

MA Music Business

Legal and Business Affairs

Lecturer: Ian Penman

Case Study: YouTube

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Synopsis:

This essay will explore the business model used by YouTube and how it relates to music rights ownership within the business to the music and entertainment area. It will also analyse the royalty distribution system and if it is equitable regarding the revenue the creators and artists generate for the platform.

Then, will study the conflicts the platform has created in the industry and evaluate if it is necessary to change copyright laws to better represent the music industry in a modern and new way of consumption.

I/. Youtube

is a video hosting and social media website where users can upload, watch, comment, rate and share streaming videos. It was created in February 2005 by Steve Chen, Chad Hurley and Jawed Karim, three former PayPal employees, and then acquired by Google in October 2006 for \$1.65 billion. The service is located in San Bruno, California.

The whole purpose of the website is to live on User Generated Content (UGC). However, the platform was initially designed to be used as a dating website for each member to upload videos of themselves. The platform took a major turn as users uploaded random videos from their galleries. Youtube then decided to focus on more versatile content allowing users to upload to the website whatever they wanted.

In 2009, 350 million people visited the website each month; in 2022, this number has risen to 2.6 billion monthly active users (MAU) making Youtube the second most visited website in the world after Google. (Statista, 2022). The company announced that in 2022 YouTube has paid the music industry \$6 billion over the last 12 months from July 2021 to June 2022. This is up from the \$4 billion paid in the previous 12 months, which means YouTube music payments are up 50% year-over-year. (Musically, 2022).

In 2017, 27% of the overall view traffic on the website was dedicated to music content. (Turek, 2017). All these Major Labels and Artists using the platform as a promotional tool have definitely contributed to the achievement of the 2,6 billion monthly active users. (GMIBlogger, 2022)

III/. The Business Model

Since its creation in 2005, Youtube has always followed the Business Model of a "User Generated Content" (CGU) and free platform. What this means is that the community of the platform will make the platform live and grow itself by creating content. The company provides the services, not the content. The website allows people to upload an unlimited amount of videos for free; the website quickly became the leader of the internet video market. (Pereira, 2022)

In May 2007, one year after the acquisition of Youtube by Google, the website launched the Youtube Partner Program (YPP). YPP is based on the Google AdSense program which, according to Google: "[...] provides a way for publishers to earn money from their online content. AdSense works by matching ads to your site based on your content and visitors. The ads are created and paid for by advertisers who want to promote their products. Since these advertisers pay different prices for different ads, the amount that you earn will vary." (Google, 2022)

YouTube derives its revenue primarily from advertising and secondarily from YouTube's premium subscription business. Apart from these two sources, YouTube also makes money from channel memberships, YouTube TV, Super Chats, Super Stickers and Super Thanks & Merchandise. In most cases, YouTube shares earnings from these shared channels with creators. (Whatisthebusinessmodelof, 2022)

Let's take a look at the two main segments to get a deeper understanding of YouTube's different revenue channels.

Advertisement from the AdSense program is the main source of revenue for Youtube. In February 2022, Alphabet (Youtube's parent company) released the final quarter earnings of 2021 with detailed pieces of information about the advertising revenue of Youtube. In Q4, the advertisement on the platform generated \$8,633 Billion which sums up the overall income of 2021 at \$28,8 Billion, a 46% increase year-on-year. (abc.xyz, 2022)

Paid subscription is the second biggest source of revenue for the online internet video giant. Initially created in November 2014 under the name "Music Key", the project is a collaboration between Youtube and Google Play Music. The subscription offered advertisement-free playback of the music videos (from participating labels) and also allowed the viewer to play these songs in the background and when offline directly from the Youtube application. Youtube Red, the next step of the process appeared in 2015 allowing this version for any subscribers to have a 100% ad-free platform. In return for the content creators perceiving their revenues from the Youtube Partner Program with AdSense, the company redistributes an amount of the subscription revenue to the creators. In 2018 Youtube Premium was launched for \$11,99 per month replacing Youtube Red, keeping the previous advantages but

launching Youtube Music, a music streaming service in straight competition with Spotify and Apple Music. (Wikipedia, 2022)

This business model results in paying the content creators in two different ways. Youtube redistributes 45% of its total revenue to the creators affiliated with the Youtube Partnership Program which sums up to a \$12,96 Billions payout for the content creators and artists with \$6 Billion only to the music industry. (Aswad, 2022)

III/. Copyright and Infringement.

