



LBA: Element 1 (Case Study)

COMMERCIALISING MUSIC ON YOUTUBE

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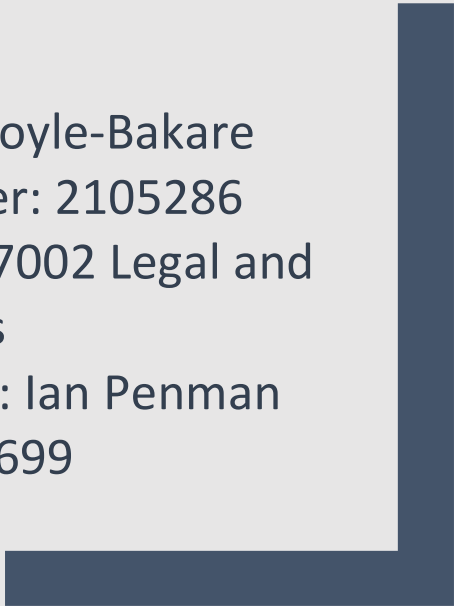


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1. Introduction

This case study intends to analyse business strategies, challenges and revenue mechanisms related to the commercialisation of music on YouTube. YouTube's relationship with the music and entertainment industry is complex, spanning over 15 years of challenges. This study will evaluate the debate surrounding YouTube and the wider music industry's key challenges: copyright infringement and the monetisation of streaming.

The study will start by providing background on YouTube as a user generated content platform. Then, it will outline the company's issues with copyright infringement. From here, it will touch on issues with low artist royalties and the wider monetisation of streaming. The study will outline potential solutions to these challenges, before concluding what it considers to be the best approach to streaming monetisation, and whether the music industry should adopt a new approach to copyright law.

2. Contextualising YouTube

YouTube was founded in 2005 by former PayPal employees Steve Chen, Chad Hurley, and Jawed Karim. It was bought out by Google 18 months later, where it went from an amateur video uploading site to a 2 billion monthly user platform with over 30 million paid subscribers and 500+ hours of content posted every minute (YouTube (2021)).

With a long list of services and falling into a range of different categories, from social media platform to a music streaming service, YouTube operates primarily on user generated content (UGC). UGC platforms allow individuals to build careers from their content. Once ads were first rolled out in 2007 with YouTube's Partner Programme, creators (known as YouTubers) started making a real income on the platform. Google pays out 68% of its AdSense revenue, which results in a YouTube channel receiving \$18 per 1,000 views, with bigger YouTubers also profiting from sponsorship opportunities, merchandise, and product placements (Geysler, 2021).

The company's first paid service was YouTube Red in October 2015, allowing subscribers to watch videos and stream music without advertisements. Three years later, YouTube Red is renamed YouTube Premium which includes and branches off to its music-streaming service YouTube Music (Leskin, 2020). This launches YouTube into the streaming market. As a result, music rightsholders are now paid through a 'twin engine' of ad-generated revenue and paid streaming subscriptions. Its combined subscribers reached 50 million in 2021, exceeding all projections (Lebow, 2021; Stassen, 2021).

There is no denying that YouTube is a massively successful, thriving business that only continues to grow, with the company's ad revenue now surpassing the global revenue of the entire music industry (IFPI, 2021; Alphabet Inc., 2021; Ingham, 2021). However, with this comes many challenges which will be discussed in this study.

3. Copyright infringement and piracy

There are three primary copyrights related to music uploaded on YouTube: master recording, composition, and synchronisation rights. A large portion of the UGC on YouTube infringes on these copyrights.

From early on, YouTube was a hub for copyright infringement in the music and wider entertainment industry, leading to poor relations and disputes. Following initial backlash, Warner Music was the first major label to license content to YouTube, with others such as UMG criticising YouTube heavily for copyright infringement at the time (Leeds, 2006). Since then, all major record labels have licensed music to YouTube, recognising the revenue stream and promotional tools that the site offers.

YouTube has been accused of exploiting safe harbour laws in Europe by claiming that it is a neutral hosting service that can benefit from copyright law exemptions, unlike digital distribution services such as Deezer or Spotify (Ingham, 2015). The CEO of the IFPI Frances Moore argued that these early internet safe harbours “should never be allowed to exempt active digital music services from having to fairly negotiate licences with rights holders” (Ingham, 2015). As a result, labels felt pigeon-holed into a position where they must accept the best terms possible under unfavourable conditions (Aswad, 2017).

