

Case Study:

Critically analyse and review business strategies, challenges and revenue mechanisms related to the commercialisation of music and entertainment content on YouTube.

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Table of Contents

Introduction	Page 3
<u>Case Study:</u> <i>Viacom International V. YouTube</i>	Page 4
Conclusion	Page 8
Bibliography	Page 9

Introduction

Before we begin to critically analyse business strategies, challenges and revenue mechanisms on YouTube, we first must explore the brief history and inception of YouTube, how far it has come and what the future holds for the brand in the following decade with new technologies.

YouTube was originally launched in 2005 by three ex-PayPal employees; Chad Hurley, Steve Chen, and Jawed Karim. The initial idea was for it to be an online dating website but when that didn't work due to advertising and low user content the co-founders pivoted YouTube to become a more general video sharing site. The site was funded by investors until one video ([Nike Advert; Ronaldinho](#)) amassed a million views which did not take long before Google saw the potential in the site and acquired it for \$1.65 billion in October 2006. In the years' since, YouTube has undergone various changes and has continued to grow into one of the world's most popular website.

The influx of income from social media has skyrocketed, and YouTube can be credited for creating an influx of original content creators and influencers. With this came new-gen entrepreneurs and businesses and the argument of intellectual property rights. This can be reviewed in any given business area i.e. beauty, fashion, sports and gaming but the focal point here will relate to music and entertainment; unless it is relevant to use other areas for comparison.

Before we go on to examine the role of intellectual property relating to music creators and users, we must first understand what is *meant* or described as 'intellectual property'. Having explored this field there is a plethora of definitions offered nonetheless the two more relevant ones in relation to the argument is detailed below.

"Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce"

World Intellectual Property Organization, 2020

"Intellectual property is something that you create using your mind - for example, a story, an invention, an artistic work or a symbol"

GOV UK, 2020

Further specifics offered in the definition of intellectual property are listed below and most of these are usually automatically protected whilst some others you must apply for. Types of protection include copyright, patents, design and trademarks.

- the names of your products or brands
- your inventions
- the design or look of your products
- things you write, make or produce

There are several arguments concerning protection and control of intellectual property on YouTube along with challenges for content creators when using music or content that is not original within their videos or individuals covering songs¹.

Nevertheless, copyright issues have plagued the community of YouTube for years, yet some creators are calling this moment unjust as most have been hit with aggressive copyright claims from record labels. But as we know there are millions of videos on YouTube that probably contain infringement yet only those that are high-profile² enough seem to get penalised or sued which some would claim that businesses are seeking to monetise from their channels.

If referring to the definitions of intellectual property given above, then the argument for protection should be permitted albeit no one ever expected for new technologies like YouTube to create a website that would allow for almost every individual to break these laws. It appears the issue with 'intellectual property' in relation to music creators and users seem to be the fact that someone else is monetising from someone else's property particularly used on YouTube as it becomes commercialised or profitable as mentioned by Smith & Yossifov (2013). If you evaluate this statement, then the argument for YouTube brokering a deal with the record industry can be valid. If a successful YouTube creator garners over 5,000,000 views which may contain a Rihanna record (Roc Nation/Universal Music) then that can be supported as streaming views, to a lesser known musician that may be profitable so this brings forth arguments for the protection and exploitation of intellectual property,

Table 1 below displays the global advertising revenue of YouTube we can begin to understand the level of income some of these creators can be expected to make so companies may want to be compensated by that especially if the IP that they own is used on their platform this can include production, broadcast, media companies and record labels etc. The problem is, no one expected YouTube to become the global phenomenon that it has today so with it now being a substantial revenue making company, other industries seem to want a hand in their income.³ Notably the first case of any copyright infringement dates back to 2007 with:

Case Study: *Viacom International V. YouTube*

This case study is particularly important because Viacom was one of the first major companies to sue YouTube over copyright infringement. After numerous court rulings and appeals, YouTube won this case. The US court ruled that the *Digital Millennium Copyright Act of 1998* DMCA⁴ shielded YouTube from liability as the DMCA was never intended to allow service providers to exploit the statute's safe harbors by designing an entire business model based on improperly profiting from copyrighted content.

Viacom's Complaint - Viacom alleged that between 2005 and 2008, over 60,000 instances of video clips that were posted on YouTube contained unauthorized copies of Viacom's copyrighted shows, such as "SpongeBob SquarePants" and "The Daily Show."

