

Youtube Legal Case Study

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1. Introduction

Youtube is one of the pioneers of the digital media revolution. Its creation and subsequent rapid growth was arguably responsible for bringing the digital distribution of video and music content to a mainstream global audience, massively increasing the potential reach of an artists' content and the potential income that could generate. Combined with an increased public access to digital cameras and faster internet connections, it also opened up the ability for anyone to share their own content without any restrictions such as fees or content control, or requiring a large production budget. When Youtube began in 2005, there was no service like it on the market. The premise was for users to be able to upload, view and share any video content without any restrictions on its content. Initially the idea was for users to upload short, self-referential videos describing themselves and their interests, however this was quickly dropped in favour of a more general video sharing service. The rise of Youtube, and later other video and music streaming services including illegal pirate sites resulted in a rapid decline in the sales of physical media such as DVDs and CDs. This loss of sales in turn affected the income of the owners of copyright film and musical works who relied on royalty payments from the sales of physical media. This shift to online media sharing has resulted in users, creators, and copyright owners having to redefine the legal relationship between owners, distributors and consumers to ensure that copyright is not infringed upon, and an income can be generated from the licensing and royalties of a copyrighted work. New legal precedents have been set by rulings in cases determining the responsibility of both users and distributors like Youtube in copyright infringement cases where content is used without authorisation, and new funding models and legislation have been developed as Youtube has expanded and the service has been monetised via advertising and subscription based models to provide income for copyright owners. This essay will determine and assess the rights and responsibilities of Youtube as a distributor as well as the legal implications of copyright law on artists, users and rights holders.

2. Business Strategies for Monetising and Regulating Content

Youtube initially began as an exclusively video based platform, but as music related video content such as lyric and music videos became popular on the site, a related platform called Youtube Music was launched opening new opportunities for generating revenue from musical content. It is currently the second largest search engine after google, it's parent company with 2bn users each month. Data harvested via google websites and extensive website tracking can provide targeted adverts and content recommendations to users. This is beneficial to creators and fans from genres and acts similar to theirs will be shown content that they are likely to engage with and potentially invest in financially through either digital album sales, merchandise sales, live ticket sales in addition to continuing to stream content which generates advertising revenue. These new revenue streams mean different things for different stakeholders from a legal standpoint in determining who gets paid and for what.

For creators of original video content, revenue from advertising on Youtube can be huge with a total annual advertising revenue of \$5.5bn in the US alone, and has propelled hundreds of 'Youtubers' to international stardom and wealth. The majority of video on Youtube is created and owned by the uploader and so generally poses no copyright infringement issues.

However, many videos also contain content that is owned by third parties such as recorded music, performance of underlying works including lyrics and compositions or video content. Only certain elements of music can be protected and this can be determined or demonstrated via testimony from a music expert. This presents several issues relating to the copyright act in determining the right to use copyright content and what constitutes 'legal use'. The EU Directive 2001/29/EC states that the owner of the copyright has the exclusive right to copy and record the work, issue, sell, rent or lend copies to the public, and perform, show, play, communicate or broadcast and adapt the work. This includes licensing out the work for use by third parties as would generally be required in the case of a video uploaded to Youtube containing a copyright work. In many cases however user uploaded videos do not have the explicit permission of the publisher due to the complicated and costly process of obtaining the correct license. Exceptions for reproduction of a copyrighted work require the use to have no 'independent economic significance' which does not apply to Youtube where content is generating revenue. It was still the responsibility of the user to obtain the required permissions, but under Article 13 of the new EU Copyright Directive it becomes the

distributor's liability and responsibility to obtain authorisation for public broadcast of the works. If no authorisation is given, the distributor may be liable for infringement unless they can demonstrate that they:

(a) made best efforts to obtain an authorisation, and

(b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the right holders have provided the service providers with the relevant and necessary information, and in any event

(c) acted expeditiously, upon receiving a sufficiently substantiated notice by the right holders, to remove from their websites or to disable access to the notified works and subject matters, and made best efforts to prevent their future uploads in accordance with paragraph (b).

This means that Youtube as a distributor must actively make efforts to license any copyright works that it hosts on its website, and employ methods to detect and remove infringing material. As technology has developed, efficient reporting systems and algorithms now form "Content ID" an effective defence against infringement, but can also present problems for non-infringing content potentially being removed unfairly so a "complain and redress" system is in place to resolve disputed content. With the new responsibility of licensing works, Youtube uses these works as the basis for both of their revenue generating models, with users watching ads or paying a monthly subscription to fund the cost of royalties and licenses as well as enforcement of the directive. This means that income generated from copyrighted works is now going to the copyright owners and prevents unauthorised parties from profiting from the works, benefiting the publishers and rights owners and reducing the cost of pursuing damages. This new enforcement may potentially damage the creative nature of Youtube where fans posting covers of songs and using music in new content is a core use of the service, but guarantees that "legitimate use" is still permitted, and short sections of content may be used for criticism, review, parody and pastiche and shouldn't affect the current expansion of video hosting sites for short video clips. Despite this clause, engagement from fans and users with copyright works on the site may decrease, which in the long run may result in decreased income from the works overall and could undermine the potential of huge

online video sharing markets. In some cases, a popular fan cover of a song may be extensively shared, and provide a boost in interest in the original artists work which may not have happened had the cover been taken down through these processes. Despite some concerns many music companies including Universal and Warner Music Groups and artists have supported the directive, claiming it will hold distributors to account over infringements. Whilst this directive feels like a victory for rights holders overcoming damage caused during the rise of internet piracy and the shift to online services, the industry must remain aware of the enormous marketing and financial potential that a site like Youtube offers and the potential damage that strict enforcement of their rights may cause to the user base, stifling future creatives who currently cut their teeth posting content to Youtube. This provides a nursery for new artists allowing record labels and promoters to discover them, track their progress and possibly sign a contract with them, which is of great value to them and the music industry as a whole.

