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Module title: Legal and Business Affairs

Assignment title: Case Study

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**Intellectual property and Youtube: an inquiry on the consequences raised by
their interaction**

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1. Introduction

Youtube is an online video sharing app created by Chad Hurley, Steve Chen and Jawed Karim. Since its foundation in 2005 and its subsequent acquisition by Google the year later, the service has gathered over 2 billion users worldwide (Oberlo, Mohsin 2020) making it the most popular platform for creators. With 500 hours of content uploaded to the app every minute, Youtube positions itself as the second most popular social platform ever (Business of Apps, Iqbal 2020). Youtube's own essence of content creation naturally results in a deep relationship with the themes of intellectual property and more specifically with copyright. In this essay, we are going to analyse how this relationship positions itself in the context of the commercialisation of music and creative content and what are the issues raised by this complex web of factors. The main question that needs to be addressed is how artists and labels can protect their work and use copyright law in the most effective way in an always-changing scenario (Music and Copyright, S.Frith, L.Marshall 2004).

2. Intellectual property

Before we start analysing the dynamics behind the commercialisation of music and entertainment content through Youtube, it is necessary to briefly introduce the characters that come into play in the discourse. The starting point is represented by the central role that intellectual property plays in our society. Intellectual property represents any form of intellectual creation such as literary or artistic work, inventions, design, logos and symbols. More specifically, it articulates in two branches: industrial property and copyright. The first concerns a range of different forms of creation (from designs to trademarks), while copyright regards literary and artistic work, protecting its reproduction, through economic and moral rights. While economic rights allow creators to receive a financial reward from the reproduction of their work, moral rights protect the claim of the authorship of a body of work and the right to object to any of its modifications. (Understanding Copyright and Related Rights, WIPO 2016). Essentially, copyright protects a work from being reproduced without the permission of its rightsholder. It cannot protect the idea behind it, but only its expression (Cyberethics, Spinello 2017). The copyright duration, established by the 1976 Copyright Act, was previously fixed at 50 years after the death of the author, but it is now extended to 70 thanks to the CTEA of 1998. When the copyright expires, the work enters the public domain (Cyberethics, R.A.Spinello 2017). As long as it is protected, if the copyrighted work is being used by a third party without permission, a copyright infringement is committed. The infringement can be classified in Primary, which consists in copying work, renting, performing or making an adaptation of the work or Secondary, which consists in facilitating or arranging for a third party to commit a Primary Infringement. However, copyright has certain limitations considered to be in the public interest (Cyberethics, Spinello 2017) that allow an intellectual creation to be exploited without falling into copyright infringement. One such limitation goes under the name of Free Use: in this case, the owner does not need to be compensated for the exploit of his work which can be employed in any way without legal outcomes. For example, this applies when a work is quoted, used for research and teaching purposes, parodied or displayed for news reporting. (Understanding Copyright and Related

Rights, WIPO 2016). The second case which represents an exception to copyright infringement is non-voluntary (compulsory) licences. These require compensation that allows the work in question to be exploited without the rights holder's consent. By restricting the copyright subject to the music works, we can differentiate between sound recordings and compositions. These are fixed through different procedures (phonorecord versus copy) and present different authors (performers and producers for sound recordings, composers and songwriters for compositions). The rights of the owner are the same in both cases, except for displaying the work publicly, which is not considered an exclusive right of the owner in the case of sound recordings (Circular 56A Copyright Registration of Musical Composition and Sound Recordings). The copyright laws are regulated by a series of government acts, one of the most important being the DMCA (Digital Millennium Copyright Act), in force since 1998.

