

YouTube Case Study

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This essay will be an overview of YouTube's business model and its relationship with intellectual property. The role of intellectual property related to music creators and users will also be discussed, and an analysis of Article 13. It is essential to understand how intellectual property works and what steps stakeholders can take to ensure that the monetisation and protection of their IP are done correctly.

1. Introduction

YouTube is a video-sharing platform founded in 2005. Initially launching to be a video-dating site, YouTube did not attract enough people to succeed. In response to this, the founders (Chad Hurley, Steve Chen and Jawed Karim) transformed YouTube into a platform where people could upload any video content they wanted (Leskin, 2020). Because of this change, a range of videos started being uploaded to the platform. There is now a wide variety of content available on YouTube, such as tutorials for everyday tasks, gaming videos, comedy sketches and music videos.

Less than two after YouTube's launch, the concept of websites hosting user-generated content was growing in popularity; this led to Google's \$1.65 billion acquisition of YouTube (Arthurs, Drakopoulou and Gandini, 2018). Although a risky acquisition to some, YouTube has evolved into a commercial platform that utilises user-generated content in an evolving media firm ecosystem, and Google is at the reigns (van Dijck, 2009). Even though YouTube continues to grow, in more recent times, popular content creators have been outraged with the way that YouTube's algorithm works, claiming that YouTube purposely hides its content from viewers as it will not generate ad-revenue. The problem with this is that YouTube has the freedom to pitch content to the advertisers that they find suitable. Usually, these are celebrity YouTuber's who create family-friendly content. This means amateur content creators whose content may not be suitable for all audiences, albeit entertaining to some, suffer from being de-monetised which means they have to find other means to generate revenue (Alexander, 2019).

2. YouTube's business strategy and revenue streams

YouTube has explored numerous business models in search of making a profit. Its primary model is based on offering access to its catalogue of videos in an unlimited way, which is financed through advertising. Unlike other subscription-based companies and pay-per-view, YouTube's success comes from user activity and advertising. Using their algorithms, YouTube can make users more likely to see content from social actors and cultured channels. It is easier for them to profit from advertising on these kinds of videos instead of random, unfiltered videos (De-Aguilera-Moyanom, Castro-Higueras and Pérez-Rufi, 2019).

Many believed YouTube's ability to generate revenue was questionable. On the other hand, others believed that YouTube could become the company to redefine audio-visual advertising (Artero, 2010), attracting more advertisers to use the platform, therefore generating higher revenue for the company.

Throughout the years, YouTube has introduced many different business models, such as YouTube Gaming subscription, which offers access to live gameplay broadcasts, and YouTube TV, which would compete with cable television. By 2019, it became apparent that YouTube was marketing itself towards being a subscription-based service, following Netflix and Amazon Prime (De-Aguilera-Moyanom, Castro-Higueras and Pérez-Rufi, 2019). This

became evident to some because YouTube quietly removed their “Broadcast yourself” slogan from the website. It was no longer an accurate representation of what the company was trying to accomplish (Parker, 2019).

YouTube has seen a significant increase in usage due to COVID-19 (YouTube Culture & Trends, 2020), with 62% of users in the United States claiming to use the platform daily in the third quarter of 2020 (Tankovska, 2021). Musicians were no longer able to play live, so YouTube theoretically became the stage. Music videos by musicians and fans were being shared from home, and previously archived concert footage was being released for people to reflect on and look forward to live performances again. Songs such as Childish Gambino’s “This is America” (Glover, 2018) and Public Enemy’s “Fight the Power” (Channel ZERO, 2020) soundtracked the social justice moments taking over the world due to George Floyd’s death. Songs from The Cranberries and Whitney Houston joined YouTube’s 1 Billion Views Club, as streams of their music rose throughout lockdown (The YouTube Music Team, 2020). These are proof that YouTube’s statistics can show how the population reacts to events.

There was also a movement titled “#SOSFEST”, meaning Save Our Shows Festival, which saw famous musicians such as Post Malone and Miley Cyrus performing in local venues to raise awareness for venues at risk of closing down. These performances were recorded and then promoted through YouTube to raise money (The YouTube Music Team, 2020).

