

Critically analyse and review business strategies, challenges and revenue mechanisms related to the commercialisation of music and entertainment content on YouTube
Introduction

Case Study

YouTube

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1. INTRODUCTION

This case study takes a look at YouTube's business model, the copyright challenges it faces and the amount of royalties it pays. Artists receive a small amount of revenue per stream from YouTube. There is a debate as to whether streams should be treated as a sale, broadcast (which would mean creators get paid more of a share) or re-assessed as a new category (House of Commons Digital, Culture, Media and Sport Committee, 2021a). Upcoming EU Copyright Laws and the UK Parliament's enquiry into Streaming Economics will be discussed along with the conflicting views about YouTube within the industry.

2. YOUTUBE BUSINESS MODEL, STRATEGIES & STRUCTURE

YouTube is the world's largest video sharing service, YouTube (Statista, 2021). It is currently the website that sees the most traffic on the internet (Hardwick, 2021) generating \$19.77 billion in global advertising revenues in 2020 (Tankovska, 2021a). It uses an advertisement based business model and the product that YouTube sells is their users uploaded content.

3. COPYRIGHTS

Are YouTube guilty of undue influence over artists? Copyrights are an umbrella of rights that subsist when eligible works are created.

'Copyright arises when an individual or organisation creates a work, and applies to a work if it is regarded as original, and exhibits a degree of labour, skill or judgement.'

(The UK Copyright Service, 2020)

In the UK, The Copyright, Designs and Patents Act 1988 (CDPA, 1988), is the current UK copyright law that protects, sound recordings, compositions and lyrics. Musical works have two copyrights: the phonogram / sound recording © and the underlying work / composition of the song ©. Rights holder have exclusive rights to copy the work, present copies to the public, perform and broadcast the work, for a duration of 70 years from the end of the calendar year in which the author dies (s12(2) CDPA, 1988). Work should not be used

without authorisation from the rights holder. Songwriters are able to exploit the copyrights of their works either by assigning or licensing rights to third parties (Frith & Marshall, 2004). In Britain The Performing Right Society (PRS) is a collection society that negotiates licencing and collects royalties for the performance of registered songs. Mechanical rights (©) can be assigned to the Mechanical Copyright Protection Society (MCPS) who collect royalties and deal with agreements associated with recording music.

Collection societies distribute any royalties collected to copyright owners. Another right concerned with IP is the neighbouring right; this protects the owner of the recorded master of a song and the performers when the track is performed or broadcasted (Francis *et al*, 2020). This right is usually owned by the publisher / producer of the work rather than the creator of the underlying work. This gives the exclusive right of public broadcasting, including on the internet, and to make another recording using any part of the work (Frith & Marshall, 2004). In the UK, these rights can be assigned to Phonographic Performance Limited (PPL).

A primary infringement occurs if someone copies the work and issues it to the public or performs the song without permission from the rights holder and it is a secondary infringement for a third party to authorise, facilitate or arrange a primary infringement. Copying includes '*reproducing the work in any material form, including storing it in any medium by electronic means*' (s17(2) CDPA, 1988). It may be seen that YouTube provides a means and opportunity for users to freely upload and use songs in their videos.

Moral rights apply to © and give the author of a work the right to be identified as the author and the right to object any derogatory treatment of their work (s77 CDPA, 1988). If authors are unaware of their works being uploaded to YouTube, there is no way for them to appeal derogatory treatment of their work, this may cause damage to their branding, moral values and reputation. 'Fair dealing' can be used as a defence to copyright infringement and this includes 'incidental inclusion' of works. Some YouTubers could present this as a case if they had music on in the background which was not the primary focus of the video.

Copyright laws and legislations differ around the world, there are territory based collection societies e.g. MRCS / PRS in the UK, BMI in the USA, GEMA in Germany. This causes complications when it comes to copyright holders getting paid for the use of their works around the world. AMRA is the first global collection society in the field when it comes to performance payments and it could be the answer when it comes to negotiating on behalf of rightsholders with YouTube.

Royalties are generated on YouTube for three aspects; the video, the sound recording and the underlying work. The corresponding rightsholders get paid mechanical / performance royalties for monetised YouTube videos. However, YouTube.com pay royalties out of ad revenue, so where there is a video with no adverts, no royalties are paid (Pernicone, 2021).

4. YOUTUBE PARTNER PROGRAMME

Eligible YouTube uploaders can join YouTube Partner Programme and monetise their channel by earning a revenue share from advertisements shown on their videos (YouTube 2021). Joining criteria includes having more than 1000 channel subscribers (YouTube, 2021). In 2020, YouTube introduced a feature where creators can view the revenue generated via the platform, minus YouTube's cut, in a metric called 'revenue per mile' (RPM) (Alexander, 2020). YouTube CEO Susan Wojcicki hopes that this increase in transparency will allow creators to see how much money the different elements of YouTube are making them; in turn, adjust their revenue strategy (Alexander, 2020). However, there are potentially a large amount of emerging artists that do not meet the partner programme criteria so are excluded from receiving any royalties for their work, this can include music videos with thousands of views.

