

Legal and Business Affairs *BMTY7002*

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Case Study

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

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Introduction

YouTube is a video streaming site that allows anyone with an account to upload videos, free of charge, and comment on videos posted by other users. Videos can be streamed without a YouTube account; in any country that does not practice online censorship (Awa-abuon, 2021). This case study will analyse and review the business strategies and revenue mechanisms of the YouTube business model and discuss its challenges and limitations in relation to music and entertainment content on YouTube.

YouTube Business Model

YouTube has evolved a lot since its initial creation as a dating- site (Dredge, 2016), however, its intentions were always to host “videos that were personally created” (Huley, 2010). The essential “product” that it sells is its “users,” this is what set them apart from other video streaming services at the time, its user-generated content (Dutta, 2022).

It was created by three ex Paypal employees, Chad Hurley, Steve Chen and Jawed Karim in 2005 as a way for people to upload and share videos on the internet (Hrbacek, 2022). In April 2005 Karim uploaded the first private YouTube video, and a month later the site was released in beta mode and gained popularity quickly. It would see an astronomical rise to success within the first year of its launch. In November of the same year Sequoia Capital, a venture firm, invested \$3.5 million into Youtube with a further \$8 million in April 2006 from them and Artis Capital Management. The success that the creators saw in the first year could be

attributed to their “user-friendly” system that did not require the additional download of tools that other applications at the time did (Hrbacek, 2022). Their easy-to-use system and user-generated content could be seen as their unique selling points, and by the time they launched out of beta mode in December 2005, they were getting 8 million views a day (Leskin, 2020).

Today Youtube is the world's third most used search engine, after Google and Google Images, although google representatives have claimed it to be the second most popular (Funk, 2020). Google however do own all three search engines as they acquired Youtube, only a year after the first video was created, in October 2006, for \$1.65 billion (Hrbacek, 2022). It was an enterprising move for Google to purchase a company so new that had not shown its capabilities for generating revenue, despite its 20 million daily users, but this decision is now regarded as one of the “smartest acquisitions” of the 21st century (Iqbal, 2022). Now it is the “world’s leading online video-sharing platform,” (Desreumaux, 2020) and is estimated to be worth \$180 billion as of 2022 (Mann, 2022). It amassed \$28.8 billion in ad revenue in 2021 (Hutchinson, 2022) which is a 46% increase from the previous year (Iqbal, 2022).

User-Generated Content

Perhaps one of the biggest reasons for YouTube’s success is its focus on user-generated content as this allows all demographics to find suitable material that appeals to them.

YouTube appears to be popular amongst all age groups When analysing the statistics shown for internet users in the US, 77% are between 15-35, and there there is only a slight decrease of 3% as age increases (Shepherd 2022). However, more men between the ages of 25 and 35 use YouTube than any other demographic (Ceci, 2022), and more men use YouTube than they do any other platform (Exposure, 2020). This could be due to the success of male-run gaming

channels on the site, like that of Felix Kjellberg, also known as PewDiePie, who began filming himself playing video games in 2010 and now has an estimated net worth of between \$40- \$64 million (Leskin, 2020). This proves that YouTube is a viable career path for those who want to monetize their love of video games. The perceived ease with which YouTube content creators can turn a profit is a large reason why new users join and begin creating videos. The allure of being able to earn money from something other than a “regular job” (Tolcheva, 2022) is appealing to many people, which can be seen from the many videos and articles instructing “how to become a Youtuber” (Geyser, 2022). This allows YouTube to have approximately 500 hours worth of videos posted every minute (Mohsin, 2022), each video offering monetisation opportunities for the creator through advertisements earnings, a percentage of which YouTube take.

