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Between new opportunities and takedown notices, YouTube and the creative industry

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I. Introduction

Since its creation 15 years ago in 2005, YouTube has been a breeding ground for new ways to distribute digital content. The video streaming giant is the second most popular search engine, the second most visited site in the world, registered 2 billion discrete monthly users in 2019. According to analyst Laura Martin, YouTube has the potential to become a \$300bn standalone company if it were to exit Alphabet Inc., the Google conglomerate.

YouTube is free to use, any member of the public can host their content on the platform as well as enjoying millions of videos available on the website. YouTube is a very profitable business. The users are not paying for it, they therefore are the product. YouTube disclosed a \$15bn of ad revenue in 2019, which is a 50% increase from 2018 and almost a 100% increase from the previous year.

YouTube is first and foremost a video distribution platform, however since videography has implemented sound since the *Jazz Singer* in 1927, it is impossible to dissociate the two mediums. Moreover, as of June 2020, 16 of the 20 most viewed videos on the platform are music videos, the most viewed video being the song *Despacito* by Luis Fonsi ft Daddy Yankee. YouTube hosts music videos, educational content and filmed music performances, whether or not they are live streamed and Google reports one billion monthly visitors for music content. This makes the free YouTube the most used streaming service, with Spotify in second place. (Nielsen Music, 2020)

During her DCMS testimony about the future of music streaming, Maria Forte says that “There is an element of competition. But you always have to remember that they are competing with free, which is YouTube. Now, people access YouTube to listen to albums and to listen to tracks that they want, and that is free to people – and that's what [DSPs] are competing with.” hinting that YouTube’s free model is one of the reasons why Digital Service Providers are charging so little for music streaming, and why artists and songwriters are not being paid fairly from streaming.

This report will examine the different ways YouTube can be an income stream for creators as well as the issues around the way it operates.

II. Monetise the YouTube content

Video content creators have the opportunity to make a profit from their creativity when they distribute their videos successfully on YouTube.

Especially in the context of the successive Covid-19 lockdowns and the restrictions due to the pandemic, data suggests that consumers have shifted toward music video streaming through services such as YouTube during lockdown. According to Music 360, a Nielsen MRC report, music video streaming in the US increased 8.1% in the week ending April 9 compared to average consumption in the 8 weeks prior to March 19, while audio streaming was down 6.5% vs the pre-COVID average in the same week.

This could not be a better time for independent content creators and artists to start building a YouTube presence as it also is the second most used social media platform, and has kickstarted the careers of artists like Ed Sheeran, Tori Kelly or the Weeknd. In addition to building a following, creating brand awareness and ultimately selling tickets to live shows - which represent over 80% of major artist's income - YouTube can also be a direct source of revenue.

The YPP or YouTube Partner Programme allows Youtubers (creators on the platform) to make revenue from their videos by placing ads on their public content.

To be eligible for the YPP, a channel has to follow precise guidelines:

- Follow all of YouTube's content guidelines, including their community guidelines and copyright regulations
- Have more than 4,000 public watch hours in the last 12 months
- Have more than 1,000 subscribers

The payments from the YPP are variable and can range from \$1 to \$5 per thousand views. and depend on multiple factors. For instance the video creator Gene Nagata aka Potato Jet earned \$1669 from his secondary channel after 1.5 million views, 30,000 subscribers and 183.3K hours of watch time. On the other hand, the tech channel Think Media earned \$5221 from a single video, with 694,6K views and 1.64M subscribers.

Photographer Teppo Haapoja reports earnings of \$2,000 from 400K views and \$100 from 100K views.

Here are some of the best practices to maximise income from the YouTube ads:

- In the book YouTube Secrets, Sean Cannell and Benji Travis explain that multiple ad placements in one video result in an exponential increase of income
- The consistency of the amount of views makes the channel more valuable for advertisers and therefore brings more revenue - keeping the quality of the content up is key to long term success
- Using different types of ads (skippable, banners, end screens) also increases the chances for advertisers to lease the space of a video

- The content of the whole channel must remain ad-friendly (no sensible content or strong opinions)

YouTube's ad revenue is a monthly payment, between the 10th and the 14th of each month, and is therefore much more interesting for creators than a royalties based system with yearly or bi-yearly payments.

