# The Commercialisation of Music and Entertainment on YouTube

**Legal and Business Affairs**

**Case Study**

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## Introduction

This case study will research and analyse YouTube, identifying challenges resulting from their commercialisation of music and review solutions to these problems, using data, information and different opinions to inform the perspective on this topic. It will explore the relationship between the Music Industry and YouTube, YouTube's history with copyrighted materials and the fair royalty's payment for musicians. This new E.U. copyright directive includes article 13/17 and how this will affect the current situation. Looking at what YouTube think and how the overall music industry feels about YouTube and the way they operate, It will look at the Pro and Cons of YouTube for artists and discussing how they think about the service.

## YouTube's History with Copyright material and Article 13/17

This section will investigate YouTube's past with copyrighted material and the impact of article 13/17. To begin with, YouTube has a long, challenging history involving copyrighted material with YouTube exploiting "safe harbour" laws and receiving no consequence if music is uploaded with no license. YouTube only must remove the upload on the request of the rightsholder, but in the last two years, sweeping new laws implemented by the E.U (Inghams) could dramatically change the landscape even further. YouTube has fought for years with the music industry and other creative industries about YouTubes role in copyrighted material being uploaded to their platform. The most recent and most significant legal events were when the E.U. passed Article 13, which has now become article 17. These articles would make YouTube filter through all the materials being uploaded and then remove all materials that are copyrighted. This process is usually carried out on the request of a rightsholder in the current system. Now under the new copyright laws, YouTube

would be responsible; it also means that YouTube would be liable (Reynolds). The new law is a significant worry for YouTube who has for the most part been able to avoid bearing any blame or consequences for these copyright infringements, while many musicians have suffered. The simple reasoning behind these laws is to protect the rightsholders, which are not getting paid for the copyrighted materials because the uploads are unofficial and are breaching the copyright laws.

During the E.U.'s debates on the new copyright law, YouTube launched a "carpet bombing propaganda" (Geoff Taylor) which was heavily criticised by BPI chief executive Geoff Taylor. He said, "However, this is difficult to square with its ongoing carpet-bombing propaganda against that provision, which feels like a challenge to the legitimacy of the democratic process".

This event happened after YouTube had agreed that article 13/17 was a good thing for artists and music business overall.

However, here in the U.K., recent news suggests that after Brexit, we may not be keeping on the E.U. law, which for the YouTube and the other big tech companies will be a big win. Here is what Prime Minister Boris Johnson was quoted saying in March, claiming that it was "terrible for the internet" (BBC News). From the same article, the boss of YouTube Susan Wojcicki warned the E.U. that nations who implemented the law could be cut off from using the service. This statement may cause many some serious concern, especially YouTubers who make their livings by uploading content to the site and have spent years building fan bases. There was much support for the new law though in 2018 many organisations including the 84 European music and media organisations, including Universal Music Group and Warner Music Group. Two of the three major labels had publicly come out in support

for the E.U.'s new copyright directive (Reynolds); this shows the support that the music industry has for new laws directed at combating infringement issues. This law would have helped the issues currently facing creatives on YouTube and that it is a shame that the U.K. will not be following the E.U. after Brexit and implementing the copyright directive. A similar law to the one that the E.U. has passed could be drawn up here in the U.K. that would help increase protection for musicians and other creatives alike.

**What does the Music Industry think about YouTube?**

The music industry has a complicated relationship with YouTube over the last decade. The music industry has long challenged YouTube over its stance on copyrighted material. However, the main problem has been the payment of royalties of which many senior figures within the music industry consider the amount of revenue that YouTube generate a large amount from music compared to the amount that they pay-out in comparison to the other digital providers. The music industry has found YouTube exploitation of "safe harbour" laws to be unfair that they are not liable for any of the illegally uploaded music. The industry wants this to change and have begun to fight back most recently in the E.U. with article 13/17.

A Guardian article in 2017 reports; "The biggest problem facing music creators is that the most significant source of online music, video streaming services, pay them insignificant royalties," said Gadi Oron, chief executive of Cisac, the international confederation of societies of authors and composers. "This is a huge global flaw in the music landscape: it is unfair, and it is alarming. That is why the E.U. reforms currently under discussion are so important." (Oron, 2017)

In 2017 the then boss of the RIAA ( Recording Institute of America) said: “It makes no sense that it takes a thousand on-demand streams of a song for creators to earn $1 on YouTube, while services like Apple and Spotify pay creators $7 or more for those same streams.”

He continues by saying that YouTube exploits legal loopholes to avoid paying those within the music industry fairly. In 2016 a survey conducted by Statista stated that 38.4% of those in the U.K. who answer had listened or watched music videos daily. This percentage is likely to have dramatically increased, whilst no data could be found if compared to the size of YouTube in 2020 and the increase in the use of streaming services. Many other significant institutions and organisations have come together called ValuetheMusic.com to support change in the way that YouTube operates around music. The organisations involved are A2IM, AFM, AMA, CMPA, CMTA, GMR, Living Legends Foundation, MMF-US, NMPA, NSAI, Recording Academy, R&B Foundation, RIAA, SAG-AFTRA, SESAC, SoundExchange.

Geoff Taylor said, “The money YouTube is spending to preserve special protections for its business would be much better spent rewarding the great music that drives users to its platform.”

Overall, the music industry does not agree with YouTube methods and is seeking to resolve YouTube's exploitation of legal loopholes and unfair royalty payments. The U.K. government needs to support the music industry with new and updated copyright right laws that need to be implemented soon to help tackle these growing issues.

