

Legal and Business Affairs (BMTY7002) Ian Penman

Case Study

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YouTube’s ‘commitment to becoming the number one contributor of revenue to the music industry’: A study of this statement considering revenue mechanisms, copyright laws and safe harbour.

“We want to be the number one revenue source to the music industry” Lyor Cohen, YouTube’s Global Head of Music, states in his 2020 interview with Music Business UK (in Ingham 2020, p.18). An admirable declaration, but do Cohen’s words transpire? In order to investigate this, this study will analyse Cohen’s statements alongside the data found for payments per streams for music, firstly using myself as an independent artist to analyse these figures. Upon clarification of the level of pay-out YouTube provide, legislation will be considered in accordance with the way in which the YouTube business model frames itself. Using current YouTubers to analyse this and what the platform provides for creators regarding the information, or misinformation, surrounding copyright will also be considered to conclude whether Cohen, indeed, can stand by his statements or if there is a lot hiding behind the bravado.

Returning to Lyor Cohen’s 2020 interview, he often declares his desire for artists to be ‘renumerated for their work’ and that, with this care, perhaps YouTube can help ‘the artists find their audience’ (in Ingham 2020, p.17-18). However, it cannot be ignored that he is in an extremely high position at an enormously corporate establishment, so he does of course intertwine this ostensible care with realities such as the fact that, of course, YouTube ‘is about sustainable business’ which, in his words, is what ‘fans are nuts for’ (Cohen in Ingham 2020, p.17-18). It is interesting to note how Cohen peppers his discussion about the business YouTube have with the music industry with concern for a music artist, along with his broad statements of wanting to be the biggest provider of revenue to the industry, which he later restates in his September 2022 blog post that YouTube’s 80 million subscribers is demonstrative of this ‘commitment’ (Cohen in Stassen 2022). What is quite noteworthy about this blogpost is that his endorsers come from companies such as Universal and Warner Music Groups – two not so small businesses in the industry. Therefore, when Cohen talks of the music industry, does he just mean one or a few of the major labels of whom he, on a corporate level, is able to establish deals with or does he mean all those that are encompassed within it, such as independent artists?

To begin answering that question, it is useful to investigate how much YouTube and YouTube Music pay musicians. According to Jefri Yonata’s article for headphonesty.com,

YouTube pay \$0.008, the article depicting that 125,000 streams would be needed to make \$1000 (Yonata 2022). This is comparative to Spotify, for example, which pay \$0.005 **less** with an artist needing 303,030 streams to make \$1000 (Yonata 2022) (Appendix 1). Although the rate is nothing to be proud of, paying more than the most used streaming platform perhaps puts YouTube Music on a small pedestal, for now.

However, upon further research, another blogsite, producerhive.com, quoted YouTube Music as only paying \$0.002 per stream which is a stark comparison and would place YouTube Music much lower on the scale of generous payers (Fitzjohn 2022). This then begs the question as to why these numbers contrast, especially when the rest of the figures in Fitzjohn's article more closely match those of the other streaming sites depicted in Yonata's (Appendix 1).

To be able to determine which figure is more exact, the first case study this essay will examine will be that of myself – an independent releasing artist, represented on all streaming sites under the stage name Anna Aarons. Using the distributor Horus Music, my music is distributed automatically upon release to YouTube (youtube.com as well as YouTube Music). My debut release in January 2018, 'Life', has achieved 46 views via youtube.com from the track distributed directly to YouTube via Horus (i.e., not self-uploaded). Comparatively, the self-uploaded music video for my 2020 release 'Words' has achieved 6.1k views. However, this number was achieved via the ability to 'boost' the post – i.e., spending money on the video to increase views. Therefore, the wide gap between the humble 46 views of 'Life' compared to 6.1k views of 'Words' is largely due to £27.03 paid on advertising (Appendix 2). However, further investigation into the pay-out rates via another blogsite, musicianwave.com, provides confirmation of Yonata's 0.008 figure but contains an ever-important asterisk that points to the following footnote:

Note: *YouTube Music should not be confused with YouTube, which pays content creators per view, not per stream. With regular YouTube, creators get approximately \$0.0006 per view, meaning they need to reach 1,456 views to make \$1.*

(Clark 2022)

\$0.0006, to my calculations, is **93% less** than what is paid out via YouTube Music and thus, is an extremely important clarification within this study, especially if most of the music consumed via any YouTube subsidiary would still be via its original entity; YouTube.com.