3. The commercialisation of music on Youtube

One of the key concepts behind the original idea of copyright was the high cost needed to reproduce and diffuse intellectual property. With the advent of the internet and digital media, this same cost has been erased and replaced in turn by the high accessibility of the online world of file sharing. Music, movies and more generally creative content have drastically changed their delivery and the copyright laws do not always seem to keep ahead of these changes. When creative content is delivered on Youtube, it is protected through a system called Content ID. This tool, which acts as a support instrument to the manual removal and the takedowns operated by DMCA, allows copyright holders to upload their work to the platform's system, which will then be checked against a database to detect if any other user has uploaded that same content, committing a copyright infringement. When a copyright infringement is detected, the rightsholder is confronted with three options: Block, which means taking down the video, monetizing the video with ads, or just tracking the video's viewership statistics. In most cases, however, there is no real human behind this choice, but videos are blocked by Youtube itself by applying the block policy automatically (A guide to Youtube removals, EFF, 2009). This system, which is only available to users that meet specific criteria, has now generated a total of \$3 billion in terms of payout (VentureBeat, Sawers 2018). Even if record labels are complaining about its efficiency, new Google reports claim that 98% of copyright infringement tracking on Youtube happens through Content ID and it is, therefore, a fundamental system for creator's rights. Other measures adopted by the platform are Copyright strikes and the Copyright Verification Program. Copyright strikes consist of a notice and takedown of the video accused of copyright infringement. After receiving three strikes, the channel and all its videos are deleted and Youtube prohibits the user to be an account holder again. This process is usually the consequence of a formal DMCA takedown notice. As part of the congress granted online services providers of DMCA, Youtube has to meet certain requirements, among those the obligation of implementing a "notice and takedown" system (A guide to Youtube removals, EFF 2009). The copyright verification program is issued for "copyright-holding companies to issue multiple removal requests" (Youtube Creator, 2020). Through a form called Youtube Content Verification Program Application, users are identified as authorized agents and their notices are, in this way, legally supported. In addition to this, Youtube will soon be affected by the new EU copyright directive Article 13, which covers how content sharing services should deal with

copyrighted content. As a consequence of this article, platforms like Youtube, Twitch or Facebook will be held responsible for uploading copyrighted-protected content if they do not acquire a license from the right holders (C.Fox, BBC news, 2019). These intellectual property policies raise a set of queries on the management and the circulation of the content. Since Article 13 expects Youtube to be held responsible for the content uploaded on the platform, this would mean that Youtube should buy licences before users upload the content, entering a kinda loop-like mechanism. Given the huge number of videos uploaded every day, this would most likely require an algorithm-driven filter mechanism (maybe similar to the already existing Content ID) in order to scrutinize all the uploaded content in a reasonable time. But copyright filters are far from perfect, and they could accidentally remove legitimate content from the platform (such as Free Use content), for example educational videos, satire or memes (G.Volpicelli, Wired, 2019). Usually, the right holders through which allegations are made consist of large companies, such as major record labels or big film productions. As a consequence of this, it could be very challenging to dispute these allegations, especially for smaller creators. Indeed, the laws and policies associated with copyright could be classified as excessively protective and limiting, especially when they act as an obstacle to content creation. Not only these laws see the creators battle for their work to stay on the platform, but they could also interfere with the creative play, which requires “meaningful access to the resources of a common culture”(Configuring the Networked Self, Julie Cohen, 2012). And even when both parts are favoured with strong legal confidence, it could not be easy to resolve a dispute. In 2016, the technology and innovation centre at NYU uploaded on Youtube a video recording of a panel, which was part of the Engelberg Center’s Proving IP symposium in May of 2019. The conference featured a discussion by Judith Finnel and Sandy Wilbur, two musicologists that took part in the Blurred Lines copyright infringement case. The panel was meant to explain how songs are usually analysed in copyright litigation and featured clips of various tracks, such as “I won’t back down” by Tom Petty or “Halo” by Beyoncé. The tracks were therefore inserted in the video for educational and information purposes, as covered by the Fair Use. When a second version of the video with more legible slides was uploaded to the NYU Youtube channel, the channel received a warning from Youtube’s Content ID system for multiple copyright infringements and the question evolved into an intense dispute between the parts. The Engelberg Center, which had as its disposal strong legal confidence, had to rely on their own networks and trigger a process in order to prove the legitimacy of their video and keep their content on the platform. (NYU LAW, How Explaining Copyright Broke the Youtube Copyright System). Other than confirming the usual happening disproportion of positions between the right holders and the accused parties, this case highlights the fallacy of copyright filters and consequently their danger. More generally, it sparks light on a complex issue: copyright policies and laws need to find a balance between protecting the individual rights and favouring the circulation of cultural resources. Laws do not need to be restrictive to the point in which they limit the diffusion of cultural material, at the same time the work of an author needs to be protected because this serves as an inducement for creativity and innovation (Cyberethics, R.A.Spinello, 2017) and acts as a means of income for content creators.