5. IS YOUTUBE A MUSIC STREAMING PLATFORM?

It is argued that YouTube should be treated as a music streaming service as music appears to be the top category that attracts audiences. During 2018, music-related content filled ten out of the twenty top YouTube searches and nine out of ten of the most watched videos of all time were music videos (Kemp, 2019). Indian Hindi-language music channel T-Series is

currently the most popular YouTube channel by a large margin, with 176 million subscribers (T-Series, 2021), followed by influencer and vlogger PewDiePie with 109 million subscribers (PewDiePie, 2021).

Chief Executive of British Phonographic Industry (BPI) Geoff Taylor gave a witness statement at a The House of Commons Digital, Culture, Media and Sport (DSCM) Committee on February 2021 (House of Commons DSCM Committee, 2021a). During the meeting on the economics of music streaming, Geoff Taylor raises concerns about the low amount that YouTube pays per stream on their platform; giving a figure of 20th of a penny per user-uploaded stream, a fraction of what is paid by Spotify. Spotify currently pay between a third and a half of a penny per stream (Sanchez, 2018).

Geoff Taylor adds:

‘The differential between what YouTube pays and what Spotify and Amazon Music and other services pay is so huge, and that is entirely caused by the fact that their position on the safe harbour is that they don’t necessarily need a licence. When their users upload, they could operate without a licence. That has resulted in a massive underpayment by YouTube to the music industry.’

(House of Commons DSCM Committee meeting, 2021a: 4)

A YouTube representative was unable to give an exact figure when it came to how much YouTube pays per stream but claims that they are on par with other streaming services (Smirke, 2021). Others state that YouTube royalty rates fluctuate per view and are based on a number of factors, including; what advertisements are used on the video, the viewers location and the time of year (Pernicone, 2021). This makes it difficult to forecast revenue.

6. HOW ARE STREAMING ROYALTIES DIVIDED?

Record labels currently receive the majority of revenue from streaming (55%) and artists only see around 13% (House of Commons Digital, Culture, Media and Sport Committee, 2021). During The UK’s parliamentary inquiry into the economics of music streaming, there

is a debate surrounding how streaming revenue should be shared out (House of Commons Digital, Culture, Media and Sport Committee, 2021a). If a stream is treated as a radio broadcast rather than a sale, underlying work rightsholders should be receiving a 50% share.

On the other hand, record labels take the approach that a stream should be viewed as a sale, whereby publishers / songwriters (© holders) get about 15% and labels (@ holders) get around 55% (Dredge, 2021a). Geoff Taylor (BPI) – argues that streams are different to both sales and radio plays and should be treated as such (House of Commons Digital, Culture, Media and Sport Committee, 2021a). Robert Neri, Chair of Music Publishers Association (MPA), stated that MPA fights to increase payments to songwriters (House of Commons Digital, Culture, Media and Sport Committee, 2021a). Neri points out that *‘If we go back to where we were 10 years ago, when streaming first surfaced, we were at 8% to 10%. We have moved up in the right direction’* (House of Commons Digital, Culture, Media and Sport Committee, 2021a:5). Neri hopes that this percentage share for publishers and songwriters will continue to rise. Record labels do a lot of work for musicians in terms of providing financial support, promotion and opportunities, however, without songs there would be no music industry. It is important to continue to work on finding a balanced and fair split of shares. Currently, it may be argued that © holders are not being valued enough and labels are receiving too much money.

7. THE SAFE HARBOUR

Safe Harbour is the current legal protection that YouTube has, meaning that as long as infringing content is taken down by the site when they are notified, they are not liable for any breaches of copyright. Taylor points out that as YouTube doesn’t need a licence, they have leverage over paying creators and record labels, thus acquiring rights cheaply and this is the reason for the pay gap (House of Commons Digital, Culture, Media and Sport Committee, 2021a).

YouTube have a ‘Content ID System’ where in the case that a song is found to be illegally used on a video, the rights holder can claim the video and choose to monetise it, if eligible. There are billions of videos on the platform and therefore impossible for rightsholders to

monitor and check each upload themselves to see if someone is using their work. Without a way for YouTube to gather information and notify right holders about works used, copyright infringement will continue. It is worth noting that the current system has been criticised for its vulnerability towards false claims and abuse (Reynolds, 2019).

In 2014, YouTuber Michelle Phan was sued for \$150,000 (per infringement) by Ultra Records for using approximately 50 of the labels songs in her make-up tutorial videos (Rawlinson, 2014). Later that year, a settlement was made after emailed evidence of permission given to Phan by the artist were revealed. However, Phan did not get an official licence for the use of any works (Gutelle, 2015). The lack of regulation on behalf of YouTube can be seen as a catalyst for incidences like this.