James Hale writes that YouTube generated \$4.04bn in ad revenue in Q1 2020, with a 45/55 split in favour of the creator, over \$4.5bn have been distributed between YouTube creators in 3 months, which is roughly equivalent to the live music industry's contribution to the music industry in 2019 (Carey & Chambers, 2020).

YouTube is also an excellent way to create a fanbase and has various sources of peripheral income, linked to the platform but not directly connected to the video content itself.

A lot of YouTubers use the platform Patreon, whose CEO is Jack Conte, also keyboards player for Scary Pockets. This platform allows creators to be sponsored on a monthly basis by their fans, who can pledge a fixed amount of money to support their favourite youtubers and allow them to keep making videos.

Many video creators also use affiliate marketing to generate income from the platform. In partnership with stores such as Amazon, they can receive a commission everytime someone uses a specific link to purchase an item. This is common practice in the influencers circle but also for tech reviewers, who sometimes even can partner directly with brands.

Brand partnerships/sponsorships between creators and commercial entities leverage the social proof of an individual in order to create revenue for the brand. This can be either a simple financial agreement - creator paid to review an item, or the creator can be given perks from the brands (Tesla providing free supercharges to youtubers through referral links) or even as simple as free equipment, without any obligation towards the brand, which happens a lot in the circle of tech reviewers or camera equipment channels such as Gerald Undone. Practically, this often translates in brands "buying time" in a video for the youtuber to talk about their product in a video (ideally) on a related topic, or completely dedicate a video to the review and the promotion to the product advertised by the brand.

The last income stream for YouTube creators is merchandising. A lot of channels, as they grow, start to sell different products, in line with their brand, and allow fans to show their support but also gain extra value.

There are many ways for video content creators to create an income from YouTube directly or derived from one's activity in the community. But what about the music creators? 85% of YouTube's traffic comes from music videos and/or music related videos, being the largest music provider, what can an artist aspire to get from this platform?

III. YouTube, the streaming platform

“A friend of mine just audited his catalogue and came up with £450 per million streams. That compares to his audit of YouTube, where he is making - this is a very successful Scottish songwriter - £70 per million streams on YouTube.” says Tom Gray, founder of the #BrokenRecord movement. YouTube is the widest-reaching streaming service but also one that pays artists the least.

In a Music Business Worldwide article, Tim Ingham reports that YouTube paid the music industry the equivalent of 20% of its ad revenue. However we know that music content is the main revenue source of YouTube - by the time I am writing this report, all 100 most viewed pieces of content in the past 24 hours are music videos based on data from Kwordb.net .

In his recent testimonial for the DCMS, José Luis Sevillano from the spanish equivalent of PRS explains that there is a value gap between YouTube and other DSPs as the former distributes the same catalogue, to an even wider audience without charging their users. The issue lies in the fact that Google is protected in other territories by the Safe Harbour law, therefore they are not subject to the same regulations as other music streaming platforms. YouTube is based on user generated content and, for now, is not legally responsible for the content that is uploaded on their platforms.

However, with the European Union Directive on Copyright, this model might change. Since it was voted on April 15th 2019, the directive encourages EU members to keep copyrighted content of being shared on online platforms unless correctly licensed The directive aims to make the service providers liable for copyright infringement and therefore direct more money to creators of said content. However this practically translates as a larger revenue to the owners of the copyrighted material, which more often than not is a major record label.

One one hand, the enforcement of such a rule might force YouTube to strike better deals with labels in the same way a DSP would, however this also means that any user generated content containing copyrighted material might be taken down automatically.

Content taken down already happens quite often on YouTube, I will now explore the reasons why this currently happens, and the implications this has for video content creators as well as artists.

IV. YouTube's copyright policy

On August 2nd 2019, Adam Neely, famous music youtuber released a video titled "Why the Katy Perry/Flame lawsuit makes no sense", in which he explains why the copyright lawsuit between the rapper and the pop artist is not justified, stating that the melody is way too simple to be copyrighted. The whole video aims at legitimising the use of the melodic device and explains that the publisher should remain entitled to their royalties for the composition.

