living from their work, then the industry is prone to lose creatives. The only way this can be resolved is for copyright legislations to be effectively amended, however it is recommended that a legislation that favours all parties of the music industry be proposed and not one that favours some and not others. Creatives are still being born and they need a chance to thrive too. YouTube can refer to many creatives whose careers have benefitted from their platform and it is worrying to think that they will no longer have this effect on growing artists and musicians.

5.0

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