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Legal and Business Affairs

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An analysis of the practices of YouTube with regards to the monetisation of creators and Intellectual Property

This assignment will talk about the history of YouTube and the meaning of intellectual property, with crucial parts of online resources like various articles and books. An analysis of how YouTube has affected creators, such as songwriters, musicians and users on the '\$300 billion' company, whilst referring to intellectual property rights (Strauss, 2019). This analysis will use case studies to uncover the challenges faced to the commercialisation of music and entertainment content on the video website.

YouTube is said to have 'over two billion monthly users who watch hundreds...of millions of hours of content every single day' (Leskin, 2020). Since it started fifteen years ago in 2005, YouTube demonstrates how much the internet has taken over our day-to-day lives compared to pre-internet days when people would wait to watch television and children would read comic books for entertainment. When YouTube was bought by Google, eighteen months after it was founded by Chad Hurley, Steve Chen and Jawed Karim, it 'went from being a repository of amateur video to a powerhouse of content' (Leskin, 2020). In an interview, Hurley said he wanted to make sharing videos 'easy' as he felt 'video...wasn't being addressed [properly] on the Internet' (McFadden, 2020). The first 'film to reach one million views' was a Nike advert of Brazilian football star Ronaldinho receiving a new pair of shoes, which then led to Nike releasing a 'remastered version of the film to celebrate the ad's 10th anniversary' (Smiley, 2016). Nike knew that the video sharing platform had a lot of 'potential' and were right to use it for promotional purposes. When it comes to music, MTV (Music Television) was the place to go for music videos. It first launched in 1981 and was very popular in its time for music, however, when it came to the cost; record labels would be 'spending and recouping \$7,000,000+ on a music video'. That is the apparent price that was spent on 'Michael Jackson's *Scream* video...back in 1995'. YouTube then made it easier to upload and 'widely distribute' music videos, especially in a shorter time, 'for a fraction of the cost' (King, 2009, p.g. 106). But then how do intellectual property rights help the creators when it comes to YouTube?

Intellectual property (IP) is a term used to describe a collection of legal rights that can be related to an asset or physical property. IP usually falls under four main areas, such as; copy right, trade mark, design rights and patents. 'The author is the first owner of copyright'. This means, for example, 'in the case of sound recordings' under the Copyright Designs and Patents Act of 1988, that the producer or creator owns the rights to the song unless given an assignment (Harrison, 2014, p.g 75). An assignment is a contract that buys the rights from the original owner. On April 15th 2019, a new law was mentioned relating 'to the European Directive on copyright in the Digital Single Market' (Crellin, 2019). This law is called Article 17, or previously known as Article 13. It means 'content-sharing services must license copyright-

protected material from the rights holders' (Crellin, 2019). So, websites like YouTube, Facebook and TikTok, will all be held liable for copyright infringement if any material is shared illegally on their platforms. The main setback with Article 17 and YouTube is that 'videos featuring copyrighted material make up a large part of the platform's content' and the company believe that it will restrict creators and users' freedom. According to the CEO for YouTube, Susan Wojcicki, said this 'risks...YouTube's revenue', even though they 'support the rights of copyright holders', the new directive is 'vague' and 'untested' (Crellin, 2019). The 'proposed law' faced a vote in the European Parliament and 'will be implemented by national governments' by the year 2021 (Fox, 2019). Nevertheless, when it comes to the UK leaving the EU, the Directive might not 'apply to UK companies' (Crellin, 2019). The European Commission organised their first meeting in October 2019 to discuss Article 17 with the stakeholders. The 10th of February was the first time the dialogue had the chance to talk about the main issue of Article 17, which is the disagreement between the users' rights and the platforms' responsibilities. They describe how adding a filter to check if the content is copyright protected can 'lead to the blocking or removal of legitimate content, such as copyright exceptions' (EDRi, 2020). These exclusions can be criticisms, reaction videos or parody. Stakeholders, like video gamers who share their gameplay on YouTube, have stressed the 'complexity of copyright online' (Fox, 2019). Video game studios have their own copyrights within their games. If Article 17 came into play, then game studios could tell YouTube to block content showing their games and it would be detrimental to YouTube's revenue. 'Over 200 trade bodies', like publishers, authors and music companies, 'issued an open letter...urging the adoption of the Directive' (Stassen, 2019). Even more so, 'Europe For Creators', this includes IMPALA and PRS, 'issued a blistering attack on YouTube for the "propagation of misinformation" ahead of the Article 13 vote.' YouTube has tried to tell their consumers and content creators that if Article 13/17 comes into play, it would 'lead to the shutting down of YouTube Channels, kill European startups...and harm freedom of speech' (Stassen, 2019). The misleading information has caused a lot of discussions to bring forward Article 13/17 and make sure that YouTube can be held accountable if copyright infringement happens on their video sharing platform.