**What Does YouTube Think?**

Whilst the Music industry has been on the attack, what has YouTube been doing and think about the situation. YouTube has spent most of the last five years on the defence on how they approach copyrighted materials and pay out their royalties. So, what is YouTubes answer? YouTube has taken a strong stance against both statements against their operations. Google, who owns YouTube, used all possible way to try and swing the vote in favour of YouTube using their web browser to push propaganda as mentioned earlier. YouTube strongly disagrees with the music industry accusing them of using "safe harbour" laws and underpaying artists in contrast with the amount YouTube generate in revenue.

Furthermore, according to MIDiA's research, the impact of Safe Harbor laws is minimal, with just 2% of music video views coming from unofficial user uploads. YouTube also claim that their platform helps the growth of the music industry; this is something I will discuss in more depth in the next section. The stats are in favour of YouTube in recent years, even if the big labels disagree. YouTube is now doing its part to help grow the music industry, but we need new innovative companies to take advantages of what YouTube as a platform is offering.

In 2017 the global head of YouTube Lyon Cohen said "At over $3 per thousand streams in the U.S., YouTube is paying out more than other ad-supported services. Why doesn't anyone know that? Because YouTube is global, and the numbers get diluted by lower contributions in developing markets."

This quote relates to Spotify and the music industry at a whole. Spotify who also run an ad-supported platform pay less but they also have a big subscription-based service which YouTube version YouTube Music has yet to make a real dent into the

market share of the other providers. This difficulty may be because most music is freely available on YouTube, and ads can be avoided by using ad blockers.

In November 2018, YouTube released “How Google Fight Piracy” report which they discuss in-depth their role in protecting copyright and paying the music industry.

> Through licensing agreements with our partners in the music industry as well as the tools we offer, like Content ID, creators and rightsholders are compensated when fans visit YouTube to watch music videos. From October 2017 to September 2018, YouTube paid out over $1.8 billion in ad revenue to the music industry. The music industry has earned over $6 billion in total ad revenue from YouTube. (Google, 2018)

They claim that the tool Content ID, which is a copyright management system which can scan uploads to check if they are copyrighted materials. Content ID then allows rightsholders choice of how they want to deal with the situation. They can either claim the money, leave it up and track viewing statistics or take the video down from YouTube altogether. The Content ID system handled over 98% of copyright claims in 2017.

## What do the Artists think?

There are many different views for artists on the pros and cons of YouTube. For all the hate from the music industry that YouTube receives there is a large amount of smaller upcoming unsigned artists that love YouTube and what it can do for their careers and are using it more for promotion than generating revenue. For them, YouTube can help distribute content for low cost and can help get them recognised. Several major artists of today have both used YouTube and other social media to

break through and become megastars, including Justin Bieber and Shawn Mendes. Two of the most prominent artists right now both begun their careers singing covers on YouTube. From an article in The Guardian talking with Hannah Trigwell.

> Although Trigwell knows she cannot survive on YouTube income alone, she believes it provides opportunities for profit to be made. “YouTube is definitely my main focus, but it is primarily a promotional tool,” she says. “The things that come indirectly from YouTube – the touring and selling merchandise online – would be impossible without it.” (Guardian)

So, for the new smaller artist YouTube has the potential to be one of the most excellent promotional tools ever available at virtually no cost. From YouTubes How Google Fight Piracy report discussing how YouTube has helped promote the artist in the U.K.

“In the U.K., grime music has found a home on YouTube, driven by trailblazers like Skepta and Stormzy and fuelled by channels that highlight new rappers.” (YouTube)

What YouTube states is accurate. Many of the new artists in the U.K. have found success from YouTube channels which have uploaded and promoted new artists. For example, GRM Daily or Link Up T.V. Almost the entire U.K. rap scene from the last decade have used and still use YouTube as one of their leading platforms for promotion and release. Even the major artists are still keen to keep YouTube at the forefront on their release cycle, using it to release promotional videos and music videos before release to help build hype which the then, in turn, should increase streams. Several major artists disagree with YouTube and are fighting back, one is Taylor Swift, but she has also fought against Spotify and Apple Music.

The Cons are issues that have already been discussed in length, the unfair payments of artist from YouTube and their commitments to copyrighted materials. However, for most of the smaller artists, it seems that the pro heavily outweighs the cons. For them, YouTube as a promotional tool is here to stay, and in the future, we should expect more new music business and more new artist start to learn to exploit this fantastic P.R. tool to launch their careers just as many of today's megastars have done.

## Conclusion

In conclusion, there is some work that YouTube can do by increasing the royalty payments for the artist but so should all streaming platforms, an issue that needs to be tackled in general. The stats are favourable towards YouTube in their work to fight against piracy and protect rightsholder. With their automated copyright system being 98% successful and MIDiA's research is showing only 2% of music is coming from illegal uses of the copyrighted material. The music industry should make more attempts to utilise the benefits of YouTube and that the upcoming member of the industry will fully embrace the opportunities that the platform offers. Nevertheless, YouTube must continue to improve and combat piracy and lead the way in paying artist fairly for their music. YouTube Music, which is a subscription-based service, might be a solution to generate more money for the artist. The music industry not accepting and working with technology world almost brought the industry to its knees in the mid-2000s, they must learn from that mistake and find a way to utilise and massive platform for the stake of musicians and their business to work towards a better future for our industry.

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