



American Association  
of Independent Music

Chairwoman Edith Ramirez  
Director Bureau of Competition Deborah L. Feinstein  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

June 4, 2014

Re: [Google/YouTube Notice-Independent music labels and their artists' content to be blocked on the YouTube music website](#)

Dear Chairwoman Ramirez and Director Feinstein,

I am writing as a follow-up to previous letters I have sent to the FTC regarding the investigation of the Universal Music acquisition of EMI's recorded music assets that concluded with the FTC's transaction approval approximately two years ago. My last letter dated September 6, 2013 is attached. **Today I am writing to draw your urgent attention to recent actions taken by YouTube with regard to music recordings from Independent music rights holders where, due to anti-trust restriction on the allowed behavior of A2IM and our members, we respectfully request urgent government intervention.**

During the course of the FTC's review of the Universal transaction the American Association of Independent Music ("A2IM"), the not-for-profit 501(c)(6) organization representing the U.S. Independent music label community and of which I am the president, shared our thoughts and those of our members with Robert Tovsky of the FTC. During the lengthy process we expressed our concerns to Bob and made a public statement to the press (read statement [HERE](#)) expressing the Independent music community's concerns about the ramifications that acquisition would bring to consumers, emerging technology companies, and the Independent music label sector.

As we'd previously shared with the FTC prior to the EMI acquisition, UMGD had made a practice of using their existing market share as a means of figuratively holding hostage new and exciting music consumer platforms from launching unless said music consumer platforms were willing to give unreasonably favorable terms to UMGD. Since the acquisition, it is becoming evident that this near monopoly (or duopoly with Sony Music) is turning into a vicious cycle that gives further market clout to a single player, or two players, which in turn gives those players a gigantic advantage in exposing and monetizing their music at the expense of competition, thus leading to fewer music choices and fewer music access points, for consumers.

These trends underline our previously stated fear that UMG will abuse their market dominance by extracting unsustainable terms from digital services. We urged you to investigate UMGD's practices because, ultimately, we see a music landscape where the primary outlet for artists, music businesses, and consumers to create and enjoy music will be via one or two entities. We were confident time was not our ally; that things were certain to get worse as UMGD's advantages in access and financial terms

provided greater advantage over any possible competitor which, in turn, will only allow them even greater clout.

**Today I am writing to draw your urgent attention to recent action taken by YouTube with regard to music recordings from Independent music rights holders.**

The Independent music sector is made up of small and medium size enterprises (“SME’s”) which the past two Presidential Administrations have seen as the growth engine of the U.S. economy via increased exports improving the U.S. balance of trade and creating commerce abroad and creating jobs at home. The U.S. Independent music sector employs 80% of the industry’s workforce and accounts for well over 80% of all new commercial music releases. Independent record companies act as investors in creativity and culture, searching out individual talent and giving them the starting point to build a sustainable career in the creative industries. They perform a vital role both economically and culturally in meeting consumer needs and providing musical diversity. Every new genre and trend in music has been kick-started by the Independent sector.

Even though Independent labels are individually smaller entities than the three individual “so called” major record labels, based upon copyright ownership collectively the Independent music labels are the largest music label industry segment. According to Billboard Magazine, Independent labels altogether were 34.6% of the overall U.S. recorded music market in 2013.

You Tube is a dominant Internet source of music with approximately 80% of Internet users engaging with You Tube for video streaming. As you know, YouTube has been a wholly owned subsidiary of Google since 2006. YouTube is expected to launch a new audio music streaming service to compete with established services such as Pandora and Spotify, and is attempting to force contract terms upon the Independent sector which we understand from our members are significantly inferior to those offered to the international non-U.S. owned ‘major’ record companies (Sony, Warner and Universal).

Our members have been informed that if they do not sign up to these revised terms, YouTube has given notice to them that YouTube will remove/block our members’ and their artists’ musical repertoire from the entire YouTube service, not just the new audio music streaming service. As YouTube is one of the leading music outlets the effect on our members on the promotion and monetization of their artists will be severe as the premium videos our members create will be blocked and the User Generated Content videos created by consumers using our members artists’ music will cease to be monetized via advertising. Our members will then be forced to engage in the “whack-a-mole” process of getting these non-monetized videos off of YouTube, so as not to detract attention from services that are paying our Independent members, as was not anticipated when Congress enacted the DMCA in 1998.

According to our members, the terms currently on offer to Independent companies from YouTube are non-negotiable and highly unfavorable, and in many cases, unworkable (for example insisting on global rights which the Independent may not be able to grant). They also undermine existing rates in the marketplace from music streaming partners such as Spotify, Rdio, Rhapsody and others but are reportedly planning to launch their service charging consumers a subscription fee similar to or at the same rate as what these competitor services charge. All of these competitor companies chose to pre-license Independent content at terms which are comparable to the majors, something which YouTube has never attempted to do.

