



LEGAL AND BUSINESS AFFAIRS: CASE STUDY

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Abstract

This case study focuses on the role of intellectual property rights in the music/entertainment industry and the methods in which creators can monetize their work. It also explores the commercialization of music and entertainment content on YouTube.

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Introduction

YouTube is an online video sharing based in the United States and is owned by Google. It is the second most visited website in the world, behind Google itself, and it operates in every country apart from North Korea, China, Turkmenistan, Iran, Tajikistan, and South Sudan. It was created in 2005 by Jawed Karim, Steve Chen, and Chad Hurley who had initially envisioned the site as a dating platform (Cloud, 2006) however, this idea did not gain any traction and it went on the path to what it is today (Dredge, 2016). By April 2006 YouTube had acquired over \$20 million in investment and uploaded their first video on 23 April 2006. By March 2013 they had over one billion active users and by 2020 this rose to approximately 2.1 billion active users (Statista, 2020)

When YouTube first launched it was simply just a video hosting platform. Since its launch they have branched out and now offers a range of services. The main ones are YouTube (the original site), YouTube Music, and YouTube TV. They also offer premium versions of both YouTube and YouTube music which grants the user an ad free experience providing they pay the monthly subscription. YouTube Music was initially a part of YouTube where you could simply watch music videos whereas now it is a streaming platform in its own right (Hindy, 2020).

YouTube has developed into a multifaceted corporation and has become an amazing tool to create some of the largest stars of today (e.g. Justin Bieber, Shawn Mendes and The Weeknd) and has helped boost the profiles of many brands such as dude perfect, BuzzFeed and GoPro (Social Blade, 2021)

Intellectual property rights

The World Trade Organisation (2021) states that intellectual property rights (IPR) are “the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time”. They essentially protect creators’ brands, designs, and work from theft. IPR is extremely important in the music industry as it is the main way creators to receive appropriate accreditation and royalties. There are two main forms that are exceptionally important in the music industry: copyright and trademark.

Copyright protects original pieces of work such as songs, artwork, literature, and films from being copied and used on other creations. A copyright is automatically formed once the work is created but will not be formed if it is merely in the idea stage as copyright must be an expression of an idea (British Business Bank, 2021). Creators can also sell or assign the copyright to others should they wish. The only instance when the owner of the copyright differs from the original creator is when an employee creates a piece of work for their employer (once created it becomes a company asset). Copyright protection however lasts a long time; it only expires once seventy years have passed since the creators’ death. You do not however have to actively use copyrighted works for them to retain the copyright (Prakash, 2020).

Trademarks offer a similar protection to copyright but protects anything that can be used to identify a product, service, or brand. This includes a brand’s name, logo, or slogan. Examples include McDonalds’s golden arches or the famous ‘Just do it’ Nike slogan. Unlike copyrights, trademarks do not expire however they must be actively used and renewed every ten years (Dev, 2020).

One thing to consider though is that both copyright and trademarks are territorial. This means that even if you have protection in one country it does not mean that you would have the same protections in another. Copyright protection however is automatically obtained in any country that

follows the Berne Convention (over 180 countries across the globe follow the Berne convention, even Afghanistan (WIPO Lex, 2021))

Revenue streams and business model

YouTube's revenue has increased every year since its inception. In 2010 they made \$0.8 billion and by 2020 they had seen an increase of 2362.5% to \$19.7 billion. The number of people who use the site has also grown but understandably to a lesser degree. In 2012 the number of active monthly users totalled 0.8 billion and that rose to 2.3 billion in 2020. Approximately 29% of the whole world uses YouTube each month (Iqbal, 2021)

YouTube does not really have a product that they sell in order to generate revenue. Their main method of gaining income is through the rental of virtual advertising space. Companies can pay as little as £6 a day for an advert. Some brands pay thousands of dollars to advertise on the site. Although every campaign differs, £5000 of ad spend should generate approximately 100,000 views of the buyers target audience (ad-spend). This will be much higher if a company aims to advertise to a large demographic (*Simply Ads Ltd.*, 2021). This is a brilliant way of generating revenue as YouTube can put multiple ads per video which means they can generate income from different sources on the same video. They have maximised the use of ad space on their site.

In 2017 YouTube implemented a freemium business model and started offering premium services for its video and music streaming. This involves subscribers paying a set fee per month in exchange for an advert-free user experience, the ability to download songs and videos for offline viewing, and the ability to play media while the phone is locked.

These subscriptions do not however generate that much revenue compared to advertising. In 2019 YouTube's premium subscriptions only generated \$750 million while ads generated \$15 billion (Bulitin, 2021). There is a benefit for content creators though as revenue from YouTube Premium membership is distributed to creators based on how much of their content is viewed (youtube, 2021).