The most distinct way to confirm the differences in pay were to check the statistics provided for my releases via Horus Music. The reports depicted that ‘Words’ has earned £8.12 from 12,185 streams, **since its release – across all streaming sites**. Delving in deeper to these reports, since 4th May 2020 – 4th December 2022, all my songs (which totals five different tracks) have made £0.08 via ‘YouTube – Red’ at a quantity of ‘6’ (Appendix 3). YouTube Red is the Premium paid service which now includes YouTube Music and thus, if 6 streams via YouTube Red total £0.08, my calculations put the ‘per stream’ figure at £0.013 which is much higher than those previously mentioned (Appendix 3). Nevertheless, there is then another figure on these reports for ‘YouTube – Content ID’ at a quantity of 6,005 – closely matching the views of the music video for ‘Words’. This arrives at the grand total of £0.1589... i.e., 16 pence! My calculations make this a figure of £0.0003 per view which is even less than Clark’s suggestion (Appendix 3). This does however justify Clark’s clarification that the ‘per view’ streams are paid at a substantially lower rate than ‘per stream’ and, more to the point, the money spent on promoting that video only benefited me, the artist, by looking marginally more impressive than without that promotion, however for me, the financier and income beneficiary of my music, it was a completely wasteful task; YouTube, on the other hand are £26.87 in profit from what they paid out on that video.

So why does this music video – which contains my original sound recording copyright plus the film copyright of my music video - constitute as a lower payment than the pure streaming of the song via YouTube Music? If anything, it should pay more due to the extra copyright of the moving image. Even if we confirm that the 0.008 figure is more accurate as a ‘per stream’ rate, YouTube may be hiding behind the fact that YouTube Music pays better than market leader, Spotify, while still making a huge profit from creators whose music are contained within videos. Is this how YouTube get away with their statement of largely contributing to the music industry as they know that most people still consume music via videos rather than YouTube Music?

This leads on well to concerns that were had upon YouTube Music’s conception in 2015. Writing for *The Guardian*, Stuart Dredge explains in May of 2016 that there were concerns for the “‘value gap’ [...] between the number of songs being streamed on [YouTube’s] service, and the money that those streams [...] generated for rightsholders and musicians’ (Dredge 2016). This was at a time when YouTube were believed to be paying £0.0009 per stream – approximately 89% lower than what they pay today (Ingham 2016). Dredge goes on to explain that, although the music industry was ‘cross’ about this low pay, YouTube was

believed to be ‘hiding behind “safe harbour” legislation’ in order to justify this (Dredge 2016). ‘Safe harbour’ is explained by Oliver and Lalchev in Ann Harrison’s *The Present and Future of Music Law* as something introduced by the Digital Millennium Copyright Act (DMCA) to grant ‘certain limitations to the liability of internet service providers’ who are acting as an intermediary (2021, p.85). Thus, in relation to YouTube, this protects the website itself from what users may be using the site for, and any copyright infringements that may take place within it. Although this law was introduced long before YouTube was even thought of, it can be argued that it is this part of the DMCA that provided YouTube’s framework of enabling ‘users to upload any video content online and reach viewers globally’, emphasis on the word ‘any’ (Hopkins in Oliver and Lalchev 2021, p.87). In fact, some YouTubers have now made a living from their channels by using music within their videos but, they argue, not as the sole focus, thus arguing this as ‘fair use’. YouTube’s own channel ‘YouTube Creators’, explains fair use as allowing a user ‘to reuse copyright-protected material under certain circumstances without getting permission from the copyright owner’ (2019, 0:15-0:21). It explains that fair use can be considered as ‘commentary, criticism or news reporting’ (1:05-1:07) but it does stress, twice, that ‘YouTube does not decide what is fair use and what isn’t’ (YouTube Creators 2019, 0:28-0:30); the last sentiment confirming YouTube hiding behind its safe harbour. However, the explanation of fair use is one that many who have success with their channels use in argument against copyright claims. Oliver and Lalchev speak of YouTuber, Rick Beato, who uses music (i.e., copyrighted material) to analyse and teach his viewers about the structure and theory behind the song and song writing (2021, p.89). Although the concept of Beato’s videos could be considered ‘commentary’, he still needs the original copyright holder’s work in order to have the content he needs for his videos. However, Beato has become displeased with the copyright claims made against him via YouTube, arguing he is being ‘unfairly treated’ as he feels the use of the song ‘should be classified as *fair use*’ (Oliver and Lalchev 2021, p.89). Oliver and Lalchev highlight that the disputes could largely be due to the fact that the consequence of a copyright claim is demonetisation (2021, p90).