Then, Katy Perry's publisher which nearly was defending in the video claimed the copyright and the ad revenue for the YouTubers content, while it is clearly advertised as educational content and should be recognised as a case of "fair use".

The troubling part is that Warner Chapel lost this lawsuit on the basis that the ostinato was recognised as being prominent enough to be considered as the melody of Dark Horse and similar enough to the one in Joyful noise to constitute a copyright infringement. The Christian rapper was therefore, by law, entitled to the publishing of this piece of music as opposed to Perry's publisher. Furthermore, the claim on the video was manually processed - by a human, not through an algorithm - someone selected the wrong melody to claim copyright on a video explaining that this very melody should not be grounds for an infringement.

The music educator, in his videos, says that " they're claiming my video for a melody that they just lost a lawsuit defending and my video was all about how they should have not lost the lawsuit because that melody was so minor as to not be copyrightable"

Copyright claims like this one are commonplace on the leading video streaming platform and happen extremely frequently in the case of educational videos.

Creators like Adam Neely, Rick Beato or Paul Davids all have had educational content taken down or "ad-bombed" after a copyright infringement claim. Section 107 of the US Copyright Act identifies criticism, comment, teaching, and research as examples of fair use. All of the videos taken down by labels or demonetised do fall into those categories, which is why music educators are disheartened.

The driving force behind this misqualification is Content ID. Content ID is a proprietary algorithm created by YouTube, upon a database of content with unique indicators that can be identified when scanned by the platform. This technology was meant to track copyrighted content and to be a benevolent system that would allow creators to have more control over their work. YouTube for creators states that Content ID claims can be contested in the case of fair use of the material.

After a Content ID match is found, the original copyright owner can choose to track the video's performance, block it on a country by country basis, monetise it or claim the ad revenue or take it down altogether.

However Content ID is far from perfect - some gaming livestreams have been taken down because Content ID considered the sound of bells as a copyright infringement, on the basis that a piece of sound design called “Multiple Bells Ringing Simultaneously” from the album *Church Bells* had been released by Sound Ideas under Hot Ideas - Sound Ideas is a subsidiary of the Walt Disney Company, who distributes their music exclusively through Universal Music Group, the main author of manual claims and video takedowns.

Content ID is an automated system, however creators can contest the claim, but the only litigator is the claimant themselves, therefore the constestations are always unsuccessful, explains Rick Beato, another music youtuber. In a subsequent video, Neely explains that he is even unable to display sheet music in his content as the major label finds every opportunity to claim the ad revenue of his educational content. Knowing that Adam Neely has 1.9 million subscribers on YouTube, it seems likely that those manual claims are motivated by financial reasons.

The possibility for content creators to actually play extracts from songs in their educational videos would in the first place provide much more value to aspiring musicians trying to understand the ins-and-outs of those recordings, but could also help keep the labels catalogue alive and in the long term provide income through streams and even live performances of said songs, bringing royalties to artists even 70 years after their death, before the material falls into the public domain.

V. Conclusion

To build a channel that even just meets the criteria to be eligible for the YPP is already a tremendous investment, financially and time wise, and since YouTube’s ad revenue is so unstable, it is extremely difficult for creators to predict their income. Fortunately, there are many ways to generate revenue by capitalising on a successful YouTube presence for video content creators.

For music creators, a unified rate for streams between platforms would see a drastic improvement on their income as YouTube pays significantly less than Spotify per stream, which itself pays significantly less than Amazon Music.

While some streaming platforms go live without any distribution deals such as TikTok or Twitch, and are severely reprimanded, not many measures have been taken to assess the viability and the sustainability of the existing deals for artists and creators.

Once more, the technology evolved quicker than the industry it relies on, and the key actors of the music creation have been left out of the conversation. The ongoing DCMS inquiry seems like the perfect opportunity to raise awareness on the way music creators are being compensated and to maybe reconsider the different regulations shielding DSPs and other online platforms from being required to compensate the artists fairly for their craft. It is time to finally find a sustainable and equitable way to support creators.

