

Risks and Roblox: Music Publishers Settle Lawsuit in Relation to User Generated Content

Anita Cade, Partner, **Ted Talas**, Senior Associate, and **Helen Wei**, Law Graduate, comment on the use of music in digital user platforms, looking at cases such as Roblox, the challenges such platforms present for music rights holders, and possible solutions.

Introduction

The gaming industry has thrived throughout the COVID-19 pandemic as people have turned to video games for entertainment and social connection when stuck inside during lockdowns.

A key beneficiary of this growth has been Roblox. For the benefit of readers over the age of 13, Roblox is an online platform that allows users to create video games and share and play them with other Roblox users online.

In this article, we take a look at recent copyright lawsuit against Roblox filed by the National Music Publishers' Association in the United States. This lawsuit, while ultimately settled, is a timely reminder both of the legal risks of user generated content but also the unique opportunities platforms that facilitate user generated content can create for rightsholders.

Music on Roblox

As of September 2021, Roblox has over 48 million daily active users. A key part of Roblox's popularity stems from the fact it allows users to code their own, user-created games – called “universes” – and then share and play these games with other people online. When developing games in Roblox, users can upload their own images, videos, music and other creative assets to the platform to build into their games. Roblox users can also use Roblox to sell the games they create and stream gameplay to other users.

Music has also become a key ingredient to the success of Roblox. During the COVID-19 pandemic, Roblox began hosting unique immersive virtual concerts on its platform to drive user engagement (and in-game purchases) and enable artists to directly connect with music fans. In November 2020, Lil Nas X

performed a series of live concerts on Roblox that gathered over 33 million views to promote his song ‘HOLIDAY’. Earlier this year, Roblox hosted a virtual concert experience featuring the band Twenty One Pilots which allowed Roblox users to determine the band's setlist through voting and purchase limited edition merchandise for their in-game characters.

In addition to live concerts, a number of artists, such as Ava Max, have debuted new music at virtual listening parties on Roblox.

Furthermore, the Roblox game creation system includes functionality which allows users to, for a fee (paid in Robux), upload music to the platform. Once a song is uploaded to Roblox, it becomes an asset stored within Roblox's central content library and other users can choose to incorporate – or synchronise – into the games they develop. Users can also share and comment on music in the asset library and purchase in-game items, such as “Boomboxes” which enable users to listen to music while spending time on Roblox. Unsurprisingly given Roblox's user base, much of the music uploaded to Roblox is commercial music or, to use Roblox's language, “the hottest jams”.

Roblox largely pushes the responsibility for clearing this music onto its users, most of whom are children. When uploading assets (including music) to Roblox, the user is required to represent and warrant they are authorised to upload the content “without the obligation to pay royalties to any third party, including without limitation... a musical work copyright owner (e.g., a music publisher)”. Under the Roblox Terms of Use, users also agree to “respect the intellectual property rights of others”.

The NMPA lawsuit

In June 2021, the National Music Publishers' Association (NMPA), filed a lawsuit on behalf of major music publishers in the United States claiming that Roblox had engaged in copyright infringement by reproducing and publicly performing musical works without a licence as part of providing the Roblox platform.¹ The infringement was said to arise from Roblox copying and performing unlicensed musical works uploaded to the platform by Roblox users. The NMPA also claimed that Roblox was secondarily liable for the infringing acts of Roblox users under US copyright law (similar to authorisation liability under the *Copyright Act 1968* (Cth)).

While the NMPA acknowledged the contractual arrangements between Roblox and users uploading content to the platform, it argued these contractual protections were a mirage in circumstances where the significant majority of Roblox users were children who, in reality, were unlikely to have obtained licences from the necessary rightsholders in respect of music uploaded to Roblox. The NMPA alleged Roblox turned a blind eye to this in order to profit from music on the platform.

Further, the NMPA also argued that Roblox was aware that users regularly uploaded unlicensed commercial music to the platform. Indeed, it encouraged this conduct. Under Roblox's content moderation policies, every file uploaded to the platform, including music, is carefully vetted by Roblox's content moderation team to ensure the material is safe and age-appropriate. Content moderation is a major selling point of Roblox. The NMPA

¹ ‘Complaint for direct copyright infringement, contributory infringement, and vicarious copyright infringement – Demand for jury trial’ (9 June 2021) <<https://storage.courtlistener.com/recap/gov.uscourts.cacd.822912/gov.uscourts.cacd.822912.1.0.pdf>>

also pointed out it was regularly common for Roblox to suspend users for breaches of its community guidelines. However, it very rarely suspended users on the basis of copyright infringement despite the wide availability of unlicensed music on the platform and some users uploading hundreds of songs to the asset library.

In the complaint filed with the United States District Court for the Central District Court of California, NMPA puts its case in the following terms:

Roblox purports to create a “safe” online environment for its users, consisting mostly of children under the age of 13. In truth, Roblox actively preys on its impressionable user base and their desire for popular music, teaching children that pirating music is perfectly acceptable.

The NMPA sought a range of relief from the Court include declaratory relief, injunctions and damages in the sum of at least USD\$200 million.

The settlement

On 27 September 2021, Roblox announced it and the NMPA had agreed a settlement the NMPA's copyright infringement lawsuit.²

While the full details of the settlement are not public, Roblox announced that, as part of the settlement, it would create an industry-wide licensing mechanism which publishers can use to license content to Roblox, together with scope for individual publishers to negotiate licensing deals with Roblox. Following the settlement, a Roblox representative said the company was “committed to partnering with the music industry, as a whole, to create an exciting new social era of the music business which engages fans and artists in an unprecedented way in the metaverse”.

The Roblox settlement closely follows the NMPA settling a copyright infringement lawsuit against the streaming platform Twitch. That lawsuit related to the unlicensed streaming of music by Twitch streamers, again highlighting the risks of user generated content. Similar to

the Roblox settlement, in settling the Twitch lawsuit, Twitch and the NMPA agreed to a new licensing partnership to create new opportunities for music publishers on the platform.³

The NMPA lawsuits against Roblox and Twitch are a good reminder of the legal risks that can arise from enabling user generated content without appropriate controls or licences. However, the settlement of these lawsuits also underscores that music publishers appreciate that platforms like Roblox and Twitch create new opportunities to exploit rights in musical works and connect with certain key demographics. Even if these platforms may have a history of facilitating copyright infringement, it is clear that publishers see them as indispensable partners in the digital future.

² Roblox, ‘NMPA and Roblox Strike Industry-wide Agreement’ (27 September 2021) <<https://corp.roblox.com/2021/09/nmpa-roblox-strike-industry-wide-agreement/>>

³ NMPA, ‘NMPA and Twitch announce agreement’ (21 September 2021) <<https://www.nmpa.org/nmpa-and-twitch-announce-agreement/>>

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