

YouTube : Case Study

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For many, YouTube has been a source of quirky videos, funny outtakes, music and above all, provided amateur video makers with an opportunity to share their talents with the world at the touch of a button. YouTube provides an endless array of entertainment to over 2 billion active users a month, and like most other Google enterprises, YouTube earns most of its revenue from advertising. Since its inception in 2005, the company has, however, run into many issues regarding copyright law and how they handle intellectual property.

When it comes to copyright, works are protected by what is called the CDPA 1988, (gov.uk, 2020). In the UK, copyright in a musical or literary work generally lasts for 70 years from the end of the calendar year in which the composer or author dies. "A sound recording is protected for 70 years from the end of the year in which the recording was created, and a typographical edition is generally protected for 25 years from the end of the year of publication" (Music Publishers Association, 2017). In a song, there are two types of copyright. One is the music itself, and the other is the lyrics or words comprising of the literary element.

In the past, YouTube has struggled managing copyright successfully, and like other platforms, this has forced a new wave of change in the form of new legislation which called Article 17. It is worth noting up until recently this was called Article 13. This new directive has caused lots of concern for Youtube.

Youtube has faced some turbulent times when it comes to copyright in the past due to their rapid evolvement of trying to make the system for copyright control work more efficiently. YouTube implemented various tools, one of which was Content ID. This system allowed rights holders to upload their intellectual property to the back end system, which would, in turn, allow You-

Tube to scowl through millions of videos and search for any breaches. YouTube would argue that this has been successful because it gained some excellent results in a relatively short space of time. "The system appears to be increasingly successful: it took seven years for it to deliver \$1 billion to copyright holders, but only two years to do the next billion. Another two years later, YouTube announced it had surpassed \$3 billion in total payouts." (Alexander, 2018). As much as this seemed to have improved, it caused significant underlying issues for YouTube creators. Content ID would give two options if the user were in breach of a copyright violation. The user can choose to either edit the video or have it removed.

The difficulty with this is that YouTube had now given itself the directive of a rather aggressive tirade on removing or issuing violations to millions of their user's videos, some of which had been very successful. Striking a balance between what is fair usage and educational is also a significant issue in the fight over the new directive. Many argue that YouTube is doing the right thing by finally doing what they should have done all along and others argue that it is a step too far and that educational videos and small usages are criminalised unfairly. These arguments are backed by musicians who use YouTube to make a living and are concerned over losing it all.

" For the system to allow third-party operatives to come and claim my videos so easily and overnight get my channel paused and pending termination, that is just such a precarious position for me as a content creator who relies on that platform," (Evans, 2020).

A music business and technology journalist who has been reporting heavily in the industry since 2001 thinks that YouTube might have a case." As artists, record labels, music publishers and managers line up to lobby the US

Congress and the European Union; it might seem as if YouTube is the worst thing to happen to the music business since Napster in 1999." (Forde, 2016).

The main issue for many is that YouTube has managed to profit off a value gap by exploiting copyrighted works without every fully compensating the content creators for their work. These behaviours have resulted in the culmination of large artists that have inspired to create change by refusing to have their works on streaming service and even launching brands like Tidal to try and tighten this gap. Donald S. Passman discusses in his book that YouTube, like many others, has played by their own rules because of the way the structure is set up.

"For user-generated videos (UGC) the major publishers have licenses with YouTube, and Fox represents some of the Indies (but not all of them). Meaning there is no central place for the YouTubes of the world to make a deal for all of their music." (Passman, 2019).

The intention of Article 13/17 is to make the media platforms liable for copyrighted content. The issue remains, however, that YouTube in the past has relied heavily on fair use in their content, but will not according to them have the same luxury in this new directive. Amongst the issues is the fact that YouTube's algorithm would not be able to differentiate between what is fair use and what is a copyright violation. They have some basis to this argument as we are aware in the past there have been significant issues in videos being removed, consistent violations being filed, and videos with millions of views no longer being available. "With Article 13, YouTube will have to deploy ex-ante measures to avoid liability, which will mean the introduction of algorithmic filtering. YouTube material that might use other copyrighted material will simply be denied from being uploaded to the site. The idea of an "upload

filter" has incensed the YouTube community, rightly concerned with the over-broad results of these algorithms." (Sands, 2019). Upon reflection, it seems some problems could be overcome if YouTube paid less attention to avoiding liability and instead put their efforts into paying the collection management organisations fairly for its intellectual property.

The arguments for and against this directive are fraught with label heads, YouTube head of music Lyor Cohen, and about any content creator at the fear of being blocked. YouTube argue that what they do is already sufficient. They have made arguments that certain songs and videos would never have seen the light of day because they could not account for individual creators and copyright holders. The argument against this is that these videos have generated billions in ad revenue, and I am sure they managed to pay the creators they could find.

