The music industry and YouTube

YouTube, YouTube, YouTube. Safe harbours, safe harbours, safe harbours. It remains the big talking point in the music community, but how did we get here, and where next? Based on his presentation at CMU Insights @ The Great Escape last month, CMU Business Editor Chris Cooke reviews the music industry’s relationship with Google’s big video platform, past, present and future.

IN THE BEGINNING

So in the beginning there was YouTube, and it was good. And as it and other social media platforms first gained momentum a decade ago we were told that everyone was a creator, and that all that had stopped these creators from creating in the past was the problem of content distribution. The future, therefore, was user-generated content.

Except it turned out that not everyone was a creator. Many more people were curators, happy to stroll around the internet grabbing what that they liked, and then sharing and championing that content with their personal networks. The future, then, was perhaps more about user-stolen content.

And so a flood of unlicensed copyright material started to be uploaded to the YouTube platform by third parties. This phenomenon affected all branches of the entertainment industry, though – as is often the case – the music industry took notice first. Perhaps because the time limit placed on YouTube uploads at that time made it more attractive to short-form content like the music video. Or perhaps because, in addition to the uploading of pop promos nabbed from MTV, YouTube uploaders were also adding uncleared recorded music to other videos they had borrowed, or indeed created.

Either way, the music industry became concerned about the growing beast that was YouTube. Though, at the same time, most record labels recognised that this digital start-up was providing a user-friendly, browser-based, fully-embeddable video platform via which they could distribute their own promotional videos at no cost. And because that content could then be shared by users, it was facilitating the kind of word-of-mouth marketing that labels had long sought to capitalise on.

So what to do about the early days YouTube? Ignore it, sue it or license it? Most record companies ultimately decided on the latter option, the majors initially capitalising on the fact that the threat of litigation was hindering start-up YouTube’s plans to sell itself to an existing web or media giant, and therefore their negotiating hands were strengthened.

SAFE HARBOURS

But on what grounds could the major record companies have sued? After all, it was third parties, not YouTube, who were uploading the content, and therefore making the initial unlicensed copies of the labels’ recordings and videos.

True. YouTube then stored that content, made it available to the public, and facilitated subsequent streams. But, the video site’s lawyers soon argued, it did so automatically and therefore unknowingly. It was a mere conduit as uploaders streamed their content to viewers, with or without a licence from whoever owned that content.

These facts arguably removed any liability for any copyright infringement from YouTube itself because of something called safe harbours. An invention of the 1990s, the safe harbours were designed to ensure that internet service providers and server hosting companies could not be held liable if their customers used their internet access or server space to infringe copyright.

The safe harbours were included in copyright law in the US - and in e-commerce regulations in Europe - on the basis that, if internet companies could be held liable for the copyright infringement of their customers, they’d have to monitor every bit of content on their networks, which would mean those businesses could never scale and the growth of the web would be curtailed.

The quid pro quo of the safe harbour was that companies which relied on the protection must provide a ‘takedown system’ for
With Google’s financial backing, YouTube got about refining its rights management system - aka Content ID - signing up content partners large and small with a simple promise: upload your content, do a deal, and we’ll sell lots of advertising around your videos and split the revenues we generate in your favour.

Over the years Content ID got better, and YouTube’s content partnerships evolved. Stage one, set up your own channel, we’ll sell the ads, we’ll split the money. Stage two, once your content is in the system, our platform will automatically monitor subsequent uploads, spot if third parties use your material, and give you the option to either block it on copyright grounds, or insert advertising around those third party videos and share in that revenue too. Stage three, if you’re up to the task, you can sell the advertising yourself, and you pay us a cut rather than the other way round.

Once those initial deals had been done, the music rights industry started to fall in love with YouTube. For starters, it was a phenomenal marketing platform. No longer did labels rely on heads of music in TV to get their expensive pop promos in front of consumers. And then there was the money. In the late 2000s many in the labels felt advertising income would play a key role in their digital future, and here was a mainstream platform that was actually generating those revenues.

Sure, resentment quickly grew about the rates YouTube was charging for its ad spots, the bigger labels reckoning that their top quality music videos should demand a premium. But Google initially kicked that issue into the long grass with the third level of its content partner programme: “If you think you can get more ad money for your content, you sell the ads and share that revenue with us”.