YouTube Premium and Music

Youtube has generated the majority of its income through ad revenue however with the introduction of Youtube Premium, formerly Youtube Red, it continues to grow its sources of revenue. Youtube Premium was originally titled “Music Key” and launched in 2014 to enable ad-free music streaming on the platform. Presently, the monthly subscription cost is \$11.99 for users to watch ad-free videos as well as have access to Youtube Music, which is an additional app launched in 2015. They have other pricing options and discounts allowing students to pay \$6.99 and families to pay \$19.99 to include up to 5 users in this plan (YouTube, 2022), which are the same prices that Spotify charge for their premium memberships according to their website (Spotify, 2022). It could be argued that Youtube Premium offers its users more than Spotify Premium does, as it allows the user to watch ad-free videos of any kind on Youtube and lets them lock their phone while playing videos, as

having to keep YouTube open is a common complaint that users find “annoying” (Singh, 2021). However, Spotify’s audio quality is better, capping at 320kbs, while Youtube is capped at 256kbs and only has a library of 70 million songs accessible to them in comparison to Spotify’s 82 million songs (G., 2022). In addition to access to audiobooks and podcasts and new Spotify Originals, Spotify grants users access to video streaming platforms Hulu and Showtime, therefore it would depend on the user's priorities to dictate the best platform to meet their needs.

The effect that YouTube has had on the entertainment industry through the sharing of music videos is prominent. Whilst MTV was an influential instrument in the music video industry during the 80s and 90s, it now is home to reality shows and plays very little music (Suciu, 2019). Now YouTube is an easy way for music fans can consume official music videos. As of 2022 Youtube Premium and Music have over 80 million subscribers, this is a 30 million increase from the year before, so they are continuing to increase their revenue from sources outside of advertisements.

Whilst videos containing music can be uploaded directly to Youtube, Youtube Music offers users the ability to download and stream music outside of the main Youtube app.

In addition to the separate music app, YouTube also launched other content-specific apps and services such as YouTube Kids and Youtube Gaming, Youtube TV and Youtube Movies.

It seems that Youtube is always finding ways to compete with other streaming services, as in 2021 they first launched Youtube Shorts (Beveridge, 2022). Perhaps this was done as a way to encourage users to continue consuming video-based content on their platform, and not turn to TikTok for short videos, as TikTok was ranked the most downloaded app of 2022 (Shepherd, 2022) (IBL News, 2022). This can be seen as a successful business venture as Youtube Shorts have amassed over 5 trillion views and have 1.5 billion monthly watchers (Shepherd, 2020).

Where the musical artist is concerned, music streaming platforms that pay the most per stream are the most beneficial to them. Youtube music pays \$0.008 per stream or \$1 per 125 streams, in comparison to Tidal's \$0.0125 per stream and Spotify's \$0.0043 per stream (Clark, 2022). It should be noted that Youtube Music pays the above figure, but Youtube video creators earn approximately \$0.0006 per stream which does not include sponsorship or advertisement earnings. Spotify could be seen as Youtube Music's biggest competitor as they are the most popular music streaming service in the world boasting 350 million subscribers (Garrett, 2022). However, the video streaming aspect of YouTube is what set them apart from other music streaming platforms, but whilst user-generated content may be their unique selling point, the lack of content moderation presents legal issues where copyright and safety are concerned.

The DMCA

The Digital Millenium Copyright Act (DMCA) is a U.S. copyright law passed in 1998 to prohibit both the piracy of copyrighted digital material and the creation or distribution of tools that enable the piracy of copyrighted digital materials (Zetter, 2016). Although it is only enforceable in The United States, many countries abide by its authority and "accept the standard DMCA Takedown Notice form and process" (DMCA, 2022). This is particularly reassuring to musicians and content creators on Youtube as they know that their intellectual property will be protected from theft.

There is a section of the DMCA that allows for the protection of Internet Service Providers (ISPs) and Online Service Providers (OSPs) when copyrighted material is uploaded by users. This is called Safe Harbour Provisions (Marrs, 2021). This means that an ISP or OSP cannot

be liable for its users violating the DMCA. However, this only applies if the website has a system in place to receive copyright complaints and is able to remove any material reported to be violating the DMCA in a timely manner.