However, 2019 saw safe harbour reforms to Article 17 in the EU Copyright Directive, prohibiting content-sharing platforms such as YouTube from displaying unlicensed copyrighted content. This represents an unprecedented shift in liability for copyright infringement toward the platforms (Bateman, 2020). Now, despite being a UGC platform, YouTube can be taken to court for making copyright-infringing content available to the public. This has caused massive debate, with Google leading a campaign against it alongside protests from other UGC platforms like Wikipedia. However, it has been defended by rightsholders and creators who argue that it protects their intellectual property (IP) and ensures accurate compensation.

The UK, due to Brexit, can bypass Article 17 and other European Union regulations. PRS and PPL hope they take this opportunity to “go even further than Europe to make sure more money goes back into the pot for creators” (Sweeney, 2021). YouTube is concerned that stringent

legislation would lead to it having to block music content altogether to avoid breaking the law, consequently lowering revenue to the music industry (Sweeney, 2021).

Piracy remains to be a huge problem for the music industry with 1 in 3 people admitting to using unlicensed or illegal ways to listen to music (IFPI, 2021b). Stream ripping - the illegal practice of creating a downloadable file from content that is available to stream- is now the most prevalent form of online music copyright infringement (IFPI, 2021B). The music industry often calls on YouTube to do more to prevent this, as ripping audio from YouTube videos has been a common method for these sites. In 2019, YouTube tried to block the services, which was successful for a period, but the issue remains that the sites consistently develop to overcome whatever measures are put in place to block them (Cooke, 2019). Thus, it is not as easy as it seems for YouTube to simply ‘stop’ stream-ripping services, though it continues to make it as difficult as possible for the sites to operate.

YouTube has often made similar attempts to combat copyright infringement. Perhaps most noteworthy is its award-winning Content ID system- the uploading and fingerprinting of reference files to YouTube’s CMS scanning and monetisation. The system gives rights owners the option to monetise, block, or simply track videos that contain their content (YouTube Help, 2021; Majewski, 2021).

Whilst this is seen as a great step in the right direction for both copyright protection and monetisation, the service is only available to bigger rights owners and distributors. There is an ongoing case taken by Maria Schneider against YouTube for this reason, arguing that: “YouTube has facilitated and induced this hotbed of copyright infringement through its development and implementation of a copyright enforcement system that protects only the most powerful copyright owners such as major studios and record labels” (Cooke, 2020). Since smaller independent artists and grassroot labels are not added to the Content ID catalogue, they must carry out longwinded copyright claims. YouTube’s rebuttal is that this powerful system can only be trusted with sophisticated rights owners who meet certain criteria (Cooke (2020).

4. Monetisation and artist royalties

Streaming is the backbone of the modern-day music industry, with the streaming share of global revenues at 62.1% (IFPI, 2021a). We can see how people are primarily accessing their music in Figure 2 below (IFPI, 2021b), with 22% of respondents using video streaming channels like YouTube to access music, and subscription audio streaming 1% higher at 23% (IFPI, 2021b).