The main way for music artists and creators to make money through their work on YouTube is through royalty payments. This is when artists are paid a pre-determined share of the revenue for the use/public performance of their asset. YouTube make it relatively easy for artists to claim royalties; their publishers can submit a claim for royalties on any video that uses an artist's song, regardless of whether the artists posted it themselves.

There are two things that royalties can be claimed for: the master recording (the audio file itself) and for the composition (harmony, melody, and lyrics). The master recordings are usually controlled by labels and distributors who then collect the royalties. Songwriters and producers have rights to the composition and can claim royalties from songs they have had a part in making (Symphonic, 2021)

There are three requirements that creators need to fulfil for their videos or songs to be eligible for royalty payments. The first is that videos uploaded to YouTube do not make any royalties until an advert is featured because royalties are paid through advert-generated revenue. Musicians can however still claim royalties through YouTube music. (Johnson, 2021).

The second is that creators must sign up for YouTube's partner program which enables the monetization of videos and access to YouTube's creator support team. There are however specific criteria that must be met to be able to join. You must have over 4000 hours of views per year and

have over 1000 subscribers to your channel. You also need to live in a country that operates the program (Welch, 2018). It operates in 121 countries around the world (Google, 2021).

The third is that they need to register for Content ID which is YouTube's "automated, scalable system that enables copyright owners to identify YouTube videos that include content that they own". YouTube will however only grant access to copyright owners who exclusively own the rights to a substantial portion of an original work that is frequently used by the YouTube community (YouTube, 2021).

How does YouTube protect IPR?

YouTube has made a commitment to helping creators protect their works. They have created a system that aims to protect creators' intellectual property (IP) that is composed of two main elements: The YouTube rights management system (RMS) and Content ID. The RMS identifies who owns or administers the IP and sets the policies used to enforce your rights. Content ID automatically scans YouTube's database for any videos that contain one's IP and will enforce the rights set in the RMS (YouTube, 2021).

When a creator uploads their work to YouTube they have up to three ways to represent their intellectual property. It can be an asset, a reference, or a video. An asset represents your IP in their rights management system, and you define information regarding rights and ownerships as a part of the asset. A reference represents your IP in order to conduct Content ID matching. This only works if content creators upload a media file that the system can compare to other videos in its system. The video is the visible representation of your asset on their website. It uses the same file as the reference and contains metadata that defines how it appears on the site (Google, 2021).

PRS for Music v YouTube (2009)

Over the years YouTube have built a gargantuan consumer base and have continuously increased their revenue. The substantial increase in revenue has led to issues regarding the amount of royalties creators are paid and intellectual property rights.

In 2009 YouTube entered a lengthy battle with PRS for Music because of this matter. PRS for Music (PRSM) is an organisation that deals with collective rights management (the appropriate licensing and copyright) for musical works created by their 160,000+ members based in the UK. It is split into two parts: the Mechanical-Copyright Protection Society (MCPS) and the Performing Right Society (PRS). PRS handles the performing rights for its songwriters, composers, and music publishers, while also collecting royalties on behalf of those members whenever their music is publicly performed or listened to. MCPS represents the same types of members but deals with mechanical rights (the right to reproduce a piece of music onto CDs, DVDs, records, or tapes (BMI, 2021) and collects royalties when their members' songs are physically reproduced as seen with digital downloads and CDs.

Prior to the 2009 conflict, PRSM had an agreement with YouTube to provide the licences for many of the songs on their roster (from UK artists) that are featured on the streaming platform. Issues arose when PRSM stated that they would like an increase in licensing revenue and royalty payments due to YouTube's ever-increasing revenue and popularity. This was seemingly a fair deal as Google's (YouTube's parent company) revenue had increased from \$10.6 billion in 2006, when YouTube was first acquired, to \$23.7 billion in 2009 (Statista, 2021) when the conflict arose (an increase of

approximately 123.6%). PRS were also using guidance from the Copyright Tribunal in 2007 which specified that the recommended rate of royalties a music artist should receive at least 8% of all gross revenue generated from each broadcast or performance (Smith,2009)

YouTube however did not agree to their terms and thought the request was too exorbitant. This resulted in YouTube pulling thousands of music videos related to PRS from its site in retaliation. They argued that they would have to pay out more than they generated on the advertising and would be financially detrimental. Google stated that "the costs are simply prohibitive for us - under PRS's proposed terms we would lose significant amounts of money with every playback" (NY Times,2009). The disagreement resulted in YouTube removing a large majority of the UK's most popular music videos, even some that were not necessarily covered by PRSM. YouTube stated that the reason for this was due to PRSM not identifying which songs/artists are covered under their licenses and this created issues as it is integral to YouTube's content ID systems to correctly identify and reimburse the necessary rights holders (Kiss, 2009). Had YouTube continued to host the videos without the necessary licensing they would have committed a 'prohibited act' under the Copyright, Designs and Patents Act 1988.