This new algorithm that YouTube have adopted to detect copyright infringement is a great step they have taken in order to protect the original copyright holder, however because of the amount of video makers who deem the content ‘fair use’, some creators now offer educational videos of their own on the topic of how to avoid copyright claims. YouTuber Michelle Pacansky-Brock explains in her video *How and When to Dispute a YouTube*

Copyright Claim that software such as Adobe Spark provide the licenses for the music to be used on videos created within it yet, still, ‘you may get these really fun copyright claims filed against you from YouTube’, Pacansky-Brock explains, followed by a dramatic sigh (2021, 0:12-0:33). Although, she glazes over the part of her video where, during the disputing process, YouTube will ‘remind you about the importance of understanding the license’ and, despite her dramatic sigh, lets her viewers know it is ‘very important’ (2021, 2:05-2:15). Therefore, the real message of this video is how much of an inconvenience it is to have someone else’s copyright impede on a creator’s right to earn from YouTube.

Pacansky-Brock’s video however is not nearly as alarming as Jacob Restituto’s 2021 video *How to: Avoid Copyright Claims in Reaction Videos (Fair Use)*. Restituto is a YouTuber with over 136,000 subscribers with the most views on his ‘Musician Reacts To’ series. However, his ‘how to’ video has accumulated over 121,000 views and provides insight into how to evade copyright infringement. Before continuing, it is important to highlight Oliver and Lalchev’s statement that ‘YouTubers have become a cultural global phenomenon, also having a significant influence on the music industry’ (2021, p.89), as this influence also has an effect on what viewers believe and are influenced by. The first shocking statement Restituto makes in this post is: ‘when you upload a video and use somebody else’s songs, if they have some sort of copyright on it...’ (2021, 1:17-1:21). The fact that Restituto uses the phrase ‘some **sort of** copyright’ clearly illustrates his lack of knowledge, educating viewers whilst failing to state that all songs contain copyright. The fact that YouTube offers absolutely anyone to upload content and, thus, absolutely anyone to have the opportunity to become viral, this already provides potential danger to the music industry due to the ‘phenomenon’ that these influencers have become. What is more disturbing however in Restituto’s video is how he explains to his viewers that he, as a musician – and songwriter, has taken ‘100% copyrights off [his] songs on YouTube’ because he wants other artists to be able to use them (2021, 1:32-1:38). He then goes on to admit that he relies on other artists to make his income (Restituto 2021, 1:42-1:44). While playing the role of YouTuber looking out for fellow Youtuber, what he is actually doing by removing his own copyrights is admitting he **needs** the copyright of others in order to earn income, and rather than seek legal advice on this and educate thoroughly on the issue, he teaches others how to avoid copyright claims. What Restituto is failing to acknowledge is that copyright exists to protect the intellectual property of the creator so, not only has he given open permission for others to earn from his work, but he also neglects the fact that his video itself contains copyright. So,

with subtitles available and a sharing of his screen, another user could duplicate his video word for word and hypothetically gain more views, thus potentially earning more money from it. Restituto, arguably, may suddenly become a lot more aware of his rights as a copyright holder if this were to happen.

Considering that YouTube is largely protected by the safe harbour act, as well as the site itself providing a platform for others to preach about the evasion of copyright, this leads to the fact that musicians are suffering, not least financially, for the use and lack of accreditation of their work. Therefore, this raises the question - what is being done about this? A study published on 29th November 2022 by the Competition and Markets Authority (CMA), via gov.uk, suggests that investigation has been carried out by legislation makers in order to potentially govern the lack of protection and income provided to musicians via such streaming sites as YouTube. However, the findings were lacklustre in their conclusions, explaining that ‘analysis found that neither record labels nor streaming services are likely to be making significant excess profits that could be shared with creators’ (CMA 2022). They therefore concluded that, despite their understanding of how artists and songwriters ‘struggle to make a decent living from these services’, they felt an ‘intervention by the CMA would not release more money into the system’ that would help them (Cardell in CMA 2022). With a disappointing result from a study that was much needed, this creates concern as to whether the law will ever provide a reason for YouTube, and its competitors, to pay its contributors a comparative fee that can add up to a living wage without the apparent luck of just becoming viral.

From the analysis of the above case studies, there is little evidence found for Lyor Cohen’s statements about how much YouTube contributes to the music industry. It seems clear that the major labels and companies are very happy to be working with Cohen himself due to whatever deals have been agreed between them (Stassen 2022). However, as a musician earning minimal amounts from YouTube, the opposite must be said. Reverting back to the CMA study where they identify that a massive 60% of streams were of music recorded by only the top 0.4% of artists (CMA 2022), this provides enough evidence to show that the bulk of payments made via music consumed on YouTube and YouTube Music is going back to the big labels and thus something that Lyor Cohen can use to stand by his claims. However, taking into account that their per stream rate is minimal, the rate they pay for copyright held within videos is even lower and the fact the platform itself provides opportunity for others to learn how to avoid copyright – thus, providing opportunity for a copyright holder to lose out

on income – YouTube could be focussing their efforts on these pay rates rather than business deals in order for everyone to earn fairly from the use of its services.