YouTube has recently been taken to court for copyright infringement by Maria Schneider, a jazz chamber composer. The reason for this is because YouTube has set in place a system called 'Content ID' for copyright owners to be able to manage and detect their content on YouTube. Nevertheless, this 'Content ID is only available to bigger rights owners and distributors' like artists with record labels or creators and businesses with a bigger following (Cooke, 2020). It does allow for the copyright owner to 'monetise rather than block videos that contain their content' if they want to. Which does work in the owners' favour in making sure they get paid for their work, but the problem still stands for 'independent and grass roots music communities'. They have to 'file takedown notices' that can take more time and as Schneider argues, this goes against the Digital Millennium Copyright Act (DMCA) in America (Cooke, 2020). The DMCA is 'a technological measure that effectively controls access to a work' that is protected under the copyright law (Spinello, 2011, p.g 109). This means, it is illegal for anyone to use her work, even third parties, unless Schneider gives them authorisation to or for 'fair use' (Spinello, 2011, p.g. 103). Her Lawsuit states, 'They are denied any meaningful opportunity to prevent YouTube's public display of works that infringe their copyrights.' It continues with 'they are thus left behind by YouTube's copyright enforcement system and instead are provided no meaningful ability to police the extensive infringement

of their copyrighted work' (Lowery, 2020). In the lawsuit document there is mention that 'Content ID is based on a variety of criteria, only five percent or less of all people who apply...are approved'. This is a very low percentage for a platform as big as YouTube and shows the only way to stop copyright infringement is to become more known or have a major label behind you. Schneider tried to apply and was 'rejected or received no response', thus meaning she continues 'to suffer copyright piracy' (Lowery, 2020). In response to this lawsuit, YouTube should grant Maria Schneider the 'Content ID' to make it easier on her and for them to avoid Schneider constantly filing notices and wasting time constantly taking them down. It would be simpler to allow her songs to be monetized.

The essay's next point is YouTube has been known to demonetise its creators from time to time, which is known as 'adpocalypse' (Thomson, 2019). This process is when content creators, or YouTubers, are denied paid advertisements within their videos. This then stops their revenue and reduces their income. Advertisement revenue is a main source of income for most YouTubers and allows them to 'flourish' within the platform. 'YouTube acts as the middleman for this', the brands pay the company to place the adverts in videos by the content creators they would like to work with. YouTube then gives the creator a cut of the revenue 'generated by running these ads' (Thomson, 2019). In order for this to happen they have to be a part of the 'YouTube's Partner Program' that gives the creators community guidelines and policies to follow. This can be very restricting to those creators because if they depend on the income from the advertisements then they have to make sure that they follow the rules even if they don't want to or they will lose their revenue cut, 'YouTube's new policy allowed for advertisers to pull their ads from videos they disagreed with or found distasteful' (Thomson, 2019). When the next two 'adpocalypse' happened, new restrictions were created after a couple instances with the main one involving a YouTuber, Logan Paul, who showed a 'body of a man who had committed suicide.' After the video was taken down, he was then taken off their 'Google preferred' list. From this incident the restrictions made it even harder to become qualified to receive advertisement revenue. Creators would now need a 'total of 4,000 hours' of watch time over a 12-month period with 'over 1,000 subscribers' just to receive advertisements. Not only that, if they want to succeed even more, they need a total of '10,000 hours' of watch time. For those smaller accounts that managed to have the right amount of watch time, have instantly had their privileges taken away because they weren't entitled to the advertisement revenue anymore. Effectively making a division in the YouTube community by creating separate classes of creators. After the third 'adpocalypse' of various content creators using 'anti-LGBTQ comments and "jokes"' and YouTube 'declining to take action' towards the issue, there was a very 'strong social media outcry' to demonetise the channel that made the comments. This resulted in an update to the 'algorithm that runs the platform to be more stringent about banning extremist commentary' (Thomson, 2019). Conversely, this has also resulted in banning historical channels on YouTube. For example, David Doel, the host from 'The Rational National', said in a tweet about his demonetisation, 'is the turban/hijab in the thumbnail triggering the bigoted algorithm?' (Doel, 2019). He believes that they are constantly avoiding hiring people to do the job and just relying heavily on the algorithm. It would also be useful to help with musicians and copyright infringement to distinguish between knowing if the use of their song is for 'fair use' and if any content creator is using copyrighted material without a licence (Spinello, 2011, p.g. 103). The video platform doesn't deal with these problems in the right way and at the right time. It seems like they would rather please the advertisement companies in order to keep more money flowing