Record labels, both major and indie, also suffered as result of the conflict. YouTube do have deals with labels themselves, but these are for the sound recording rights while the licenses from PRSM are for lyrics and music. Without the licenses from PRSM, both live and pre-recorded songs cannot be performed (Lindvall, 2009). Artists who uploaded to the site independently, as opposed to premium videos from established artists and labels, managed to come away unscathed (Nuttall, 2009).

This dispute was eventually resolved after approximately half a year of deliberation and resulted in new terms of licensing for YouTube and the re-upload of the songs that had been taken down (PRS,2009). It did however mean that many artists lost out on streaming royalties for half a year (Topping, 2009)

Conclusion

It can be said that the problems YouTube faced in its earlier days can be attributed to the rapid digitization and technological advancement of an industry that had primarily dealt with the physical distribution of music and issues regarding copyrights and licensing were significantly more unclear than in the present day. YouTube have now put many measures in that enables labels, creators, and collaborators to easily claim the rightful royalties and credit for the works they create. While it is not perfect, people can see that it is an extremely vital tool in enabling creators to monetise their work and build their profiles.

References

- BMI.com. n.d. *What is the difference between performing right royalties, mechanical royalties and sync royalties? | FAQ | BMI.com*. [online] Available at: <https://www.bmi.com/faq/entry/what_is_the_difference_between_performing_right_royalties_mechanical_r> [Accessed 29 December 2022].
- Ciampa, R. and Moore, T., 2021. *dummies - Learning Made Easy*. [online] Dummies.com. Available at: <<https://www.dummies.com/article/technology/social-media/youtube/10-things-to-know-about-copyright-and-youtube-143446>> [Accessed 29 December 2022].
- Cloud, J., 2006. *The YouTube Gurus*. [online] TIME.com. Available at: <<http://content.time.com/time/magazine/article/0,9171,1570795,00.html>> [Accessed 29 December 2022].
- Design Council. n.d. *Protect your creativity with Intellectual Property*. [online] Available at: <<https://www.designcouncil.org.uk/news-opinion/protect-your-creativity-intellectual-property#:~:text=Did%20you%20know%20that%20intellectual,assets%20your%20business%20will%20own%3F&text=In%20fact%2C%20IP%20is%20particularly,from%20potential%20copycats%20and%20infringers.>> [Accessed 29 December 2022].
- Dev, R., 2020. *Understanding Intellectual Property Rights in the Music Industry*. [online] Patentbusinesslawyer.com. Available at: <<https://patentbusinesslawyer.com/understanding-intellectual-property-rights-in-the-music-industry/>> [Accessed 29 December 2022].
- Dredge, S., 2016. *YouTube was meant to be a video-dating website*. [online] The Guardian. Available at: <<https://www.theguardian.com/technology/2016/mar/16/youtube-past-video-dating-website>> [Accessed 29 December 2022].
- En.wikinews.org. 2009. *Music videos return to UK version of YouTube after agreement with PRS - Wikinews, the free news source*. [online] Available at: <https://en.wikinews.org/wiki/Music_videos_return_to_UK_version_of_YouTube_after_agreement_with_PRS> [Accessed 29 December 2022].
- google.com. 2021. *Overview of YouTube rights management - YouTube Help*. [online] Available at: <<https://support.google.com/youtube/answer/4597810?hl=en-GB>> [Accessed 29 December 2022].
- Help.prsformusic.com. n.d. *Case Portal*. [online] Available at: <<https://help.prsformusic.com/s/article/what-rights-are-covered-by-the-youtube-licence>> [Accessed 29 December 2022].
- Hindy, J., 2020. *YouTube Music vs YouTube Premium vs YouTube Music Premium explained!*. [online] Android Authority. Available at: <<https://www.androidauthority.com/youtube-music-vs-youtube-premium-vs-youtube-music-premium-1020214/>> [Accessed 29 December 2022].
- Ipeg.com. 2007. *YouTube and IPRs – Intellectual Property Expert Group*. [online] Available at: <<https://www.ipeg.com/youtube-and-iprs/>> [Accessed 29 December 2022].
- Iqbal, M., 2021. *YouTube Revenue and Usage Statistics (2021)*. [online] Business of Apps. Available at: <<https://www.businessofapps.com/data/youtube-statistics/>> [Accessed 29 December 2022].
- Kiss, J., 2009. *Google and PRS in deadlock as music videos pulled from YouTube*. [online] the Guardian. Available at: <<https://www.theguardian.com/media/pda/2009/mar/09/digital-music-and-audio-youtube>> [Accessed 29 December 2022].