YouTube argues every year, they have paid a climbing amount to content creators. "YouTube offers twin engines for revenue with advertising and subscribers, paying out more than \$3 billion to the music industry last year from ads and subscriptions. (Wojcicki, 2020). It is no surprise that this has people rallying from both sides on whether this copyright plan is justified. Intellectual property has, for a long time, been used and monetised by third parties without the creators or copyright owners being adequately compensated.

"YouTube is by far the most vocal critic of Article 13, with the firm making a big effort to promote opposition to the directive among its creators and users. A popup on the YouTube website and app directs users to a page with the title "#saveyourinternet" which includes a video from YouTube explaining the firm's objections to the directive. In the video, Matt Koval, a content strategist at YouTube, argues that – in its current form – Article 13 threatens

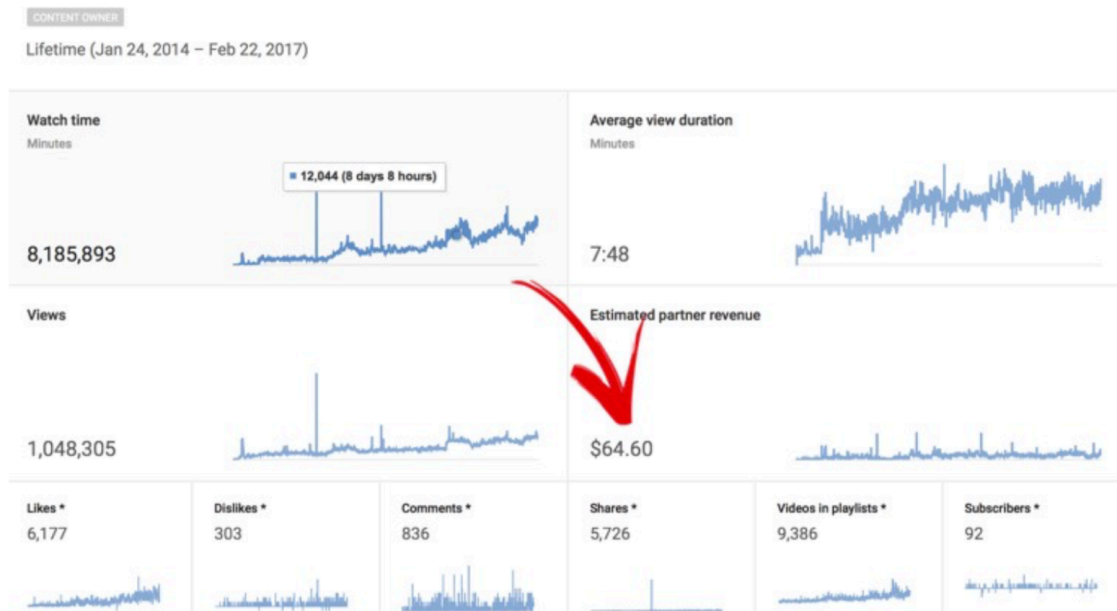
hundreds of thousands of creators, artists and others employed in the creative economy." (Reynolds, 2019).

Thanks to Brexit, UK politicians now say Article 13/17 will not be adopted in Britain after all. (*Lyor Cohen turns to the camera, arches eyebrow, whispers: "C'est la vie." Run credits.*) (Ingham, 2020). Maybe this would have come as good news to content creators in the UK as "YouTube boss Susan Wojcicki had also warned that users in the EU could be cut off from the video platform." (BBC, 2020).

YouTube has stated that 85% of their user base visit the site for music, and this is what ushered them into the streaming market with a premium subscription service that has over 20 million users sign up. Along with the streaming platforms like Spotify, Apple Music, and Tidal. YouTube has also come under fire for their minimal payments to artists and copyright holders. "It's claimed YouTube pays creators 0.00054p per stream of music. This means a track streamed one million times would earn the artist around £540". (Ellyard, 2018).

After researching back over previous years, it seems that not much has changed. An article states from 2012 that copyright owners were at this point still only receiving a minimal amount for their work. "Many record labels I spoke to were shocked by how little the songwriters in my article got paid for YouTube videos. A British independent label told me they get around £1,000 per million YouTube streams, and a US independent relayed that their revenue was £1,800-£3,000 per million streams, depending on what type of ads were served with the video." (Lindvall, 2012).

Fast forward to 2017, and we see similar results on the evidence I found on Digital Music News. This data is from a content creator that had gathered over 1 million views on his copyright content online and had received \$64 .60 in total. This equates to roughly 0.0000616 cents per user.