And so Sony and Universal’s Vevo joint venture was born, while Warner and other labels – usually via third party agencies – started selling advertising for their official YouTube content. Meanwhile, the labels started to see the benefit of the second level of Content ID, as the music used to soundtrack user-generated content started to result in brand new ad money for the record companies. Good times.

**TENSIONS GROW**

But the good times couldn’t last forever, could they? So what went wrong? Well, in the main, the problem is that everything is relative.

In the early days of YouTube, streaming revenues overall were nominal. The SoundExchange-licensed services in the US were bringing in some monies, and the first big advance cheques from the streaming start-ups were starting to be cashed, but the big numbers in the big recorded music markets remained CD and - in the US and UK in particular - the big booming world of iTunes. Therefore, from that perspective, the YouTube money that sat in the streaming column seemed pretty good, with some labels admitting that the video site was now their second biggest digital revenue generator behind (albeit a long, long, long way behind) Apple’s iTunes.

Then streaming music started to take off. And then it started to really take off, in key markets like the US and UK. And as SoundExchange revenues started to grow in the former, and Spotify gained momentum in Europe, the monies being paid over by YouTube each month started to look much less impressive. While YouTube continued to grow in terms of users, the royalties it paid over to the music industry did not keep up, with either YouTube’s own consumption growth, or the streaming market in general. Meanwhile, in Europe especially, it became clear that the real money in streaming was going to come from premium subscription services, not ad-funded free platforms.

Oh, and then download sales peaked. This was a key factor in the music industry’s changing relationship with YouTube. Remember, the attraction with the video site was partly revenue, but also the fact that it was such a good marketing channel. YouTube’s consumption growth didn’t result in the major uplift in revenue that the labels wanted, but it made the site an ever better marketing tool.

However, as consumers started to consume music via streams rather than downloads, a new question was posed: “What are we marketing to whom exactly?” If a certain portion of YouTube views can be converted to download sales, then that works, and any nominal ad income from the video site is a happy bonus. But if convinced consumers only want to stream, and they can stream for free without leaving YouTube at all, then the nominal ad income is everything. And, say the labels, it’s simply not enough.

**THE BIG BAD VALUE GAP**

Which brings us to now. Given all the YouTube rage in the music community in the last two years, you’d be forgiven for thinking that the Google platform pays nothing over to the music industry. But, as YouTube chiefs like to remind us, it does pay.

The three key levels of content partnership remain: monetise your own channels, monetise your content on other people’s channels, sell your own advertising. And while
labels share in the ad revenue generated by their own content, YouTube looks after the payments due on the song copyright via its deals with the music publishers and their collecting societies.

But it’s all about revenue share and – say the labels and publishers – there simply isn’t enough revenue to share in. The arguments go that: YouTube isn’t selling enough advertising: it’s too easy to skip and block the ads; and, while Content ID is an impressive bit of technology, it’s not perfect, so labels and publishers aren’t monetising all of their content on the YouTube platform.

This would be frustrating in itself but there’s a bigger problem, the music rights sector argues. The existence of YouTube is stopping people from signing up to the subscription music services. And even the free subscription music services, like Spotify’s freemium level where [a] the digital service pays minimum guarantees to rights owners oblivious of what ads are sold and [b] there is an opportunity to try to upsell a £10 a month service to those currently taking the free ride.

Which is why YouTube is the top gripe of the music industry, is its top grip regardless of technology and the way it works. The problem with the music industry’s plan to reform safe harbours. Although the industry’s lobbyists insist there is support for reforming safe harbour laws, especially in Europe, the word coming out of Brussels isn’t so positive.

Yes, there may be support, but what does reform actually look like? What words can legislators use to force YouTube’s hand, without causing collateral damage? Which is to say, could you achieve the music industry’s objectives without making every social network liable for every ‘borrowed’ photo that is shared on the net?

Even if you could persuade lawmakers to play ball, changing European law is a very slow process. The outcome is likely to be messy too, requiring legal action to clarify exactly what YouTube’s new liabilities may be. This could take years, and with the digital music market evolving so rapidly, where will we be by then? There seems to be more appetite in Europe for forcing content makers and user-upload platforms to the negotiating table to discuss better ways to operate the takedown process and “share the value”, whatever that means. Of course, if such conversations can take place with the threat of label-friendly legislation down the line, that might be enough to secure some concessions from YouTube. Which is possibly the record industry’s plan.