Taylor says that the safe harbour is suppressing competition and blocking the ability for music streaming services to increase their subscription prices. Also, there is nothing stopping re-uploads of pirated material. YouTube project that they will become the music industry's main source of revenue in five years' time. However, Taylor is cynical about this claim and responded by pointing out that *'last year, we received something like £35 million in the UK for all the tens of billions of views of music videos, which are largely on YouTube. That is about half of what we earn from selling vinyl records.'* (House of Commons Digital, Culture, Media and Sport Committee meeting, 2021a: 15).

YouTube CEO Susan Wojcicki stated that YouTube support the Safe Harbour and the content ID system has generated approximately \$5.5 billion to music rightsholders so far (Dredge, 2021). Wojcicki also highlighted the fact that, by January 2021, YouTube have made \$12 billion in pay outs to rightsholders (House of Commons Digital, Culture, Media and Sport Committee, 2021b).

8. THE EU'S COPYRIGHT DIRECTIVE

In June 2019, The European Commission approved The European Union Directive on Copyright in the Digital Single Market (EU Directive, 2019). These new EU Copyright Laws are part of the EU's Digital Single Market strategy that aims to protect copyright holders and

ensure that recognition, payment and protection is received for the use of works in the digital age. EU countries have until 21 June 2021 to implement this new rules. The new legislations include *Article 17: Use of protected content by online content-sharing service providers* (EU Directive, 2019) meaning YouTube will be responsible for uploaded copyrighted content. Filtering and removing copyrighted works from YouTube will become more of a priority as they will become liable for violations. Due to the volume of videos that are uploaded hourly to YouTube – 500 hours of video content per minute (Wojcicki, 2020) - manual checks would be unfeasible. Developing copyright checker software or an upload filter to scan content could be a solution.

Some people predict that these changes will have a negative impact on creators (Reynolds, 2019). As the largest video streaming platform and access to billions of users, YouTube have an opportunity to educate the world on licencing and leading the market by scanning for copyright violations prior to publishing. Final revisions were made to the EU's Copyright Directive on 26th March 2020. YouTube's plan of action is to '*continue to work with the industry & rights holders to find a system where both platforms and rights holders collaborate, including participation in dialogue organized by the EU Commission*' (YouTube, 2020). Although initially supporting this law, since leaving the EU, the UK have announced that it will not be implementing the EU Copyright Directive (Stassen, 2020).

9. WHAT DO ARTISTS THINK?

Despite the issues that user-uploaded content (UUC) sites like YouTube face in terms of piracy, music-related user generated content is said to be a fast-growing revenue stream for the industry (Paine, 2020). However, many independent artists are not generating enough streams to make a living (Dredge, 2021a). In a survey with over 5800 European respondents, Pay Performers found that '*90% of all performers indicate receiving no remuneration or less than €1,000 per year from streaming services... even when streamed over 100k times*' (Pay Performers, 2020). If YouTube addresses the pay gap, there could be a positive economical shift of the music industry and for independent artists.

Sir Paul McCartney is against YouTube's current model, in a letter to parliament he showed his support for Article 13; sharing his belief that it would address the value gap, sustain the future of music economy and help ensure artists get paid fairly for their work (Music Business Worldwide, 2018). The older, more established generation may not see the benefits of exposure through YouTube whereas younger artists are utilising the platform to build up a direct fan base.

In 2019, Google's survey of 12,000 people from around the world found that 90% of the sample discover new brands or products on YouTube (Think with Google, 2019). This shows the opportunity here for independent and emerging artists to showcase their work and increase awareness of their brand through releasing music videos and other content on YouTube. The marketing that YouTube offers can benefit musicians by opening avenues to new contacts in the industry too. It is also a place the artists can build a community and fan-base and get discovered. A few global superstars that were recognised through YouTube include Justin Bieber, Shawn Mendes and Cody Simpson (Grace, 2018).

10. CONCLUSION

How the implementation of the EU Copyright Directive affects YouTube and rightsholders is yet to be seen. At this uncertain time, it is difficult to predict how the UK will approach the piracy and copyright issues. At the time of writing, the UK Parliament enquiry into the economics of music streaming is ongoing. Hopefully, the following year will unveil a solution to some of the issues addressed in this case study and the three following questions:

- What is a fair split for streaming revenue between rightsholders?
- How will YouTube develop to minimise piracy?
- Will YouTube reduce the pay-gap for streaming revenue?

See the **Appendix** for further conclusions drawn from this case study using a SWOT analysis.

11. APPENDIX

YouTube SWOT Analysis - from the Music Industry's point of view.

STRENGTHS	WEAKNESSES
- Provides a global reach for emerging artists - A platform to build a community - Opportunity to be discovered - Can earn revenue through YouTube Partner Programme	- Value-gap of royalties - Only eligible channels can monetise videos (over 1000 subscribers) - Bad reputation within the music industry for not paying artists well enough
OPPORTUNITIES	THREATS
- To work with the industry towards an anti-piracy solution - To develop a relationship with collection societies such as PRS.	- EU Copyright Directive resulting in the requirement of an upload filter

Based on conclusions drawn from this case study

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