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VI. Bibliography

Beato, R., 2020. Why Record Labels STILL Suck!. [video] Available at: <https://www.youtube.com/watch?v=QoTl9V8cjH0&t=1s&ab_channel=RickBeato> [Accessed 11 December 2020].

Gray, T., 2020. 'Economics Of Music Streaming' Enquiry - DCMS Select Committee - 'Economics Of Music Streaming' Enquiry - DCMS Select Committee. [online] Committees.parliament.uk. Available at: <<https://committees.parliament.uk/writtenevidence/15512/pdf/>> [Accessed 11 December 2020].

Ingham, T., 2020. Global Recorded Music Industry Revenues Topped \$20Bn Last Year – But Streaming Growth Slowed - Music Business Worldwide. [online] Music Business Worldwide. Available at: <[https://www.musicbusinessworldwide.com/the-global-recorded-music-industry-generated-over-20bn-last-year-but-streaming-growth-slowed/#:~:text=The%20industry's%20total%20worldwide%20annual,on%202017%20\(%246.5bn\).](https://www.musicbusinessworldwide.com/the-global-recorded-music-industry-generated-over-20bn-last-year-but-streaming-growth-slowed/#:~:text=The%20industry's%20total%20worldwide%20annual,on%202017%20(%246.5bn).>)> [Accessed 11 December 2020].

Ingham, T., 2020. Youtube Says It Paid The Music Industry Over \$3Bn Last Year – Equivalent To 20% Of Its Annual Ad Revenue. Is That Good? - Music Business Worldwide. [online] Music Business Worldwide. Available at: <<https://www.musicbusinessworldwide.com/youtube-says-it-paid-the-music-industry-over-3bn-last-year-around-20-of-its-annual-ad-revenue-is-that-a-good-deal-for-artists/>> [Accessed 11 December 2020].

Iqbal, M., 2020. Youtube Revenue And Usage Statistics (2020). [online] Business of Apps. Available at: <<https://www.businessofapps.com/data/youtube-statistics/#6>> [Accessed 11 December 2020].

Kworb.net. 2020. Today's Most Viewed Music Videos On Youtube. [online] Available at: <<https://kworb.net/youtube/>> [Accessed 11 December 2020].

Lindvall, H., 2013. How Record Labels Are Learning To Make Money From Youtube. [online] the Guardian. Available at: <<https://www.theguardian.com/media/2013/jan/04/record-labels-making-money-youtube#:~:text=The%20label%20gets%20another%2020,the%20remaining%2010%25%20between%20them.>>> [Accessed 11 December 2020].

Neely, A., 2020. Warner Music Claimed My Video For Defending Their Copyright In A Lawsuit They Lost The Copyright For. [image] Available at: <https://www.youtube.com/watch?v=KM6X2MEI7R8&ab_channel=AdamNeely2> [Accessed 11 December 2020].

Office, U., 2020. More Information On Fair Use | U.S. Copyright Office. [online] Copyright.gov. Available at: <<https://www.copyright.gov/fair-use/more-info.html>> [Accessed 11 December 2020].

Peoples, G., 2020. Consumers Now Favor Streaming Services For Music Discovery Over All Other Sources. [online] Billboard. Available at: <<https://www.billboard.com/articles/business/streaming/9457753/consumers-streaming-music-discovery-music-360>> [Accessed 11 December 2020].

Static.billboard.com. 2020. Year-End Music Report U.S. 2019. [online] Available at: <https://static.billboard.com/files/pdfs/NIELSEN_2019_YEARENDreportUS.pdf> [Accessed 11 December 2020].

Volpicelli, G., 2020. Don't Believe The Hype: Article 13 Is Great News For Youtube. [online] WIRED UK. Available at: <<https://www.wired.co.uk/article/article-13-youtube-what-next>> [Accessed 11 December 2020].

warner music claimed my video for defending their copyright in a lawsuit they lost the copyright for. 2020. [video] Directed by A. Neely. YouTube.