According to IvyPanda (2022):

"Copyright is the law and the type of intellectual property which is used to credit authors of works of a non-physical nature. Copyright can be used to protect the original expression of the idea against theft, change, or other forms of infringement that can harm the creator."

Youtube video makers can upload their work and copyright their content to keep their rights. However, since 150,000 videos (About 183 hours) are added every minute on the media, it is very complicated for the platform to ensure the original right holders content is not being used, duplicated, modified and uploaded by other users stealing a part of the revenue from the original creation. (Hayes, 2022)

In the case of music creation, they are two different copyrights to take into consideration:

- The Composition Copyright and the Masters copyright. The composition copyright (©) underlines everything related to the creation of a raw piece of music. This implies the melodies, the lyrics, the chords, the arrangement of the song etc. The composition copyright is held by the people who created the song and by their publisher.
- The master copyright concerns a specific sound recording using the copyright of a composition. For instance, covers or remasters using lyrics, melody or a chord progression from a copyrighted composition. The master copyright is owned by the performing artist and their label.

However, since youtube is an Audio-Visual platform, synchronisation rights are the most common acts of infringement. Indeed synchronisation is the process of placing a song over moving images such as Video Games, Films, TV Shows and obviously, Youtube videos. To have the right to use a copyrighted song over moving images, you need a Synchronisation Licence which can be obtained from the copyright owner of the piece of audio, in most cases, the publisher. (Wikipedia, 2022)

Section 20 of the DCPA "Copyright, Designs and Patents Act" (1988) stipulates that infringement is committed if "The communication to the public of the work is an act restricted by the copyright in a literary, dramatic, musical or artistic work [...]" as well as "[...] the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them."

From the emerging stage of the platform, Youtube is an important actor in copyright infringements in music as well as the general entertainment industry. This situation has led to conflicts with big actors in the music industry such as Warner Music Group (WMG). In 2008 most WMG music videos were pulled from the website because, as the Music Group communicated: "contract negotiations between the two sides have reached an impasse." (Wilkerson, 2008). This battle between the label and Youtube has lasted for over a decade; nevertheless, the third-largest label in the music industry extended its licensing contract with Youtube in 2017. After signing this deal, Steeve Cooper expressed himself, writing: "There's no getting around the fact that, even if YouTube doesn't have licenses, our music will still be available but not monetised at all." (Gutelle, 2017).

IV/. DMCA and Safe Harbor.

The Digital Millennium Copyright Act, or DMCA, was enacted into law in 1998 when the commercially available internet was still fairly new. The DMCA was written to achieve several purposes. However, the overall goal was to address online copyright infringement in a way that balances the interests of copyright owners, online service providers and general internet users. To protect copyright owners from infringement of their work, the law allows them to ask website administrators to remove infringing material quickly without having to resort to litigation (CopyrightAlliance, 2018).

Yet, service providers are protected from their user's uploading and distributing infringing content on their platforms. The DMCA shields them from liability if the platform removes the infringing material upon receiving a takedown request from the copyright owner. This liability shield is referred to as "Safe Harbor". (CopyrightAlliance, 2018).

As Youtube is a UGC website, it exploits Safe Harbor. Steve Cooper thinks that as long as youtube is covered by this liability shield, it has a very strong power of negotiation and is "calling for change more loudly than ever". In 2017 the Supreme Court refused to consider the appeal concerning Vimeo, a direct concurrent of Youtube which was attacked by Capitol Records (Gutelle, 2017). This power of negotiation resulted in Record Labels having to accept deals under very difficult conditions.

However, in 2019 Article 17 of the European Union Copyright Directive was reformed and content-sharing platforms such as Youtube or Vimeo can be taken to court for committing an act of infringement if sharing unlicensed copyright content to the public. Even if they are certain methods for the platforms to escape liability such as: "Made best efforts to obtain a license", "Made best efforts not to display any copyrighted content which has been registered with the platform by rights-holders", "Acted expeditiously to take down any copyrighted content on receipt of valid notice from the rights-holder" and "Made best efforts to prevent the reupload of taken-down content" (Bateman, 2022) the adjustment on the law regarding Safe Harbor is a huge step in favour of the right holders.

