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Module: Legal and Business Affairs
BMTY7002

Assignment Title: Element 1, Case Study

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Word Count: 2358

Introduction

In this essay, I will discuss the video platform YouTube and its relationship with copyright law and intellectual property. I will aim to use online and physical sources to explore the concept and support any claims I make within this case study. This case study will focus specifically on the legal issues surrounding YouTube and its use of intellectual property, as well as analysis the company's business strategies and challenges they face.

YouTube The Business

YouTube is an online platform that allows anyone to upload videos for users to watch for free. The videos can be anything from influencer content such as 'Vlogs' and fashion content, to music content such as fan-made lyric videos and covers.

Throughout this essay, we will be focusing on the music side of the platform as well as the issues surrounding using another person's musical work.

YouTube was founded in 2005 and 18 months later the website was purchased by Google allowing YouTube creators to make money off their content through the use of Google ads (Leskin, 2020). In 2007 the company launched there 'Partners Program' which allowed creators easier access to earning money from ad revenue, this eventually developed into allowing creators to post sponsored videos that were sponsored by an outside advertiser (Leskin, 2020). The 'Partners Program' and Google ads are very important to the company's business strategy, as it allows the platform to generate revenue from an otherwise free to use platform. However, the legal issue with this is when a creator posts content with the use of someone else's

intellectual property, it could allow others to make revenue off of another person's work.

Music has always been a major source of content for YouTube, whether that is for independent musicians posting original content to grow their audience or for them to post covers of another musician's work. Artists such as James Bay have managed to reach commercial success off of original content that was posted to the platform (Savage, 2020). Bay was first noticed at an open mic gig in London by an A&R scout but the deal was finalised because of a video the label came across on YouTube (Savage, 2020). This is just one example of a musician being able to use the platform to generate success for their careers, in the US the likes of Tori Kelly and Justin Bieber to name a few, have all been discovered by labels because of a video they uploaded to YouTube.

YouTube has also provided a space for music videos to be posted and in 2021 is becoming the leading platform for this type of content, as the industry has seen a decline in music TV channels over the last decade. Originally music videos were being posted on the platform illegally for fans to enjoy, this caused many labels and artists to file copyright infringement claims to YouTube (Alexander, 2019). This caused the platform to create its own copyright claims system and take other actions to ensure the music was made available in a way that benefited artists and labels. YouTube decided to partner with the music company Vivendi to create the website Vevo (Kafka, 2009), artists were then given their own Vevo channels on YouTube to upload music video content too. This also allowed artists to access ad revenue from their videos as YouTube is notoriously known for paying very low royalties rates (Owsinski, 2018).

Copyright Law and Intellectual Property

Intellectual property law covers the protection of intangible property that was created with some level of creativity (CMU Editorial, 2021). It covers four main areas of protection, Trademark, Copyright, Patents and Design. The main areas of concern for musical work are Trademark and Copyright protection (CMU Editorial, 2021).

Trademark protection has to be applied for in the UK and it covers the protection of product and brand names, logos and jingles (gov.uk, no date). Trademark protection is important to apply for to be able to protect the name and logo of your band to insure another person does not copy these details.

The legal definition of Copyright is “a limited duration monopoly” (Passman, 2021). In simple terms, it means the creator of a piece of work, whether that’s a book, a piece of artwork or a piece of music has control over certain rights. These rights give you exclusive rights to who can make reproductions of your work, who can distribute copies of your work and who can perform your work publicly. Copyright protection also give the copyright owner control over who can make a derivative work, this is where another creator creates a piece of work based on your original piece. Lastly copyright protection allow rights owners to control where their work is displayed publicly, in music this also covers websites lyrics are posted on too. (Passman, 2021, P 239)

YouTube, Copyright and Article 13

YouTube the platform has had a problematic history with both intellectual property and copyright. In the early years of YouTube creators that used the platform experienced a significant amount of freedom around what content could and could

not be uploaded to the website (Wasserman, 2015). The platform eventually decided to launch its own copyright claims system to handle all copyright infringement on the platform, named Content ID (Wasserman, 2015). The Content ID system can detect copyright protected music and videos and then block them from the service. This was not popular amongst many YouTube creators as they felt their freedom to create was being restricted and a lot of creators experienced a loss in revenue because of the system. Jimmy Donaldson a YouTube creator reported he lost a 'five figures' revenue payment on one video from just saying the lyrics to Bon Jovi's track 'Livin on a prayer' (Alexander, 2019). This is because under the copyright system rights holder can either ask for the video to be taken down or claim the money generated by ad revenue from the video. Some creator on YouTube rely on the income from their videos, so it is understandable why a large amount of creator who uses the platform see the system as being unfair. Especially after losing a considerable amount of revenue from uttering one line. However, with the music industry experiencing a significantly large drop in revenue from physical sales, it is more than valid for rights holder's and labels to exercise their right to control and regulate the copyright of their original work. As well as claiming any royalties and revenue that is made from the use of that musical work.

