

VALERIE ETIENNE 2117325
MA MUSIC BUSINESS
LEGAL AND BUSINESS AFFAIRS
ELEMENT 1 (CASE STUDY) BMTY7002
IAN PENMAN

INTRODUCTION

YouTube was launched in 2005 by ex- PayPal employees Chad Hurley, Jawed Karim, and Steve Chen. According to Karim, the idea stemmed from frustration at not being able to see footage of the 2004 Boxing Day Tsunami. He also wanted to 'review' Janet Jackson's wardrobe 'malfunction' at the Super Bowl half time show that same year (Krol 2021) in which she was a guest of Justin Timberlake who was the headline act.

It started off as a platform for a dating video sharing profile site. It was not successful at the time, but they noticed that creatives; Musicians, artists, brands, and businesses etc... were using the site to upload all sorts of different videos, promoting their art, sharing silly stories, recording their lives. They realised that it would be beneficial to adapt the platform to receive a wider variety of content.

The company released the platform as a preview on 'Beta software' (Sachedina 2021) in May 2005, but it really took off when it was made available to the public in December 2005. By then YouTube had 8 million views a day. YouTube's rise within a year was extraordinary, helped with healthy investment from Sequoia Capital Founder Don Valentine and Sequoia Capital partner Roelof Botha who was an old colleague of the founders. The rise was significant enough for there to be a bidding war (Gaither and Chmielewski 2006) between Yahoo & Google to buy it. Google won and paid \$165 billion (£125 billion). It made the co-founders incredibly rich each of them pocketing at least \$400 million (£303 million).

PRODUCT/BUSINESS MODEL

You Tube's 'modus operandi' is based on egalitarianism. (The Telegraph Long Read 2015). The service is offered for free (you can set up a YouTube account in minutes) and it makes money by advertising and customer subscription. However, the bulk of its revenue comes from advertising. Firstly, sponsored adverts, where the advertiser pays YouTube based on the number of views it gets. The ad is the first thing you see. Even for a few seconds, before you click 'skip ads' the user has been exposed to the product.

Secondly, embedded adverts, where advertisements are played directly into video clips. These 'in video' ads (launched in 2007) appear on the bottom right corner of the video content. Viewers see a short ad of about a min 30 secs (nowadays they are increasingly targeted) followed by a second ad with the 5 second countdown.

It is important to remember that You Tube's 'product' is its users, introducing tools to aid more user generated content. Launching You Tube Red in early 2005, removing ads from all videos, You Tube music followed. Allowing access to 35,000+ songs licensed by YouTube from the artists & therefore 'royalty free', enabling creators access to songs for a small fee to upload onto their content. You Tube Premium in effect replaced YouTube Red in 2018 giving ad free music and video for a small subscription fee.

These new users are now known as YouTubers. The most successful of these being a man called 'Pew Die Pie' who up to date has earned upwards of \$40 million from his YouTube channel. The most successful YouTuber since the inception of the platform. The success stories from the use of the YouTube business model are plentiful.

Jamal Edwards, founder of SBTU (Alemoru 2016) who uploaded his first YouTube videos at 15 firstly as an artist in his own right and then filming his friends rapping and singing, using a video camera which he got as a Christmas present. (He uploaded them onto his YouTube channel, launched from his bedroom.) He quickly accrued a significant number of subscribers and started to earn money; eventually taking a percentage of the revenue raised from subscribers and advertising. Tapping early into a burgeoning 'UK grime' scene; giving artists like Akala, Wretch 32, JME, Headie One and Chip exposure. These artists and many more of the same genre featured in his 'F64' series on the channel inviting artists to 'freestyle' in 64 bars. He also sought out young artists who were not from the UK Grime scene to appear; and the channel very famously featured artists Ed Sheeran, Emelie Sande, Rita Ora and Jesse J.