Another big issue related to the commercialisation of music on Youtube is the revenue mechanism operated by the platform. There are two main ways in which money can be generated through Youtube. The first one is based on copyright and consists of the rights related to the tracks other users upload. As stated before, no content (except for Free Use) can circulate on Youtube without the rightsholder being rewarded for it. Usually, videos monetized through Content ID generate \$0.00087 per view. The second method consists in monetizing your own videos by running ads. This can be achieved differently based on the artist's position. If the artist is independent, the channel in question will need to be eligible and apply for the Youtube Partner Program, a system that enables smaller creators to earn from their videos by partnering with advertisers. The second way is to work with third-party distribution companies like The Orchard, Believe or AWAL. These companies usually collect royalties from all the DSPs and ask for a percentage on the earnings for the service. The third option involves record labels, and it is the most complex one as there are various types of deals that can be underway. Once a video is monetized, royalties are generated and the rights holders are paid at different per-view rates. Four types of royalties can be generated by Youtube: performance royalties, mechanical royalties, revenue for the content owner (through Content ID) and royalties for the sound recording owner (MBME, E.Watkins, 2020). Despite constituting the most used online platform for music stream, Youtube holds the record of the lowest paying service: Youtube's Premium rate is around \$0.008 per view, while video streams on the official artist's channel generate approximately \$0.00164. Similarly to Spotify, Youtube has recently introduced a Premium subscription option- alongside Youtube music- which provides ad-free content by paying a monthly fee so that the stream per-rate of a premium user is higher than a normal one. Money generated from Youtube videos come from ads, more specifically from ads impressions, that is how many times an ad is viewed. The ad rates are measured through CPM (cost per mille), which means cost per thousand impressions (not views) so that on average about 35% of the views are counted as impressions. Skippable ads are the most expensive with a CPM of 12\$, while display ads are around 3\$. The time a user spends watching an ad is also important: if an ad is skipped, the company does not need to pay the owner of the video. It is also salient to say that Youtube keeps 45% of the money from ad sales for itself (COMPLEX, S.Setaro 2017).

As it already happens with other streaming services, there seems to be a huge discrepancy between the high user traffic and the revenue mechanism, which just does not pay artists enough. According to Media Hub, around 85% of Youtube users visit the platform for music, generating over \$2.3 billions of revenue in 2017 (MediaHub, C. Ellyard, 2018) but "in order to earn the monthly minimum wage amount in the US, an artist would need around 2.1 million views on Youtube" (Digital Music News, D.Sanchez, 2018). Youtube Music ad revenue reached \$15.15 billion in 2019 with a growth of 36% and the platform also hit 20 million paying subscribers, so the service is experiencing high profits that do not match the low royalty payout (GRAMMY, ADVOCACY, 2020).

It seems that the problem lies in Youtube's own nature. Unlike any other streaming platform, Youtube is a user-generated service. This means that, even without purchasing any license from record labels, the music and, more generally, the content could still be uploaded by

users, ensuring in this way the functioning of the service (Hyperbot, B.Owsinki 2017). The conversation is therefore being brought back to copyright, where currently “safe harbour” laws are protecting Youtube from liability for the copyrighted material uploaded by users (The Guardian, M.Sweney, 2017). Once again, we are facing a quandary: on the one hand, Article 13 could limit freedom of expression and block the flow of culture, on the other hand, to be obliged to acquire licenses from the creators might result in a re-evaluation of Youtube's revenue mechanism and turn out to be a positive revolution for rights holders.

4. Conclusion

In conclusion, the digital revolution has brought many changes to the market of music and entertainment and it is still doing so, in a way that is quite impossible to predict. In this context, we have seen that the commercialisation of music on Youtube revolves around two main issues: copyright laws and revenue mechanisms. Both these forces seem to weave together and co-depend on each other in order to constitute a possible solution. The question is complex because a lot of different agents are in action: culture, freedom of expression, business strategies, ethics and economics, but it seems that a right balance between individual interest and the common good is needed to be found, that is to say, business strategies and laws need to take into account also their consequences on the collective, while artists and creators need to find a way to earn from their work while making it accessible. Copyright laws need to be implemented and possibly used as a vehicle to instigate a change in the way that Youtube works.

(word count: 2,627)

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