Knight, D., 2009. *YouTube vs PRS – this row highlights the huge importance of music videos* | News | Promonews. [online] Promonewstv. Available at: <<https://www.promonews.tv/news/2009/03/10/youtube-vs-prs-%E2%80%93-row-highlights-huge-importance-music-videos/2188>> [Accessed 29 December 2022].

Lindvall, H., 2009. *The YouTube war is over – but at what cost?* | Helienne Lindvall. [online] the Guardian. Available at: <<https://www.theguardian.com/music/musicblog/2009/sep/03/youtube-google-prs-nda>> [Accessed 29 December 2022].

Nuttall, C., 2009. *YouTube blocks music videos to UK users*. [online] Ft.com. Available at: <<https://www.ft.com/content/41992364-0cd4-11de-a555-0000779fd2ac>> [Accessed 29 December 2022].

Nytimes.com. 2009. *YouTube blocks music videos for U.K. viewers*. [online] Available at: <<https://www.nytimes.com/2009/03/10/business/worldbusiness/10iht-google.4.20739415.html>> [Accessed 29 December 2022].

Oates, J., 2009. *PRS v YouTube: No UK vids, but royalty row runs and runs*. [online] Theregister.com. Available at: <https://www.theregister.com/2009/03/11/youtube_google_prs/> [Accessed 29 December 2022].

Pope, L., 2021. *YouTube Stars And Trade Marks - Intellectual Property - Worldwide*. [online] Mondaq.com. Available at: <<https://www.mondaq.com/uk/trademark/1086258/youtube-stars-and-trade-marks>> [Accessed 29 December 2022].

Prakash, P., 2020. *Copyright vs. Trademark: What's the Difference?* - NerdWallet. [online] NerdWallet. Available at: <<https://www.nerdwallet.com/article/small-business/trademark-vs-copyright>> [Accessed 29 December 2022].

Prsformusic.com. 2009. *PRS for Music*. [online] Available at: <<https://www.prsformusic.com/press/2009/prs-for-music-and-youtube-sign-a-new-licensing-deal>> [Accessed 29 December 2022].

Simply Ads Ltd. n.d. *How much does a YouTube Advert cost?* - Simply Ads Ltd.. [online] Available at: <<https://www.simply-ads.com/how-much-does-a-youtube-advert-cost/>> [Accessed 29 December 2022].

Smith, C., 2009. *YouTube And PRS Continue Dispute Over Copyright Licence Fees - Intellectual Property - UK*. [online] Mondaq.com. Available at: <<https://www.mondaq.com/uk/licensing-syndication/78684/youtube-and-prs-continue-dispute-over-copyright-licence-fees>> [Accessed 29 December 2022].

Social Blade. 2021. *TOP 100 SUBSCRIBED YOUTUBE CHANNELS (SORTED BY SUBSCRIBER COUNT)*. [online] Available at: <<https://socialblade.com/youtube/top/100/mostsubscribed>> [Accessed 29 December 2022].

Statista. 2021. *Google: annual revenue* | Statista. [online] Available at: <<https://www.statista.com/statistics/266206/googles-annual-global-revenue/>> [Accessed 29 December 2022].

Sweney, M., 2018. *YouTube faces paying billions to music stars after copyright vote*. [online] the Guardian. Available at: <<https://www.theguardian.com/technology/2018/jun/20/music-industry-wins-key-vote-in-youtube-copyright-battle>> [Accessed 29 December 2022].

Topping, A., 2009. *YouTube and PRS make peace as musicians protest about plans to punish file sharers*. [online] the Guardian. Available at: <<https://www.theguardian.com/technology/2009/sep/03/youtube-prs-deal-file-sharing>> [Accessed 29 December 2022].

Welch, C., 2018. *YouTube tightens rules around what channels can be monetized*. [online] The Verge. Available at: <<https://www.theverge.com/2018/1/16/16899068/youtube-new-monetization-rules-announced-4000-hours>> [Accessed 29 December 2022].

Wipolex.wipo.int. 2021. *WIPO Lex*. [online] Available at: <https://wipolex.wipo.int/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_word=C&code=ALL&treaty_id=15> [Accessed 29 December 2022].

youtube.com. 2021. *YouTube copyright and fair use policies - How YouTube Works*. [online] Available at: <https://www.youtube.com/intl/ALL_uk/howyoutubeworks/policies/copyright/> [Accessed 29 December 2022].