Youtube, on their side, is also trying to find ways to prevent copyrighted content from being shared on their platform with their tool Content ID. Copyright owners can send their protected work to the software which will scan every uploaded video and verify if their audio or visual isn't used in other creators' content without their consent. (Google, 2022)

VI. Piracy

In 2011, Spotify investor Sean Parker said: "Spotify is the answer to piracy.". However, even if Spotify and equivalent platforms have reduced the number of pirate downloads considerably in music from the early 2000s, the problem is not entirely solved today. (Parvez, 2022)

In 2017, 300.2 Billion users visited piracy websites allowing them to download Music, Films, Series and Software. (MUSO, 2018)

Even if the way of hacking music from the internet has evolved, the consequences are the same. New websites allow users to create an MP3 version of a Youtube video and download it for free to their phone or computer. These new websites attract millions of visitors and estimated that one out of three 16 to 24-year-olds has downloaded converted audio files from these websites in the UK alone. (Cuthbertson, 2018)

However, Institutions like the British Phonographic Industry (BPI) or the Recording Industry Association of America (RIAA) are trying to stop and shut down these pirate websites. Under threats from the RIAA, many of these websites closed in 2019; one of the biggest websites which have been shut down by these threats is MP3Fiber. The anonymous owner of the website then declared to the press, "This site was actually run as a hobby. We spent more on servers than we ever made, so we did not want to get into any legal battles. We pretty much gave in to their demands without too many other thoughts,". (Cuthbertson, 2018; Maxell, 2018)

VII. Royalties and Distribution

If the subscription streaming service model is the main actor of today's music consumption, video streaming still owns an important share of the market. According to these statistics (IFPI, 2022), 19% of the music consumed by listeners is from video streaming which represents only 5% less than subscription audio streaming services representing 24% of the listener's music consumption. (IFPI, 2022)