YouTube's Defense – Argued that it was entitled to the safe harbor defense as it was not aware of specific infringements claimed by Viacom until it received the DMCA takedown notice from Viacom, once it did it removed all the referenced clips. YouTube argued that with such volume, it would be

¹ The issue of monetization vs. permission of cover songs, recent example includes removal of Ella Mai's hit song 'Trip': <https://www.billboard.com/articles/columns/hip-hop/8477058/jacquees-reacts-ella-mai-remix-removal>

² Refer to the popular cases of Lindsey Ellis (2019), Michelle Phan (2014), Ethan and Hilda Klein (2016)

³ BBC strikes a deal with YouTube-Google in 2007

⁴ DMCA 1998 Act can be viewed here: <https://www.copyright.gov/legislation/dmca.pdf>

prohibitively burdensome to require it to actively monitor every upload on its site for potentially infringing content.

It is also important to note that businesses suing other business is usually expected but when companies begin to sue individuals who have signed up to a platform like YouTube this can be regarded as highly problematic, depending on who you ask.

(in billion U.S. dollars)

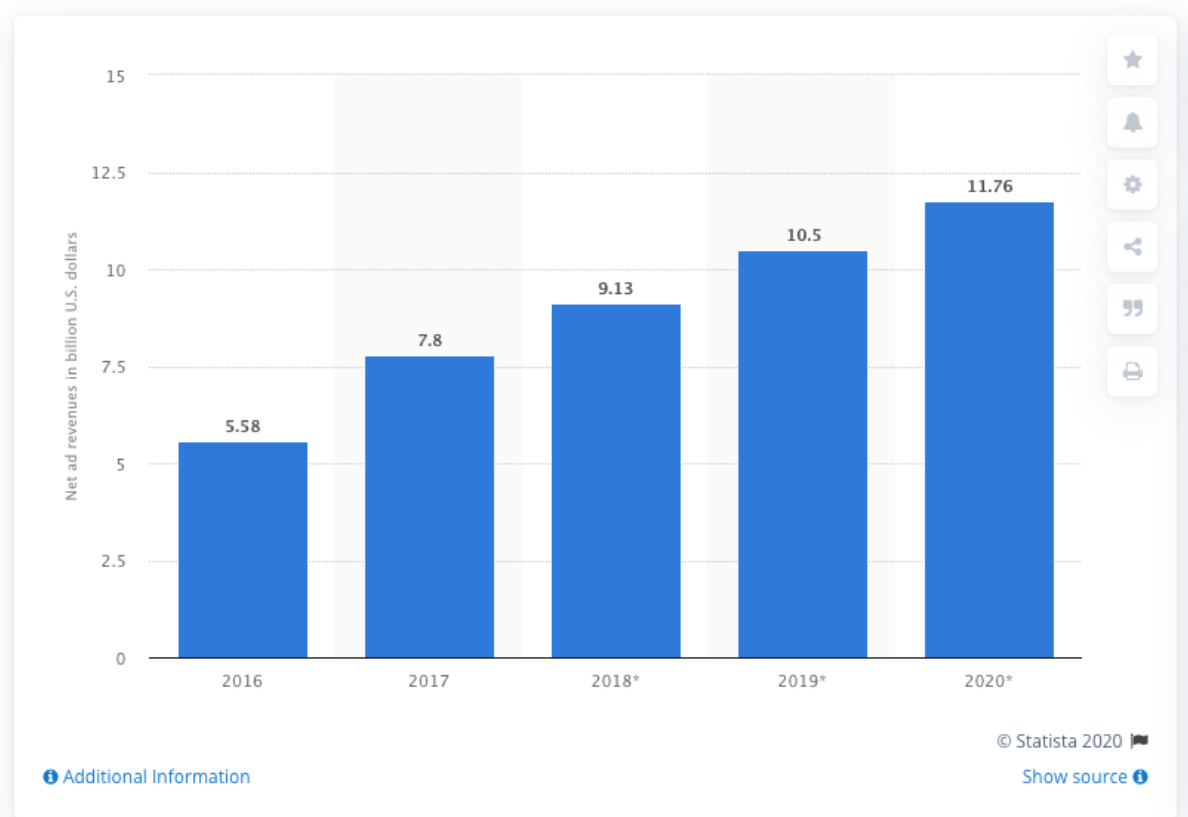


Table 1: Global YouTube net advertising revenues 2016-2020 (Statista, 2020)

Some critics would argue that when intellectual property is used fairly or with permission as YouTube *rules*⁵ put it, then one cannot be in contempt of these regulations otherwise that would then apply to almost half the videos on YouTube which is said to be at 2+ billions of users as shown below in Image 1. According to various YouTube creators, they create and produce original work so there is an argument that they should not be penalised when referencing music as part of their original work particularly if used and referenced fairly.