Musicians/Artists use the platform extensively for uploading music videos. Seen as an especially valuable tool, some of these artists have millions of subscribers who help propel record sales etc... One of the very first to garner enormous success from the platform was Justin Bieber (Petridis 2018) who's career was famously launched when his mother began posting videos of him online. He was spotted by Scott Samuel 'Scooter' Braun (who went on to become his manager). He was flown to Atlanta to record some demos, which is where he met Usher (Das 2021) who arranged an audition with L.A. Reid. Usher, (who by this time had started a media company with Scooter Braun) became Bieber's mentor and was instrumental in getting him signed to their label 'Braun Media Group Records' with parent company, Def jam Records. He is today one of the most successful artists on the platform with 60 million+ subscribers.

Sometimes ordinary people were big winners financially, after their videos went 'viral'. One of the most famous ones being of a little baby called 'Charlie Davies Carr' who bit his older brother Harry's finger. This video (KTLA 5 2021) generated more than £300,000 in merchandising & advertising deals for his family, who finally sold that video as an NFT at auction in May 2021. Another example is a young woman called Zoe Sugg, who started a YouTube channel as a 'Haul girl' launching her career as a 'You Tuber'. She unpacked her 'Haul' of shopping, showing off her purchases, clothes, and cosmetics etc... On screen just like you would with your best friend or sister. A simple idea that has grown into an empire. (Turk 2017)

COPYRIGHT, AND THE DMCA

The UK copyright law protects owners of recorded work if their music is used. There are two copyrights linked to recorded music, the Sound recording (or master recording), and the composition (Lyrics & melody). Usually, the record company will own the sound recording rights and the composer will own the rights if registered with the Publishing Rights Society (PRS) or any other collector on their behalf. Most of the user's content that goes up on YouTube features music as a soundtrack to their creativity often without awareness of licensing rights.

The problem is that, not everyone understands copyright law ... (Team 2018) as well as 'professional' creators on You Tube posting every day and earning money...there are still millions of ordinary people posting family videos, recording special occasions, who are doing it for fun. However, having user generated content on their platforms (only) serves the artist (arguably) well in that it sends higher traffic to the site, thereby generating income for the copyright owner.

YouTube has faced a few challenges and criticisms in recent years, Copyright being the main sticking point. (Gerken 2020). Since the inception of YouTube Premium, (giving creators ad free and 'licence free' use of music on their various platforms,) there has been a rising dissent amongst music industry companies, (Namely PRS, PPL, & the MU amongst others) executives.

YouTube have long argued that they have always paid adequate copyright revenue to artists. (Hale 2018). According to an article written in Rolling Stone in June 2021, YouTube CEO Lyor Cohen, was quoted as saying that YouTube paid out “\$4 billion in the previous 12 months” generated from Subscriptions & ad revenue. Most of that ad revenue coming from amateur UGC’s rather than artist music videos. Critics still feel this is ‘small fry’ compared to the income Spotify generated on behalf of music rights holders in 2020, generating \$8.9billion and two thirds of that paid out to rights holders (about \$5.8billion). There is still a long way to go. Jeff Price a Spotify representative argues that the “data that is necessary to pay copyrighters is often incorrectly added, wrong or incomplete” The streaming services employ third parties to attribute the right data to the correct copyright.

The requirement from YouTube regarding Article 13 is that material can be removed from (said) videos if there is a suspected infringement of copyright. The addition of Content ID means that holders can make a claim on existing uploaded material by either blocking if they so wish or leaving it up and monetising it by adding an ad to the video so that generated revenue goes straight to the rights holder. Another protective method to support copyright holders is the copyright strikes, (a three strikes & you’re out’ system based on baseball terminology) a ‘policing’ practise used for the purpose of managing copyright infringement and thereby complying with the Digital Millennium Copyright Act (DMCA, The 1998 US copyright law) a safe harbour protection. This has resulted in numerous creators having their channels terminated, removing all videos from their account, and preventing them from creating another one.

Thereby (In a way) absolving YouTube of any ‘responsibility’, having put the protective measures in place. Users have complained that these systems are unfair, biased towards copyright holders (Clark 2002) and that YouTube are able to ‘hide’ behind the Safe Harbour provisions and therefore pay less ‘royalty’ to rights holders. Even when no infringement has occurred. The CEO Susan Wojcicki (Chmielewski 2018) and the CBO Robert Kyncl (Jones 2018) Of YouTube argue against Article 13 citing that creative freedom & artistry to aid business will be crushed, and (alleged) infringements cannot always be 100% verified. Kyncl referred to the role of User Generated content in the success of videos by Dua Lipa and Drake.