Content ID

In order to comply with the DMCA law YouTube created Content ID, which they spent \$100 million on creating (Soundstripe Team, 2019) so it can be deduced that copyright infringement is very integral to the operations and legality of the site. Content ID is an algorithm that Youtube use to match posted content with content that is registered on their database, any content matched can be taken down, left alone or demonetised at the discretion of the owner of the original material.

It not only allows the original creator to earn royalties whenever their content is used in other videos, but it also stops the music from being used without your permission and for video creators to earn money from your music. However, it can be argued that the scenario of a Youtube video creator using music in their video that will cause them to be demonetised and give their revenue to the original creator is very unlikely (Freccero Production Studio, 2021). When artists release and distribute their music via a service like Distrokid, Content ID is included in the fee that is paid, this is currently \$4.95 per single/year (Ramm, 2022). The music is then entered into the Content ID system and the artist can begin earning money, if and when their music is used in Youtube videos. However, the Content ID system is not fully optimised yet, and creators often complain that their videos get flagged for violating copyright even though they have not. This can happen if a sound or song used in a video is similar to that of one registered in the Content ID database.

In compliance with the DMCA, any content reported as infringing copyright is taken down immediately but not completely deleted. This allows for the video uploader to file a counterclaim, after they receive the “takedown notice”, to restore their video, but this process can take weeks, as was the case with Stephanie Lenz who posted a 29-second video of her son dancing to a *Prince* song in 2007 (Wagner, 2015). Universal Music issued a DMCA takedown notice for the removal of this song claiming copyright infringement, but Stephanie Lenz filed a counterclaim, and after “a month and a half” her video was restored (Marrs, 2021). Lenz was seemingly unsatisfied with this result and filed a lawsuit against Universal Music for the violation of her right to fair use and freedom of speech. She claimed that Universal did not have a “good faith belief” that her video was an infringement of copyright, and eight years later Lenz won as the court sided with her.

This case is particularly significant as it brings to light copyright claimants' ability to abuse power, it was noted by the judging panel of this case that “copyright holders must consider whether a use of the material is fair before sending a take-down notice” (Wagner, 2015). Fair Dealing or Fair Use are terms used to consider if the use of copyrighted material can be justified, for instance, if it is a video is used for education purposes, is not monetised, or only uses a small amount of the copyrighted material and it is not the main focus of the video, the court may allow the video to be posted under “fair use” (YouTube Creators, 2019). However where YouTube are concerned, under the protection of safe harbours, they could not be liable in this situation and although the copyright claimant could try to file a lawsuit against them, they are granted “free immunity” against any charges or repercussions that users post on their site (DMCA Agent Service, 2019).

Some argue that YouTube does not do enough to qualify for safe harbour provisions and that the immediate removal of videos does not protect the uploader and only benefits the copyright holder. There is a demand for OSPs to be held accountable and there is an

argument that the DMCA should be amended in light of this, that YouTube should consider fair use before issuing a Content ID match, and that without this, YouTube should not qualify for protection from liability as it violates the right to free speech (Zapata-Kim, 2016) (Perel & Elkin-Koren, 2016). The question of how much involvement ISPs should have in moderating content for the purposes of safeguarding is often debated, as too much moderation can infringe on the user's right to freedom of speech, although it should be noted that this right is not universal (Morgans, 2017). But the risk that comes with user-generated content is that videos of any manner can be uploaded and may be damaging to another person, either through slander, defamation or copyright infringement.

Summary

It can be concluded that Youtube is the “number one video-sharing platform in the world” (GMI Blogger, 2022) for a reason. Their focus on user-generated content, accessibility for the average consumer and freedom of speech are unique selling points of theirs, however, issues with the efficiency and bias of Content ID have been causing online controversy. But as their database continues to grow and if they implement a Fair Use process, perhaps these issues will be remedied. But it seems that even with these legal issues, YouTube remains a successful business that continues to grow year by year by evolving with the times and successfully implementing new features to compete with other video-sharing platforms.

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