Youtube, along with other major technology and software companies were against the directive claiming it would have to block any existing uploads and new uploads from users, and obtaining licenses for every single video uploaded would be impossible. The directive also requires the rights holders to provide the service “the relevant and necessary information” and this may provide an obstacle to complete enforcement on the website due to the vast number of different stakeholders and content on the site. As algorithms and content recognition software develops, new technologies such as blockchain may further assist in detecting infringing content, and either remove it or ensure that a fee is charged. It is possible that the current directives will need to be updated again as the prevalence of hosting sites increases and usage and monetisation of content evolves.

3. Case Studies

Many legal cases involving copyright infringement have been brought against major companies, users and artists covering different aspects of copyright law and intellectual property rights. The outcomes of these cases shed light on the application of copyright laws in a commercial context.

1. Harrington, Leonard and Halo Songs vs Sheeran, McDaid and others (2016)

In this lawsuit, Harrington and Leonard claimed that the chorus from Ed Sheeran's song "Photograph" had wilfully copied the chords and the melody of their track "Amazing" almost identically and that therefore they were entitled to royalties from the track, writing credits and damages accounting for the vast income that the song had generated, stated to be over \$20m if the infringement is proven. In order to prove an infringement of this nature, the plaintiffs must demonstrate several things. The defendant must have had access to the track, and the level of similarity between the two tracks must be established as well as the nature and extent of the infringement. This information is extensively detailed in the complaint, stating "The chorus sections of "Amazing" and the infringing "Photograph" share 39 identical notes meaning the notes are identical in pitch, rhythmic duration, and placement in the measure." Alongside descriptions of breaches including performances at 179 live shows and sales of 10 million copies by 2015. This lawsuit was settled out of court for an undisclosed sum, and it was reported that the two writers now receive a royalty payment for the song.

Court cases such as this one demonstrate the need for artists to be careful not to willingly and knowingly reproduce elements of a copyright work as the potential legal implications and costs of an infringement lawsuit can be damaging and expensive. However, this case and other similar cases such as the Williams vs. Gaye case have not been well received by artists with some claiming creativity is being stifled and creating works inspired by other works is being punished when it should be encouraged. Youtube is not responsible under for any breach associated with this song as it would not knowingly be infringing, unless it had received a take down notice. This notice may have been challenged however via the complaint and redress system or the courts.

2. Lenz vs Universal Music Corp. (2010)

In another case, the meaning of legal and fair use of a copyright work and the rights of the owner are questioned. Lenz uploaded a family video to Youtube of her children dancing, containing a 20 second segment of the recording of "Let's go Crazy" by Prince. It is noted in

the case that the audio was also of bad quality but lyrics and distinctive guitar licks can be heard in the video uploaded to Youtube. Universal owns the copyright to the song, and issued a takedown notice to Youtube who removed it the next day. Lenz proceeded to complain to Youtube citing fair use and the video was re uploaded and reached 810,000 views. This lawsuit is claiming for damages and legal costs of pursuing the take down notice. Lenz does not question that the video contained copyright content, but the right to use it in good faith. Universal claimed that they could not be required to determine fair use as it was still not an authorised use, and that Prince retained the right to decide where his music was performed, resulting in thousands of take down notices having been issued to Youtube. Both sides extensively detailed supporting arguments and presenting conflicting interpretations of the legal framework.

This case has Youtube in a difficult position as the middle man in a disagreement about liability for infringement. This case was brought in a US court, but similar principles apply in UK and European copyright laws. Youtube was required to act upon the take down notices and it did so, but through the complaint and redress system the infringing content was reuploaded. Under current EU Law as detailed in 2. Youtube would be liable for this breach, but initially fulfilled its responsibility by removing the content. In this case Lenz was pursuing damages related to responding to a takedown notice and not Universal pursuing infringement damages. This case demonstrates how even extensive and detailed laws such as copyright laws can be open to interpretation and disagreements resulting in an uncertainty as to the legality of uploading any footage containing a copyright work and what will be allowed or not, and the potential implications of a breach.

4. Conclusion

The commercialisation of content on Youtube has presented a variety of legal questions for the global stage, but years of negotiation and discussion between rights holders, distributors and law makers is resulting in new legislation to answer some of those questions and provides greater protection to the owners of copyright works. Despite some vocal criticism from several stakeholders in the industry, the EU copyright directive is now in force and its effect on services like Youtube and its large user base will have to be assessed after a

period of time has passed. Legal complaints regarding intellectual property and ownership of protectable work will continue to be brought against infringers. The process may become more simplified as technology develops, however creative works are in many cases inspired by other works and it will remain a grey area as to what is considered infringement and what is not.

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