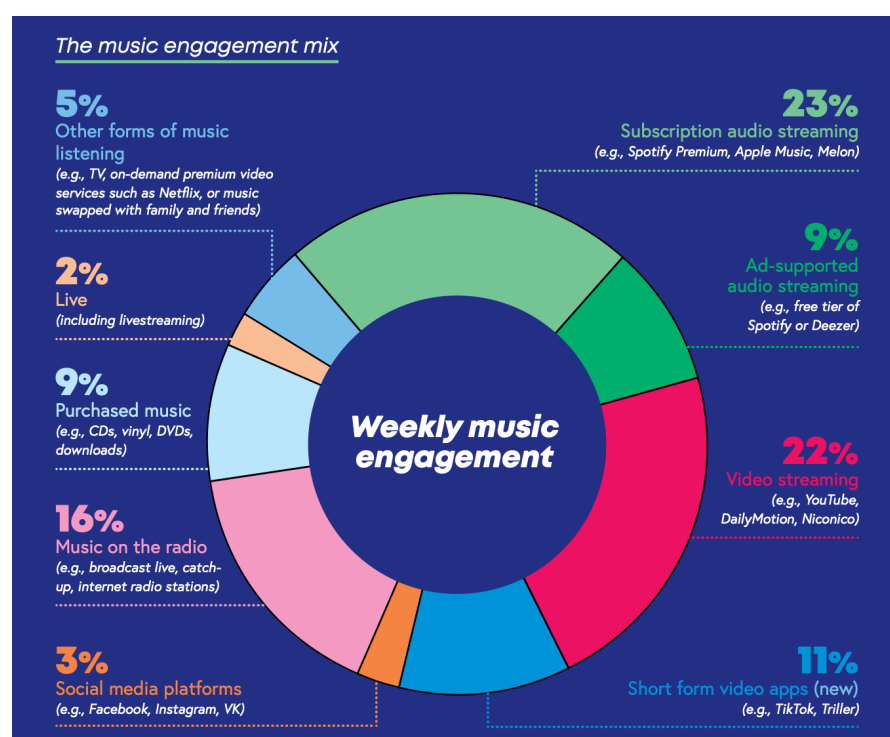


Figure 1: music engagement

Our common understanding of streaming monetisation being based on per-stream payout rates is an inaccurate metric to determine how much an artist is being paid, as most services operate a platform-centric distribution model. Effectively, not all streams are equally valuable, with the payout rate depending on who, where and how much your music is streamed (Pastukhov (2019)). This is complicated further by free and paid tiers, as well as differing prices for subscriptions on a country-by-country basis.

Overall, streaming monetisation as a revenue share based on a consumption share system, has caused a long and tedious ‘digital pie’ debate. The DCMS recently published its findings of an

investigation into streaming to address this. It found that there is a pay disparity between rightsholders, with the current revenue share giving the record label most of the track's revenue, based on an outdated model where labels had more overheads (DCMS, 2021). The report also addresses safe harbour issues, particularly the advantage that platforms like YouTube have by not having to license music before hosting it, creating a value gap (DCMS, 2021). Denis Ladegaillerie (2020), CEO of Believe, says that there has never been a so-called 'value gap' with YouTube, arguing that companies need to simply employ people to utilise the system that YouTube has in place to find and monetise copyright protected content. If anything, "YouTube has actually created sources of revenue that the music industry was not capturing before" (Ladegaillerie, 2020).

The 2019 IFPI Music Listening report showed that 77% of respondents had used YouTube for music in the past month, with respondents spending 3.5 hours listening to music via video streaming each week. YouTube evidently owes a huge portion of its success to music. Yet, it controversially paid miniscule payouts to the industry over the years, which led to the hiring of a highly experienced Global Head of Music, Lyor Cohen, to improve relations with the industry (Rys, 2016). As previously mentioned, YouTube now pays the music industry through a two-engine growth system, which Cohen states: "is fuelling [YouTube's] goal to become the music industry's No.1 driver of revenue... YouTube has paid out \$4bn to the music industry in the past 12 months" (Stassen, 2021).

YouTube, more than any other platform, is in the unique position of cutting across all the different digital revenue streams (Cooke, 2021). The launch of the standalone YouTube Music service, encouraging people to upgrade to pay for the music they're listening to, plus increased ads on the free service, have been key developments in improved relations (Cooke, 2021). YouTube is further encouraging the industry to invest more in its direct-to-fan services, "such as ticketing, merch, memberships, and paid digital goods" (Cohen, 2021). These tools proved their worth during the Covid-19 pandemic, where live shows were no longer an option and artists needed to find ways to connect with their fanbase. They will be ever more important in the growing digital market.

However, ultimately, artists are still not being paid enough, demonstrating a wider issue in the industry.

5. Potential Solutions

The complex issues with streaming monetisation and copyright infringement go beyond what YouTube could possibly tackle single-handedly. Industry-wide systemic change is evidently necessary.

5.1. Tackling copyright infringement

Some valid points have come up in the Article 17 debate, that it could stifle creativity, and even lead to YouTube banning music on the platform to avoid legal difficulties. Current copyright law seems outdated, primarily developed at a time where music sales were physical. Perhaps, then, there is a need for an entirely modernised approach to copyright and IP law itself.