in for them rather than listening to the content creators that are actually the ones giving a place for the advertisements to reach their audience.

YouTube isn't an ethical company, and it shows when their algorithm doesn't even pick up on disturbing clips about "kid-friendly" YouTube videos. The 'Momo Challenge' was brought to light in July 2018 and has surfaced in videos, like Peppa Pig, with an image of a sculpture by a Japanese artist called Keisuke Aisawa. This image came with 'instructions for children to self-harm' or to eventually commit suicide (Dickson, 2019). Parents are then instructed to keep an eye on what their children watch, but doesn't this defeat the whole objective of YouTube's algorithm? 'YouTube's key failing here is that it relies on a "flagging" system to find inappropriate content', which doesn't straight away stop the video (MacDonald, 2019). Someone has to see it first and report it before it is subsequently taken down. YouTube needs to have a better and bigger team of people, not computer programming to help the company act quickly with incidents like these.

Another problem with YouTube's copyright guidelines is they have a system called 'Copy Strike'. 'Copy Strike' gives users three warnings before their channel is taken off YouTube. After this became known to the public it was used as a 'tool for extortion' for certain creators. 'An anonymous blackmailer has caught at least two YouTube creators in a scheme involving cash ransoms and esoteric copyright laws' (Wodinsky, 2019). The anonymous blackmailer offered to stop the strikes in exchange for bitcoin money or to pay into their Paypal account, that has since been removed. If a channel has one or two strikes it deletes the videos in question and can restrict monetisation for a long period of time. Reversing the strikes and gaining their privileges back 'can take months of work, especially for smaller channels' (Wodinsky, 2019). Another example for 'Copy Strike' is from a YouTuber/ musician called Paul Davids who uploads content on teaching how to play guitar. He received a notice from YouTube that he was stealing someone else's song. As it turns out this person took Davids' track and 'added vocals and guitar' to make it their own and uploaded it to YouTube (Gerkin, 2018). Despite being challenged with the accusation of copyright infringement and demonetisation, he had a conversation with the 'copycat' and told him that he couldn't take someone else's work without speaking to them first but also without crediting the rightful owner, he still allowed him to keep using the song. This goes to show that YouTube's algorithm can't check who uploaded content first and who is the rightful owner of their licensed rights. In the UK there is no 'formal copyright registration' but there are other ways to prove that Davids' song was his if he wanted to take things further (Harrison, 2014, p.g. 111). The fact that he put the video up shows a time stamp and this could be compared to the time stamp of the other person's video to see who in fact owns the rights.

YouTube isn't the only company that have been caught with cases of copyright infringement. In 2017, musician Kate Nash had noticed that Snapchat was using a 'clip of her music without her permission' (Maine, 2017). She went on to say how the 'giant corporate company' doesn't support artists because they didn't pay her for the use of her song. 'Foundations' is a very noticeable song and it can be recognised instantly, so it was very shocking to see that Snapchat tried to get away with it. YouTube has tried to deal with this with updating their systems but quickly learned to realise that this can easily be abused by rightsholders claiming copyright infringement from monetised videos with 'very short music clips' (Bosher, 2019). When the rightsholder claims on a monetised video, it can allow them

to 'block the video or prevent the upholder from monetising the video' (Bosher, 2019). Although, there is a manual claiming tool that allows rightsholders to receive all the revenue from the video that they say includes their content. If this isn't looked at properly by someone at YouTube, then it can really damage someone's income when they have worked very hard and put a lot of time into their content for their videos. All things considered, YouTube needs to change the way they do their business and stop relying on a computer's algorithm to do the work of a human being.

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