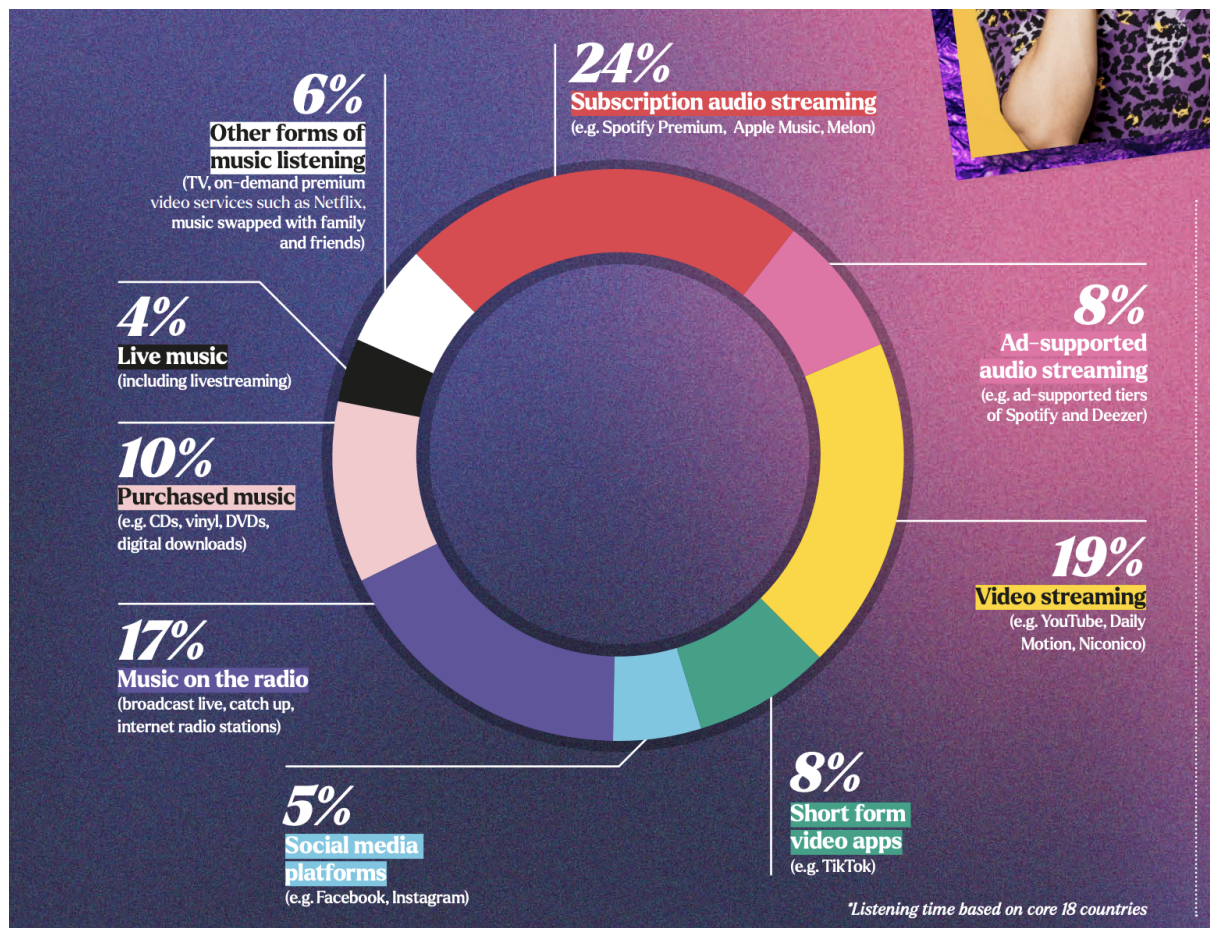


Figure 1: A GLOBAL SNAPSHOT OF MUSIC ENGAGEMENT IN 2022 (IFPI, 2022)

We know it is impossible to determine exactly how much a service pays an artist according to its number of streams.

Indeed, there are factors in this revenue model which create royalty distribution variation from artist to artist such as the listener's country of origin or the account plan the listener has (Free or Premium). (Ditto, 2022)

However, according to Headphone Honesty, the following figure is the mean payout per stream of each platform. (Yonata, 2022)

Platform	Pay per stream	Streams to get \$1,000
<u>Tidal</u>	\$0.013	76,924
<u>Apple Music</u>	\$0.01	100,000
<u>Amazon Music</u>	\$0.004	250,000
<u>Spotify</u>	\$0.0033	303,030
<u>YouTube Music</u>	\$0.008	125,000
<u>Pandora</u>	\$0.0013	769,231
<u>Deezer</u>	\$0.0064	156,250

Figure 2: How much streaming platforms pay the artist for each stream and how many streams it takes to earn \$1,000. (Yonata, 2022)

Now, Youtube and Youtube Music are two different entities. According to HypeBot.net, in 2021, Youtube paid \$0.00164 per impression (impressions are 40% to 50% of total views) on an Official Artists channel, while the content claimed through Content ID on a tier video pays the artist about \$0.00087 per impression. (Davie, 2021)

So, to earn \$1000 on Youtube your number of impressions will need to be around 609 756 on your Official Artist channel compared to 303 030 on Spotify or 100 000 on Apple Music. (Davie, 2021)

It is clear that Youtube pays a laughable amount of royalties to artists, but Youtube Music is trying to aim in another direction.

VII. Independents.

If the website has been legitimately in conflict with big record labels and bigger artists who are not paid correctly via the royalty distribution model, nevertheless, with 2.1 Billion monthly users, independent artists and labels have an opportunity to be listened to and break through the masses.

In 2011 The Weeknd released three tracks on the platform without any photos, videos, description or whatsoever. A few weeks later, the track "What You Need" was elected Best New Track of the month by the influential magazine Pitchfork (MediaForta - 2017). From there, the artist has won 154 awards from various events for 428 nominations. (Wikipedia, 2022)

VII/. Conclusion

Throughout the years, Youtube has evolved in many situations. However, Youtube is not the only one responsible for the many issues in today's music industry. From copyright infringement to safe Harbor and royalty distribution, there is a much deeper issue with laws and the modern online royalty system.

Valid arguments, such as Steve Cooper's Safe Harbor declaration on the WMG case, that the fact even if Youtube does not have licenses for the music, the music will still be available but without any monetisation at all. But again, the DMCA is the real issue here. Youtube is just exploiting a flaw.

Concerning Youtube royalty distribution, creators and artists deserve a higher share of the revenue they generate. Considering the mean payout per stream of each platform, it is notable that Youtube is trying to do a better and equitable distribution of its income through the Youtube Music service paying the artist five times more royalties than on the conventional platform and 2.5 more than Spotify.

In fine, Youtube is a great and very powerful platform for artists and content creators. The service has issues which are complex to correct and will never be able to find an arrangement which pleases every stakeholder. With help from institutions like the DMCA, even if it takes a long time before the main problems are solved, hopefully, someday, Youtube can be used as an equitable and responsible asset of the entertainment and music industry.

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