

YouTube Online Distribution Network

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With all of these potential viewers available and ready to consume every conceivable type of content, it is no surprise that large studios, record companies, celebrities and sporting entities are all clamouring to be a part of the offering. What is surprising is that companies as diverse as consumer goods suppliers, retailers, healthcare providers and hotels are also hoping to spark interest in their brand by careful use of a YouTube campaign. And beyond seeking the potential customers that YouTube can deliver to your content and your brand, many companies are also seeking to monetise the YouTube content, seeking a share of massive revenue that YouTube generates by showing videos that it does not pay for.

So if YouTube is making all this money, what is the best way to make money from YouTube?

The past few years has seen the rise of the Multi Channel Network (known as an MCN). This is, in simplest terms, a company that aggregates or curates content under its own umbrella brand and then promotes that brand to consumers. Many MCNs have a loyal following but more importantly they have strong relationships with YouTube - they are YouTube preferred customers. The result of this 'preferred status' is that they receive better advertising rates, generate sponsorship opportunities and work to achieve larger audience share. The combination of these three elements means that, as a content supplier, you may be able to use an MCN to generate noticeable revenue from placing your content on YouTube for the world to see.

An MCN must sign a long contract with YouTube in order to become a preferred supplier. These terms are reasonably standard but can be heavily negotiated depending on the status and desirability of a particular MCN to YouTube and its operations. Sitting underneath that main contract, the MCN carefully selects its desired content supplier and each one then must negotiate and sign a content supplier agreement with the MCN. From early beginnings as short form agreements, these MCN content supplier agreements are becoming more complex as revenue generated from the use of the content has become more significant.

As with all distribution contracts in the media industry, significant revenue potential should always be protected with a well defined and properly drafted contract. So what are the key terms that a content supplier should look for in an MCN content supplier agreements and, more importantly, what are commercial ranges that you should be seeking to put into place.

The Term

Any MCN will likely want to replicate the terms it has itself with YouTube in relation to the duration of your contract. If you are a first time content supplier this will be more likely to be a shorter term but to ensure that you can retain positive commercial term in the future negotiations, it is always recommended to have an ability to extend the term easily. Note that some MCNs will present you with a content supplier agreement that will only allow the MCN itself to terminate. However, if you feel that your content or your brand does have some commercial strength, we recommend that you negotiate to include termination by your company, at the very least if there is any failure by the MCN to pay your revenue to you in a timely manner or otherwise makes an error in calculating your revenue.

Censorship

This can be a difficult area since MCNs do legitimately have a reason to request the ability to edit content for various reasons, usually to comply with censorship matters. If censorship is required, it is important to

specify who will decide if censorship edits are required, who will undertake them and who will pay for them. Whilst it is tempting for smaller operations to allow the MCN to undertake and pay for the edits, as the MCN will likely have larger resource to do so, it is important to remember that the MCN censorship team may not have the same respect for your content that you do. However, if you are going to demand the right to undertake those edits then you should expect that it will have to be done at your own cost.

Most MCNs will, regardless of whether the right to edit is included, include the right to take down your content. They themselves have little control over this, as they must comply with YouTube terms of engagement which has strict take down provisions. It is, as an aside, always wise to make yourself familiar with these take down provisions before you provide your content to the MCN.

Aside from the MCNs right to take down your content, it may also be desirable for you to have the capacity to require the MCN to take down content upon your reasonable request. This might not always apply but might become extremely relevant where a particular piece of content links to, by way of example, a 6 month brand activation or content directly relevant to a sporting event. There may be times, where, for commercial or legal reasons, you want the content to be removed from public view. If you are not afforded this right under the content supplier agreement, then you need to have a negotiation with the MCN to give effect to your wishes. The clause should provide you with an on-demand mechanism to remove particular content.

Minimum Video Upload

An MCN generates more revenue if it has increased and popular content. They therefore seek to be the next carrier of next “big thing” on the internet. For this reason, they may require you to upload a minimum number of videos on a periodic basis. Obviously, you can only agree to this if you are practically able to deliver that amount of content. But ideally, you would avoid the minimum commitment all together, even if you feel that you are able to comply with its terms at the early stage of your negotiation. Things can change very quickly in the commercial world and you may find that your budget alters, and so this minimum commitments means that you are going to have to supply substandard content - which will be linked to you and to your brand.

Promotion and Marketing

In any agreement where a third party is taking your content and seeking to exploit it, it is always desirable to have clear indications contractually as to the level of marketing and promotion that the third party will provide. In this case in particular, your revenue is linked to the number of clicks that are generated by your content, so if your content is difficult to find, poorly indexed, or just not promoted very much in other channels carried by that MCN, then your clicks will reflect that. Standard terms in the MCN content supplier agreement should note that your content will be promoted on other channels that are included in the MCN but in exchange for this, you should note that you will be expected to carry a similar amount of promotion for other channels in the MCN suite.

In negotiating this difficult area, be sure to include anything that was promised to you during your negotiations. If promised promotional activities are not contained within the content supplier agreement then it is very likely that you will never see them.

It is also possible that, if your content is considered to be desirable to sponsors that are already working with the MCN, the MCN may include a clause that allows them to require, or request that, you include third party content within your videos in exchange for additional revenues. Again, consider this carefully and, if this is appealing to you, ensure that you have contractual terms that specify your level of control over who you will work with and how much time within the content you may give them. Ambiguous language may mean that your content ends up with third party logos throughout - not a creatively desirable option.

The Revenue Share

There is no doubt that YouTube generates a massive amount of revenue on annual basis – it was reported as securing US 9 billion in revenue for 2015. Obviously they would be unable to do this without content creators and the operation of multiple MCNs is a key part of that operation.

It is important to note that revenue generation really does not become relevant until you have a half a million clicks on a piece of content, so it is wise to be initially conservative when it comes to estimating potential revenue generation from YouTube and any MCN.

The MCN content supplier agreement will generally provide you with about 70% of the net revenue that the MCN generates from advertising but this figure is not fixed by any means and may be lower. More importantly, in analysing the terms, you must check the manner in which the MCN deals with expenses. What expenses are claimable by the MCN against the revenue generated for your content? Is it clear in the contract? Can they claim back overheads such as marketing flights for their executives or electricity for their offices? Are these expenses capped at any particular level? Can you request approval before they are incurred?

You may not be able to negotiate all of these points but you should at least know the answers. More importantly it should be clear in the content supplier agreement so that there are no arguments later about what they can and cannot claim in your revenue before they distribute the balance to you.

Conclusion

There is no doubt that an effective relationship with MCN can increase your clicks, increase your audience and positively affect income. It is potentially a wonderful opportunity however, do not blindly sign the first draft of the content supplier agreement, fuelled by the enthusiasm for potential growth. Ask questions. Talk to other suppliers to ensure that this MCN pays reliably and properly manages and promotes content.

Despite the delight you will feel if an MCN chooses to carry your content, at that stage you have only managed the first half of the battle.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on content matters both on-line and in traditional media, acting for producers, creative agencies and broadcasters. For further information, please contact Fiona Robertson (f.robertson@tamimi.com)