⁵ A link to their policies and guidelines can be found here:
<https://creatoracademy.youtube.com/page/lesson/copyright-guidelines>

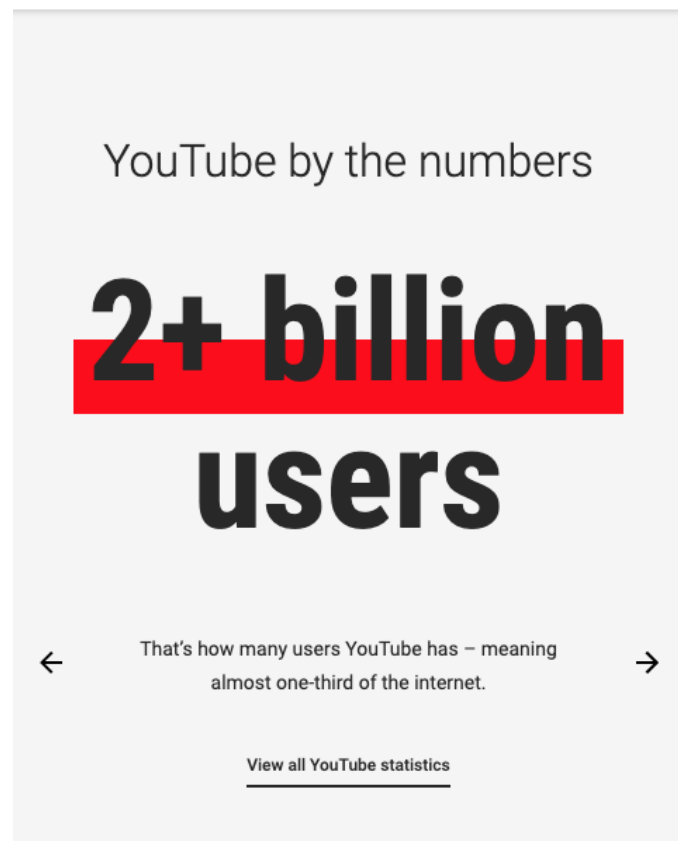


Image 1: YouTube for Press webpage (2020)

Moreover, the article written by Scott Hervey (2017) on how lawsuits were an inevitable cost of YouTube successes is very relevant here. He points out useful methods on how to avoid liability of copyright infringement and notes that many creators are not protected by YouTube policies/guidelines because they often do not have accurate knowledge of fair use or are inadequately advised when in this predicament.

It is important to be aware of YouTube's copyright policies because the challenges faced by stakeholders and businesses to protect their work can be costly. Since 2007, it seems there are dozens if not more lawsuits pertaining to the copyright infringement law with companies now issuing lawsuits to creators who have become business entities that were just individuals who once uploaded free videos on YouTube in the earlier days. Once creators figured out how to monetise from their channels, so did companies whose intellectual property they had once used. The creation of Content ID⁶ was an internal system introduced by YouTube to help monitor copyright infringement and protection of IP. These conflict resolution methods were met with mixed reviews in the YouTube community.

⁶ Drawn from the Digital Millennium Copyright Act of 1998

It is important to note the most sought-after content on YouTube is video games⁷ as seen in table 2 with vehicles being second leaving music somewhere in the bottom section. Even with the amount of views per video is enough to generate a steep income of revenue for any industry.