Lawyer and activist Lawrence Lessig has spent many years arguing for more sensible intellectual property law, for all creative works, that is better equipped for the digital age. He discusses how the creativity and digital literacy of today's youth is centred around remixing and editing old content (Lessig, 2007). The response to this use of digital technology, he argues, has lacked common sense. Having auto-takedown systems that denote copyright infringement regardless of context or fair use judgement is futile when fighting against a growing backlash of young creatives that reject the very notion of copyright.

Lessig's stance is not a campaign to justify piracy- taking something wholesale and redistributing it with no creativity- but rather making an allowance for *re*-creativity (Lessig, 2007). The belief is that there is vast economic potential to be made here, once artists and creators embrace the idea and choose that their work be made available more freely (Lessig, 2007). Lessig became a founding board member of Creative Commons, a non-profit organisation to help overcome the legal obstacles to sharing knowledge and creativity. Its licenses and public domain tools aim to provide: "a free, simple, and standardized way to grant copyright permissions for creative and academic works; ensure proper attribution; and allow others to copy, distribute, and make use of those works" (Creative Commons, 2021).

This approach has its own issues. It is unfair to ask the artist to sacrifice their earnings and protection for the sake of creative flourishing. Further, with the sheer amount of content uploaded to sites like YouTube, it would be extremely difficult to determine what is acceptable

and where the line lies of what is permitted. Thus, this may not be as suitable for music as it is for other creative works. Ultimately, an outright abolition of copyright is not an adequate solution, though a re-evaluation of current copyright law may be necessary.

5.2. Alternative models of monetisation

One popular alternative model of monetisation is based on User Centric Payment Systems (UCPS), where a user's money goes directly to the artists that they listen to. This has recently been adopted by Deezer, aiming to make it fairer for artists, more personal for users, to promote diversity and budding artists, and to fight fraud (Deezer, 2021). However, studies show varying results on the success of UCPS, with evidence of a minor redistribution and negligible shifts overall in payouts (Maasø, 2014; Muikku, 2017). This consumerist approach does little to solve the wider issue of a fundamental power imbalance against artists and songwriters, particularly smaller ones, when it comes to streaming monetisation.

Music blogger David Turner (2019) suggests a model that combines UCPS with a focus on smaller artists receiving better royalties. He dubs this the OC Streaming Model, with the basic idea being to introduce a streaming cap that would function like a marginal tax rate. This would mean that, until a certain threshold (say, a cap of 250 million streams), the earnings from one song's streams would be distributed to the songwriters and recording artists involved, with remaining earnings distributed to the artist's respective label and/or publisher (Turner, 2019). The excess would then be distributed to other acts, the majority being smaller ones, that are signed with the label/publisher.

This, of course, comes with its own issues, primarily with the same argument that many have against traditional tax systems- that those who have 'worked hard' to be successful should pocket their own earnings. However, this study argues that it is a system worth looking into and building upon, with a viable real-life model already existing in the taxation system. Further, this would fight in tandem against the common belief that only the top 0.1% in music have the chance to be successful, by providing smaller artists with a decent paycheck to increase their own chances of success.

6. Conclusion

Though contributing heavily over the years to significant issues in the music industry regarding monetisation and copyright infringement, this study believes that YouTube is merely a cog in the machine. The wider music industry has fundamental issues in these two areas and must rapidly adopt systemic change. However, as with many complex debates centring around creativity, there is unlikely to ever be a solution that pleases everyone.

Though there are valid arguments against the likes of Lessig and Creative Commons, there is a valid point to be made in the fact that modern day creativity and the digital age is not going anywhere, and copyright law needs more leniency that recognises this whilst simultaneously protecting artists. This study is yet to find a solution to the issue of copyright infringement on sites like YouTube that adequately accounts for its complexities.

When it comes to streaming monetisation, undoubtedly, artists and songwriters deserve a greater share of the revenue for their creations. YouTube must continue its increasing payouts to the music industry, using its two-engine system and encouraging the industry to avail of its direct-to-fan services. Government intervention such as the DCMS report is welcome in moderating the situation. However, there is clearly a greater issue at play in the wider streaming industry. It is the opinion of this study that an OC Streaming Model be examined in greater detail to determine its suitability.

YouTube is an impressive business and service, that can be used as a brilliant asset for the music and entertainment industry once the above challenges are mitigated.

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