YouTube has the power to turn videos into revenue with the use of advertisements. An example of this was in 2010 when YouTube user TomR35 uploaded a clip about advertisements from the TV series ‘Mad Men’. The company which owns the rights to the clip, Lions Gate, may have requested to have the clip of their show taken down in the past, but instead, they had decided to leave the clip up as YouTube could run ads on the popular video and then split the revenue with Lions Gate. YouTube has many videos uploaded by users without the original copyright owners permission, but YouTube automatically recognises these videos as an infringement of copyright by using Content ID. The revenue generated from the ads on said videos is halved with the copyright owners, which means many copyright owners do not request to have the videos taken down. Advertisements became the largest revenue stream that YouTube has (Miller, 2010), but little did they know that this would be at risk with the implementation of Article 13 many years later.

3. YouTube’s challenges and the threat of Article 13

A challenge that YouTube has had to face recently is the threat of Article 13/17. In September 2018, the European Parliament voted on a version of the EU Copyright Directive. An article that sparked controversy, in particular, was Article 13, which meant that platforms like YouTube and Facebook would be held responsible for enforcing copyright protection rather than the copyright holders (van der Linde, 2018). The directive will not affect the ordinary internet user. Instead, it will affect large online platforms and news aggregators to make it necessary for them to pay artists and journalists whose work they monetise correctly. The directive will address platforms whose primary purpose is to store, organise and promote copyright-protected works uploaded by their users, excluding websites such as Wikipedia (Schrantz, 2019) as they are nonprofit. They are run by the nonprofit organisation, The Wikimedia Foundation (Wikimedia Foundation, no date). The directive’s purpose will not be to censor content but to increase accountability, intensifying the pressure on internet

platforms to create fair payment deals with the creators who generate revenue for the platform with their content (Schranz, 2019). Overall, the directive's goal will be for an online platform to always compensate people for any money the platform earns from the creators content. This means that any used works that the creator is not compensated for is therefore illegal and can result in creators suing the platform. The agreed-upon directive also allows platforms to let users make complaints about any wrongfully removed content, which the platform can then act on (Schranz, 2019).

YouTube has an internal computer algorithmic system called Content ID, which content creators and copyright holders can use to prevent infringing videos from being uploaded to the platform. To do so, copyright holders can upload files to the Content ID, which means that every new video uploaded to YouTube will be scanned against all of the Content ID database files. Copyright owners then decide what happens to videos that match their content, and the video gets a Content ID claim (Google, 2021a). YouTube believes that Content ID meets the criteria for the safe harbour provisions of the Digital Millennium Copyright Act of 1998 (DMCA). However, some industry experts believe that YouTube should be doing more for this (Zapata-Kim, 2016), which is where Article 13 comes into place, pushing that responsibility onto YouTube to ensure that its platform does not breach copyright violations.

Even though it was before the announcement of Article 13, a compelling case could be seen in a married couple, Ethan and Hila Klein. They operate a popular YouTube channel titled 'h3h3Productions' and are mostly known for making funny reaction videos and memes. Fellow YouTuber Matt Hosseinzadeh sued the couple in 2016 for copyright infringement and defamation in response to a comical reaction video they made to one of his videos, where they mock him. The legal battle threatened to bankrupt the couple, but they continued to pursue their case (Sims, 2017). In the end, h3h3 won their case with the judge ruling that their video did not constitute copyright infringement and was fair use as a matter of law. This was a notable victory for the couple and questions about what fair use would look like after Article 13 had been implemented (van der Linde, 2018). Some suggest that with Article 13 in place, it is almost impossible for fair use to be implemented. This is because filters used to recognise works that may infringe copyright cannot tell if said content could be justified as fair use. This prevents the person from posting the content to rely on fair use to defend their content as non-infringing (Adams, 2019).

YouTube was unhappy with the idea of Article 13, as they believed it could discourage platforms from hosting user-generated content. YouTube believe that this could negatively impact creators fanbases and revenue streams and even tear apart communities that content creators have worked so hard to build and develop (Loney, 2018). However, YouTube has been steering in the direction of generating its own content for consumers.

4. Monetising and protecting intellectual property

Intellectual property law covers everything from literary and artistic works to marks and designs used by merchants for their goods and services. The law is in place to prevent people from copying or taking unfair advantage of others' work or reputation without any repercussion. In a legal sense, intellectual property can be owned and distributed (Bainbridge, 2012).

YouTube has a system for managing intellectual property on its platform, which consists of three major elements. First is the YouTube rights management system, which helps identify owners and administrators of intellectual property and identifies copyright holders' policies to

enforce their rights (Google, 2021b). Content ID is the hub for rights management. Users can manage their assets, generate reference files and set policies to prevent or track copyrighted content (Google, 2021d). Secondly is the Content ID, which, as previously discussed, automatically scans YouTube for content that matches the user's intellectual property. Lastly, YouTube videos can be the public representation of someone's intellectual property (Google, 2021b), as if a video is uploaded publicly, it shows which user owns that video.