Word Count 2743

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Appendices

Appendix 1

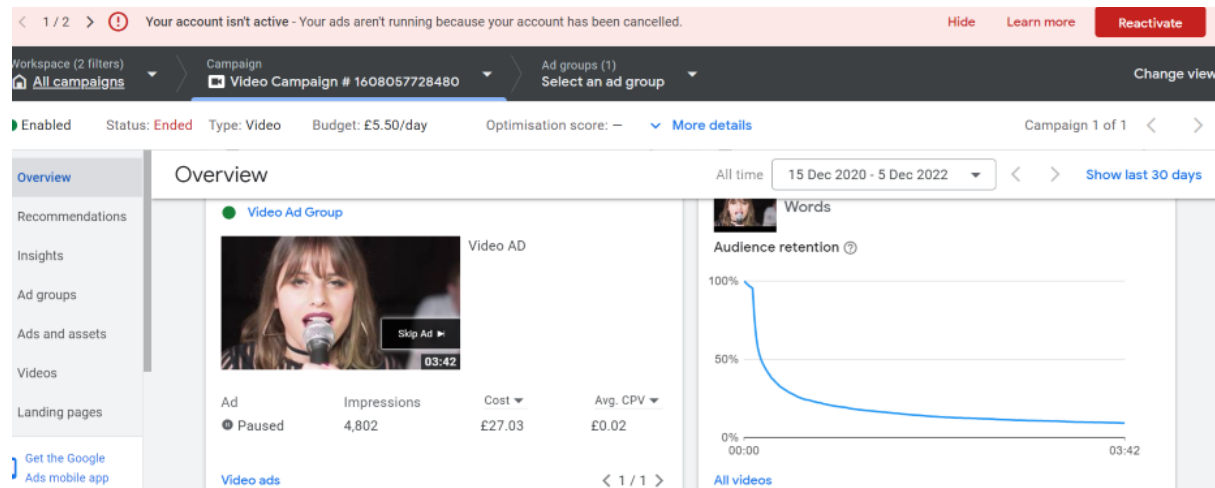
Platform	Pay per stream	Streams to get \$1,000
Tidal	\$0.013	76,924
Apple Music	\$0.01	100,000
Amazon Music	\$0.004	250,000
Spotify	\$0.0033	303,030
YouTube Music	\$0.008	125,000
Pandora	\$0.0013	769,231
Deezer	\$0.0064	156,250

Table taken from *How Much Do Spotify & Other Music Streaming Platforms Pay per Stream*. Yonata, Jefri. September 2022. Available at: <https://www.headphonesty.com/2021/11/how-much-does-spotify-pay-per-stream/> [Accessed: 26/11/2022]



Screenshot taken from *Streaming payouts per platform & royalties calculator*, Sean Fitzjohn 2022. Available at: <https://producerhive.com/music-marketing-tips/streaming-royalties-breakdown/> [Accessed 26/11/2022]

Appendix 2



Screenshot taken from my Google Ads account depicting the £27.03 spent on boosting the video.

Appendix 3

#	Track	Income(GBP)	Earnings(GBP)	Quantity			
1	Spotify	16.25994269	16.25994269	11,496			
2	Amazon	0.98	0.98	2			
3	TIDAL - Streaming	0.801074636	0.801074636	110			
4	Apple - Music	0.734330347	0.734330347	83			
5	Spaceshower	0.658815335	0.658815335	1,945			
6	Amazon - Unlimited	0.452034255	0.452034255	58			
7	Google - Play Music (Subscription)	0.240246243	0.240246243	34			
8	Youtube - Content ID	0.158989565	0.158989565	6,005	0.00003	per stream	
9	Google - Play Music (Trans)	0.11	0.11	1			
10	YouTube - Red	0.080570707	0.080570707	6	0.013	per stream	
11	AWA Co. Lte	0.03382839	0.03382839	7			
12	TikTok	0.007191882	0.007191882	1,524			
13	SoundCloud	0.001725865	0.001725865	3			
14	Netease	0.000670611	0.000670611	1			
15	Bytedance / Resso	0.000545042	0.000545042	55			
16	Facebook	0.000381056	0.000381056	307			
17	Tencent - QQ Music	4.70927E-05	4.70927E-05	1			
			20.52039371				

Screenshot of the report sent via Horus Music depicting the total income against the quantity of streams for each digital music store. Highlighted are those relating to YouTube along with calculations of pay per stream.