Though in Content-ID, YouTube already operates an industry-leading takedown system. And it already pays the majority of its ad income to the rights owners. The problem isn’t so much how the value is shared, as it is the lack of value to start with. And the powerful Google lobby will be backed by its social media rivals in this debate, all of which have ambitions in the user-uploaded video space.

Now, there are some who hope that, with big name artists now speaking out on this issue too, YouTube will be embarrassed into making concessions before any law-maker-instigated meetings can take place.

**THE PROBLEM**

Beyond YouTube’s big bluff, there is another problem with the music industry’s plan to reform safe harbours. Although the industry’s lobbyists insist there is support for reforming safe harbour laws, especially in Europe, the word coming out of Brussels isn’t so positive.

*WHAT EXACTLY IS YOUTUBE?*

- **PANDORA**
- **You Tube**
- **Blogger**
- **Y Outube**
- **Deezer**
- **Flickr**
- **Y Outube**
- **NME**
- **ISTOCK**

*Who are they and what do they do?*

- **Streaming service**
- **Publishing platform**
- **Promotional platform**
- **Media platform**
- **Non-commercial licensing platform**
That approach might make sense, and certainly recent popstar ranting has forced YouTube executives into the press, defending their record, in a much more proactive way than in the past. Though to date, artist griping doesn’t seem to be stopping any fans from using YouTube. And whereas Spotify, as a startup heading for IPO, will be sensitive to artist criticism, YouTube may feel better equipped to weather any public relations storm.

Which means that, while ‘safe harbours’ and the ‘value gap’ will remain the music industry’s mantra for some time yet, it’s far from clear where all this is heading.

OTHER OPPORTUNITIES

Either way, it’s important to remember that safe harbour reform isn’t the only way the music industry can capitalise on YouTube, while concurrently pushing forward the growth of the wider streaming sector.

While it’s true, as we said at the outset, that more people are curators than creators - which is why YouTube was more about user-stolen content at the outset - of course some uploaders are creating compelling original videos.

Which brings us to the YouTuber phenomenon. It’s no secret that the top YouTube talent are now massive stars, and there are a multitude of opportunities for the music industry to both work with these creators, and to learn from them when it comes to building an online fanbase and a direct-to-fan business for new artists.

The music industry could also be selling to these young creators. YouTubers care about their videos, and want to use great music, without the risk of that music resulting in their videos being blocked by Content ID. This is an audience who would pay upfront to sync music into their work, if only a workable micro-licensing system could be developed, by YouTube, the industry, or a third party like Cue Songs.

Meanwhile, in the YouTuber community, the music industry might also find unlikely allies in the push for YouTube to further refine Content ID. YouTube is a very viewer-focused company – which is in no small part why it’s so successful – though sometimes it fails to deliver for creators as a result.

There are a number of refinements YouTube could make to benefit all content creators, not least allowing multiple rights owners to share in the revenue generated by a single video. With only one rights owner currently able to claim each video uploaded, the YouTubers are using production music in their soundtracks, to avoid losing revenue. A more sophisticated Content ID could enable more partnerships in this regard.

There is also an issue with the advertising industry. This applies well beyond YouTube, but it’s perhaps most apparent on the video platform. Ad agencies need to start selling their products in ten seconds or less. That’s something they should be able to do, but they won’t, which hinders short-form content services like YouTube, where ad skips have to be offered, but skips mean no payment.

And finally, if the big streaming income stream is always going to be premium – and it almost certainly is – the music industry needs to get better at selling subscriptions, rather than leaving it to the digital service platforms, who usually outsource it to tel cos, meaning the future of the music industry is in the hands of Vodafone.

With premium streaming now increasingly paying the bills, artists and labels should be proactively using their key marketing channels - and none is more key than YouTube - to promote subscription streaming. And once YouTube is awash with that kind of messaging from official music channels, it will have to step up its game in the premium content domain.

CONCLUSION

None of which is to say the music industry’s position on safe harbours is wrong: lawmakers of the 1990s almost certainly didn’t envisage services like YouTube benefiting from their safe harbours, not least because no one envisaged services like YouTube at all.

But tangible success in safe harbour reform is far from assured, however well record companies, music publishers, collecting societies and artists fight their fight. Having a plan B – and C, D and E – isn’t an admission of defeat, it’s just good business. Because YouTube remains a key channel for music, so every possible opportunity to maximise the value of the platform should be pursued.

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