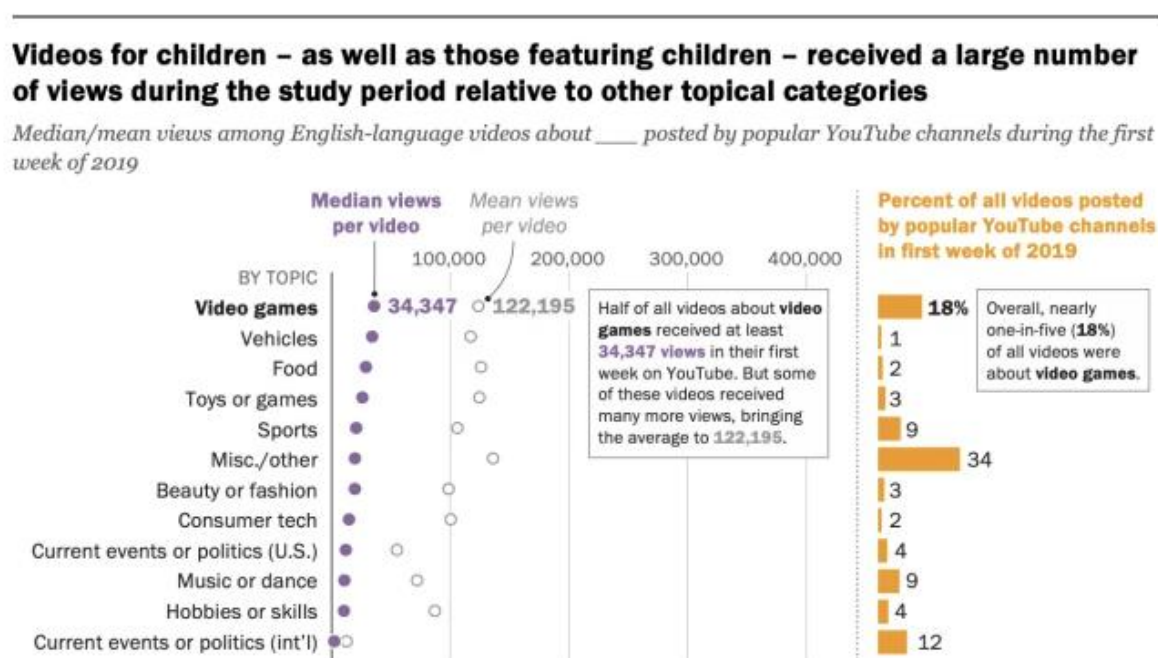


Table 2: Pew Research Center: Internet and Technology (2019)

Once YouTube was acquired by Google, they introduced several revenue mechanisms on the platform that was targeted to both businesses and content creators. The first being ads, first aired August 2007 now commonly referred to as video or display advertising. Then later, InVideo ads appeared in August and Partner Programs began in December of 2007. These were early stages to monetise the brand but in later years there were several brokered deals and partnerships with other brands.

With the ability to now generate money came various challenges, in particular for the music industry although music or dance isn't at the top of the list for content viewed in 2019 according to the Pew Research Center, a majority of content in other topics probably contain music within the videos and this has allowed the gateway for creators of music or those representing them to monetise off their work. As most music is a form of intellectual property this has permitted original owners to file suits where large sum of money can be generated. There are already pursuits in the entertainment and music industry with plagiarism or production companies not getting legal permission⁸ but the record label claims that YouTube exploits the "value gap" between what it makes from online advertising

⁷ An analysis of every video posted by high-subscriber channels in the first week of 2019 finds that children's content – as well as content featuring children – received more views than other videos

⁸ Recent movie hustlers sued by Samantha Barbash (2020) based on defamation, seeking \$40m from STX and Nuyorican Productions

shown around music videos and what finds its way to the artists' pockets concerning British music according to British Phonographic Industry; BPI (2016).

This refers to the relatively small fees the platform pays for music videos compared with streaming services so in reference to protecting intellectual property, the BPI states that YouTube underpay artist via music video streaming, a sector it dominates funnelled in £25.5m in 2016 compared to £41.7m that was received via UK vinyl sales. We must also examine certain reasons for such a high number of vinyl sales that year which was driven by *Blackstar*, the final album by the late David Bowie.

In reference to the music industry in particular, according to Music Business Worldwide (2018) more music is played on YouTube than on Spotify, Apple Music and every other audio streaming platform combined so by this conclusion, they have become more rigorous in protecting their intellectual property as well as trying to profit from marginal loss to the site.

Conclusion

As YouTube continues to remain ahead of music streaming platforms, many conglomerates have decided to join forces. 2016 saw VEVO and Apple TV to bring the opportunity to 'reimagine music television'. Most labels know the importance of music videos and so if YouTube is a majority shareholder of the sector and thus provisions of room need to be made. It is considered that YouTube for millennials now is what MTV used to be for certain demographics for example, 81% of 15–25-year-olds in the U.S. use YouTube, over 70% of YouTube views are on mobile and 73% of adults in the U.S. use YouTube. (Hootsuite, 2019)

According to Schwemmer, C. and Ziewiecki, S. (2018), past research has shown that 'product promotion can be observed on multiple social media sites, with the video sharing platform YouTube arguably being one of the most important targets.' Recent studies have also provided valuable insights about the mechanisms of product promotion and addressed concerns regarding the substantial social and economic impact such influencers have especially on their younger audience. As younger target groups have grown up to use social media sites on a regular basis, YouTubers easily reach adolescents through their content than any other traditional or new methods.

Due to the significance of YouTube in the music industry, Billboard has announced plans to include its data towards its 'Billboard 200' albums chart. These changes will take effect from 18 January 2020. This may be considered another strategic business approach for major businesses within this remit to co-exist.

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