‘

Paul McCartney, (in joining more than 1,300 artists including James Blunt, Max Martin, Dave Rowntree, Imelda May and more), wrote (Paine 2018) an open letter (to Legislators in the EU Parliament arguing for Article 13 and addressing the 'Value Gap', (The disparity between the value that music-streaming platforms get from the revenue generated by those who create content.)

The controversial element (Article 13 now 17) of the European copyright directive was retained in a vote in Europe in March 2019. It will make some difference to UK musicians, because the UK left the EU (Bedingfield 2020). A dismaying result for the UK 's Musicians, the copyright directive is widely seen as one of the ways of keeping up with widely changing technology across the music industry.

PPL, PRS, MU, and The IVORS ACADEMY

The PPL 's stance on the copyright issue is an interesting one. The consensus is still to push ahead with implementing added liability to Internet service providers. There is less money now to support an ever-increasing number of performers/creators with greater competition and consumption so addressing the value gap is as important as ever. According to the IFPI global music report of 2019, revenue generated from physical sales (Vinyl CD's) streaming, syncs/downloads, peaked in 2001 at \$23.4b. Due to unregulated unlicensed downloads, by 2014, that revenue had shrunk to \$14b.

From 2015 there was a steady growth in revenue and by 2019 Global music growth had reached \$20.2b. This is still less than what was generated in 2001. However, with the huge growth in music consumption in all its forms, considering inflation from 2001 the actual amount generated by the global music report in 2019 (according to PPL CEO Peter Leatham) would have been closer to \$33b.

The UK officially leaving the EU was a blow to the 'The European copyright Directive in the Digital Single Market' and it is now left to the UK music industry with the UK government to re- address its licensing arrangements with YouTube.

The performing Rights Society's (PRS) stance regarding copyright has always been in support of initiatives that have built a solid base in support of efficient licensing. One of these initiatives being the 'Collective Rights Management Directive' which is intended to support collection of copyrights and to set high operating standards for multiple territories in licensing of songs to online streaming services.

PRS also support widespread consumer education in basic copyright law and the importance and relevance of rights to creators.

The Musicians Union are incredibly supportive of the European Copyright Directive, finally passed in March 2019, with of course the article 17 (formally article 13) clause. The MU has long campaigned for a change in copyright legislation. Anger amongst musicians is high because of the government's antipathy towards it. There is strong recognition that copyright law as it stands needs to be updated to deal with the speed of fast changing technology.

Dave Rowntree of the band Blur, one of the leading artist campaigners for the directive, speaking to the MU, is quoted as saying; "It's yet another frustration about the way the Government has shafted the music industry in their scramble to 'get Brexit done', "The Copyright Directive was one of the ways of keeping up with today's lightning-fast changes in technology". We've explained all this to ministers a thousand times, so I can only assume when Boris Johnson said, 'who cares about business', he meant ours."

Crispin Hunt (also speaking to the MU songwriter and chair of the Ivor's Academy said, ""What we need to do as a sector is convince the Government that music and the music industry is a major national asset – and it is,"

CONCLUSION

As the second biggest exporter of music in the world, it is our duty to pursue fair and correct remuneration for all Artists. Modernising the way data is collected, stored & distributed is of vital importance. As a working musician myself... we cannot afford to let our industry fall behind other countries in the way we treat and pay our creators and performers. YouTube is and will continue to be, a vital tool in promoting and exposing art and despite the significant dissent by some musician/creators around Article 17, there are still plenty of artists and creators who will use YouTube as much as ever (at least at the beginning of their careers) in favour of the wide undoubted exposure. It is essential that the industry nurtures talent and ensures that a career as a professional, musician remains a viable option in the streaming era.

The problem is that, not everyone understands copyright law ... (Team 2018) as well as 'professional' creators on You Tube posting every day and earning money...there are still millions of ordinary people posting family videos, recording special occasions, who are doing it for fun. not necessarily for monetisation. However, having user generated content on their platforms (only) serves the artist (arguably) well in that it sends higher traffic to the site.