(Resnikoff, 2017).

With the global trend in the music business going down the route of digital streaming, fast consumption, and large amounts of releases the music industry and intellectual property has been harder to protect and earn from in such a technological climate. Even though steps have been made to protect copyright, it has, in turn, led to battles, which forced the industry to try and force a change.

"For years, the music industry has argued that YouTube exploits the lack of legal protection around music videos being viewed on its service to pay minimal amounts to artists and labels when they are viewed. The music industry has lobbied that this "value gap" between the true worth of the music

videos and what YouTube decides to pay needs to be addressed with legislation" (Sweeney, 2018).

In 2018 alone in the resurgence of vinyl records, albeit still at a small scale copyright owners earned on average four times the revenue in royalties from vinyl than they did from 25 million views on their work on YouTube. This worked out at an average of 67 cents per user annually. Spotify is in no means anywhere near the excellent standard from streaming revenue either, but in contrast, they managed to work out at \$20 a user.

There is absolutely no doubt that YouTube has done nowhere near enough since they began to make sure creators, artists, and intellectual property owners are adequately compensated for their creations. It has allowed the system to generate billions in ad revenue without, for a long time, really making any effort to make a positive change. After implementing Content ID, they built a slightly more robust relationship with the labels, but in turn, alienated users but bulldozing through, in some cases, peoples entire works on their platform. YouTube say that 9/10 most people who are sent a copyright violation will choose to share the ad revenue with the content creator but at what point does fair use, moral rights, and sync licensing approval come in to play.

Many smaller artists say that without YouTube, they would have absolutely no presence whatsoever. If users have used YouTube as a platform to propel themselves, whether that be with covers that they have obtained copyright clearance and permissions for, or their original music that would not cause a violation then, of course, it can be seen as a positive platform. The issue lies in the fact that millions of videos that use music, songs, and creators copyrights, which brings in 30 million active users a day, 85% of which,

for music, are not being paid the fair amount, or not paid full stop. "It makes no sense that it takes a thousand on-demand streams of a song for creators to earn \$1 on YouTube, while services like Apple and Spotify pay creators \$7 or more for those same streams," (Sherman, 2017).

The reason YouTube has got away with this for so long it seems is that they believed themselves to be in a power position. "The key here is that YouTube is primarily a user-generated service. If a label was to refuse a license to the company, its songs would still appear thanks to user uploads. The label can ask for a takedown, but as soon as that happens, another one, or 10, pop up. This puts YouTube in a strong position to low-ball on any licensing agreement." (Owlsinski, 2017).

YouTubes behaviour, in my opinion, is morally corrupt. To use a privileged position, in which you can make little effort to do the right thing simply because you can is something that has rightfully been addressed. YouTube has also in previous arguments tried to compare themselves to radio in the US by holding up the flag to say we are wrong, but everyone else is just the same, so it is all ok. The argument against this is that on YouTube, you can choose what you listen too. You have the freedom and ability to select records and consume what you want to hear. "Even Pandora, a service that programmes music like radio (not on-demand music like YouTube), and is also largely ad-supported, pays around twice as much to artists and labels as YouTube does. It offers so much less than YouTube yet pays double what YouTube pays." (Furtado, 2016).

The stakeholders in this discussion are also very interesting as the views, as much as they are towards the same goal, are different. On one side we have the music and on the other audiovisual. Both with a common enemy but

both with different views on what they want the outcome to be. For the music side of the argument, it is all about licensing and getting that music to as many people and users possible, while making sure it is done correctly. In the AV industry, on the other hand, they are more interested in selective licensing and think that platforms like YouTube only jeopardise their commercial success.

"This makes it clear that once put into practice; Article 17 will be about both licensing and automated filtering/blocking of content. In this context, it is interesting to see that the music industry (which has been the driving force behind Article 13/17) gets to play the good cop ("it is all only about licensing") while the AV industry, which (at times reluctantly) supported the music sector in its efforts to get Article 13 adopted, will now be stuck with the bad cop role trying to push through automated filtering solutions." (Keller, 2020).

It is clear from analysing YouTube's previous business strategies, though successful for Google financially, have fallen short of where they need to be in terms of the commercialisation of music on their platform. Copyright law is going to see changes around the world and with the industry landscape continually evolving. The industry is becoming more aware than ever of mispractice and unfair use of copyright; then YouTube will have to make changes to their current system. Pay copyright holders more, make sure the stakeholders in the industry are satisfied with the system and process of the intellectual property that they own and make sure that they are playing fair.

"The industry will shift correctly at the right time. YouTube will line up with everything. I don't know how fast that will be, but it will inevitably have to." (Craig David, 2016).

We are still not sure how long this will take, but only time will tell.

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