If this threatening and intimidating behavior does not stop, the implications are very serious, not only for the music industry, but for all creative and rights based industries. We face the very real prospect of all internet based trade in creative output being controlled by three non-U.S. owned companies who seem intent on taking as much value for themselves, and passing as little value as possible back to those companies and artists creating the very content on which their businesses are built, and are dependent upon, to the detriment of our primarily U.S. owned and based Independent membership. There are parallels in the book retailing world: it is now a matter of public record that Amazon is punishing publishers who refuse to sign new terms which amount to a transfer of value, not a benefit to the consumer.

Google has shown little willingness to play fair on issues such as tax responsibility, and it now shows a similar lack of regard for cultural diversity and creativity and marketplace access. We would argue that a dominant player such as YouTube forcing SMEs to accept lower rates than non-SMEs constitutes abuse of a dominant position, with regard to the digital music and video streaming market.

We ask the U.S. Government to urgently intervene, in order that other creative sectors are not forced into expensive and wasteful litigation against dominant players such as Google. We call on the U.S. Government to provide injunctive relief to prevent You Tube from blocking these Independent companies from their music platforms while our members seek a commercial solution.

The significance of this issue is such that our European Independent music sector colleagues, through their Brussels based lobbying body IMPALA and worldwide Independent music label umbrella organization WIN, are also requesting that action be taken at the European Commission level on this matter as a matter of urgency. Our international colleagues across the rest of the world are also contacting their governments requesting action.

We would be very happy to provide you with further information on this matter. Sadly, all our fears about the effects of the Universal/EMI purchase are coming to pass. More scale has been created and the effects of the Universal and Sony duopoly leveraging that scale are visible everywhere. When rights owners license to fixed-pie digital services - those where there's an income pie to share, rather than a wholesale price - French owned Universal and Japanese owned Sony demand more than their copyright ownership market share, and those excesses end up coming out of the indies' share. Independents which are primarily U.S. owned music labels who traditionally have introduced new musical trends and who are the custodians of our U.S. music culture in genres such as Reggae, Jazz, Blues, Americana, etc., genres that have largely been abandoned by the three non-U.S. owned major labels. Our Indie music community is often an early adopter of new consumer friendly digital services, as opposed to those larger creators who inhibit market innovation and often block marketplace entry. As Lucien Grange, Chairman of Universal Music Group, noted in his February 16<sup>th</sup> Billboard Magazine Power interview:

“Power is about who calls who and whose call you take. That’s power. Power is a combination of the ability to write checks, the ability to make things happen, the ability to block things—political power, the ability to testify and the requirement to testify at a Senate hearing and have five commissioners against zero in favor of what you said. Power is the ability to buy and sell businesses. Power is the ability to stop new services. Power is the ability to create new services. That’s power.”

Collective licensing has enormous benefits for the music market and consumers. It provides broadcasters and services with a one stop license for the world's repertoire under compulsory statutory licenses with rate setting by the Copyright Royalty Board. Collective statutory licensing as set by

Congress under the DSPA in 1995 and DMCA in 1998 which recognized that each song is created equal and each copyright holder should be compensated equally for each song, and that size of the creator of the song performance or the economic power of the investor in the sound recording should be irrelevant. The only differentiation in pay should be based upon consumer demand for the music, e.g. the number of streams each receives, not the ownership company. That's the basis of the compulsory statutory license; each individual jazz song, blues song, pop song or classical song should all have the same basic single usage value. The non-interactive compulsory statutory licensing regime ensures equity and fairness for all copyright owners and allows greater music service marketplace access resulting in greater consumer choice

Unfortunately for non-statutory services requiring direct licenses under U.S. anti-trust laws, collective negotiation of interactive-on-demand licenses by Independent music labels is limited, which, instead of promoting competition, and thus allowing consumers greater choice and broader music service choices as barriers to music usage are lowered, reduces competitiveness of Independent labels and their artists. This lack of ability to collectively negotiate a group license also bars certain services from access to "so called" major label music should they decide not to license and to a wide swath of Independent music which they need to successfully launch in the market place due to more difficult licensing logistics. **We come to you today to request government intervention related to YouTube's proposed blocking of our member's content** since we are forbidden under anti-trust laws to negotiate collectively or collectively advocate a boycott of a service.

While the Universal/EMI merger has been completed the repercussions continue to be felt. We hope you'd agree that the importance of a robust and competitive music market place is still a worthwhile goal for the U.S. economy, consumers, and emerging technological services. I would most appreciate being able to have a conversation with someone from your offices regarding our concerns about both YouTube and the Universal/Sony duopoly. My thanks for your time and I look forward to hearing from you.

Sincerely,  
/s/Richard Bengloff  
Rich Bengloff  
President, American Association of Independent Music ("A2IM")

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