In 2018 the European Union decided to announce the new European Copyright Directive as a response to making 'Copyright law fit for the digital era' (Fox, 2019). Article 13 within this law was the topic of much discussion between digital platforms such as YouTube and professionals within the music industry. The Article covers how "online content sharing services" should deal with copyright-protected content such as music and movies (Fox, 2019). It says that all content sharing services must obtain licenses for protected material from rights holders, similar to the system that

platforms such as Spotify and other streaming services have to adhere to. If these licenses aren't obtained the service may be held accountable, unless the service can demonstrate three actions have taken place (Music Business Worldwide, 2018). The first being that the service made "best efforts" to get permission from rights holders. The second that the service made "best efforts" to ensure the content specified by rights holders were not made available to the public. Finally, the service would have to prove they acted quickly to remove any infringing content from their platform. This new law came under scrutiny from service providers but has been welcomed by rights holders.

The law came under criticism within the online content industry, as services felt that the law imposed unfair restrictions on their business. YouTube was a notable critic of Article 13 as they felt it would be almost impossible to obtain licenses for every piece of intellectual property available on their platform (Stassen, 2018). The platform was also worried about how their users would react to these new restrictions as YouTube creators have often voiced concerns about unfair copyright restrictions (Gerken, 2020). This new level of restrictions introduced with Article 13 may be the last straw for some creators as they see further restrictions on their content that once had very few restrictions. This could cause creators to switch to one of YouTube's increasingly popular competitors and stop independent music creators using the platform in general, for instance, creators who produce DJ or remix content.

YouTube also warned that the law may also have unintended consequences on professionals within the music industry. The platform warned in 2018 that the new law may make it harder for musicians and songwriters to grow their audience with the use of YouTube (Stassen, 2018). YouTube's global head of music Lyor Cohen interviewed John Shahidi the CEO of Shots Studios, a management company that

helps Artists grow their audiences with the use of open platforms. In the interview, the two discuss some negatives relating to Article 13 and how that would affect how useful the platform would be for musicians in the future. Shahidi suggested that Article 13, would stop musicians from being able to increase clout because of other creators discussing their music, which would in the long term affect audience growth and income from royalties (Stassen, 2018). For example, when the Marshmello song “summer” was released a large number of creators on YouTube started remixing and featuring the full song in videos, the creators of the original song subsequently saw a rise in numbers. After the infringing videos were removed the original video saw view numbers begin levelling off (Stassen, 2018). This is one example of the power open platforms such as YouTube have to help artists grow their audience and is ultimately a very useful tool for upcoming and independent artists. The freedom to create is also an important factor in the YouTube business model and ultimately an element that aided their success as a business.

The music industry, specifically music rights holders have shown support for Article 13. This legislation has been welcomed as musicians and rights holders seek to improve access to digital royalties’ payments, especially in a world where this is becoming the largest type of consumption of recorded music. Geoff Taylor from the BPI (British Phonographic Industry) accused YouTube of “carpet-bombing propaganda” against Article 13 and said that they were challenging the EU legislative process (Ingham, 2018). Taylor goes on to explain how he feels services such as YouTube should use their energy on helping to increase the value of recorded music with labels and rights holders to improve the industry as a whole (Ingham, 2018). The main issues with allowing organisations such as YouTube to carry on without newly updated Copyright legislation is that it provides an unfair advantage to their

business and to independent creators who exist within the platform. While causing a disadvantage to signed artists and rights holders whose music is being exploited to help others grow audiences and generate income. A factor that when consider is not entirely useful to YouTube as music from these rights holders essentially drives users to their platform which earns them ad revenue.

Conclusion

In conclusion, Article 13 would allow owners of intellectual property to access revenue they are entitled to much easier than they can with just the use of YouTube's Content ID system. Music should not be treated as free content within the digital world just because it allows other creators to access advantages when growing their audiences. This system is extremely outdated and represents the early days of digital platforms where labels and rights holders still generated the most income from physical sales. Ultimately YouTube's criticisms of the legislation have to lead to many people within the industry accusing them of 'safe harbouring' their business model and profit streams while avoiding the legal issues that affect the overall industry (Ingham, 2018).

That being said the YouTube business model relies heavily on allowing creators and users of their platform to be able to use others intellectual property to create their videos. For example, educational content available on the platform relies heavily on copyrighted material, it is unsure whether this use of content would come under fair use underneath the new EU legislation (Music Business Worldwide, 2018) as profits are technically still being made from the use of the content. The platform has also warned the music industry some highly viewed content such as the music video for "Despacito" (Luis Fonsi, 2017) would not be able to exist on the platform under the

new legislation, as some songwriters for the track are currently unknown (Music Business Worldwide, 2018). However, this might not be the case as the industries range of licensed platform can obtain licenses for content such as this. Although this would require more time and money for YouTube and may require them to reevaluate their current business model.

In January 2020 the UK left the European Union (EU), in doing this the UK government were able to decide which EU laws to still uphold once the UK was no longer apart of the EU. The UK government decided that they would not be implementing the European Union Copyright Directive once the UK had left the EU (Stassen, 2020). This came under criticism from many professionals within the music industry as many were worried open platforms such as YouTube would no longer be held accountable (Stassen, 2020). This was a heavy blow to the UK supporters of Article 13 as they questioned whether UK copyright law would be changed in the future. I feel this is a good time to learn from the issues that surrounded Article 13 and the EU copyright directive. Now is the time to use the information learned and use it to make an educated decision when deciding how to shape UK copyright law in the future. It is clear that the industry needs to be fairer for rights holders, but should still be aware of the place open platforms have within the industry.

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