When it comes to distributing music to YouTube, musicians and labels usually choose which platforms they would like their music to be available. If YouTube is selected, their distributor will create a profile dedicated to that artist's music and upload the songs via that channel. This means that if the artist wants their music taken off YouTube, they can do so via their distributor.

YouTube presents a way for music creators to earn money from their music on YouTube by joining the YouTube Partner Programme, which uses ads to monetise their works. As well as this, musicians can also earn money from YouTube Premium subscriptions – a service that allows consumers who pay a monthly fee to experience ad-free videos and background play through the YouTube Music app. A piece of subscription revenue is distributed to artists depending on how much YouTube Premium members watch or listen to their content. Artists have also been known to use YouTube to advertise merchandise and tours (YouTube, 2021), increasing their exposure and revenues.

The sound recording stakeholders of a song are usually the artist/performer and the record label, whereas the composition stakeholders of a song are the writer/composer and publisher (Shepard, 2019). These stakeholders should pay attention to the monetisation of their IP rights on YouTube. To do this, stakeholders need to ensure that YouTube has reference files and samples of copyrighted materials. YouTube can recognise an artist's work when used in videos uploaded by any user on the platform because of these reference files. By ensuring that the reference files contain the correct metadata, YouTube will know whom to pay when any copyrighted content is used or uploaded in someone's videos. There are now Corporations that can ensure that this is done on behalf of their clients (Ciccatelli, 2017). To create a reference on YouTube, an artist could claim a video that they own and enable it for Content ID. Doing so creates a digital fingerprint that Content ID compares with videos uploaded by other users to claim videos on that artist's behalf (Google, 2021c). Creating a reference is essential for artists to ensure that they get the payments deserved for their material being used on YouTube and protects their intellectual property; without doing so, artists could lose out on money that could be used to fund further projects. Music is in everything and can be crucial for creating content for YouTube, which is why users need to be aware of any material that may be infringing before uploading.

When it comes to monetising videos, YouTube uses its Partner Program. Unfortunately for other creators, Logan Paul's 'Suicide Forest' video created a permanent change to YouTube's Partner Program. The video depicted a tour of a famous forest in Japan that is known for people committing suicide, and Logan comes across a hanging body in the woods and decides to film it for his viewers. The video received a massive backlash and was taken down shortly by Logan or his team. Considering the popularity of Logan Paul at the time of the upload, one would assume that YouTube should have been quicker to take it down themselves. YouTube has since announced that it will enforce tighter restrictions on which videos could be monetised within the Partner Program, which results in more positive content

creators receiving ad-revenue (Alexander, 2019). Another reason for users being demonised is for using copyrighted music in their videos without paying for it or stating that it is not their music. Some creators also get confused with the term “royalty-free music” by assuming that it is free to use as if it was in the public domain. Instead, if the music is royalty-free, it sometimes requires the user to pay a one-off fee for the content, and royalties do not need to be paid for the use. However, it can sometimes be expected for musicians to offer their music royalty-free with no fee to be paid, as long as they are given credit in the video description (Lickd Staff, 2020).

Musicians need to know that any videos that feature their music can earn them royalties, as publishers can claim any channel with the artist’s music featured. Once the publisher claims a video, YouTube can then monetise it. However, any video viewed by a YouTube Premium or YouTube Music Premium subscriber automatically generates royalties (Davie, 2020). There is much controversy about the rates that YouTube pays artists. However, a spokesperson from YouTube told Digital Music News in 2019 that “YouTube pays the same rates as Spotify” based on streams by premium subscribers. With this being said, YouTube still somehow comes last when it comes to payments to artists. Because the company refuses to disclose the actual numbers of its subscriptions (Resnikoff, 2019), it can be hard to understand how YouTube can compete to pay as much as industry giants Spotify. Geoff Taylor of the BPI (British Phonographic Industry) agrees that YouTube pays nowhere near what it should for music streaming (Express & Star, 2021).

5. Conclusion

With article 13 being passed in Europe, YouTube needs to adapt and use Content ID tools to ensure that all copyright laws are obeyed correctly to prevent them from being held responsible for infringement on its platform. YouTube should also consider the possibility of a similar law being passed in other territories. By doing so, YouTube can do its best to help protect and monetise copyright holders' work on its platform. YouTube also need to look at the future of payments for artists, as industry bosses look at YouTube in disappointment for the payments they currently provide.

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