

**VIA ELECTRONIC TRANSMISSION**

June 24, 2021

Ms. Shira Perlmutter  
Register of Copyrights and Director  
U.S. Copyright Office  
101 Independence Ave, S.E.  
Washington, D.C. 20559

Dear Register Perlmutter:

We write you today in our capacity as the Chairman and Ranking Member of the Senate Judiciary Committee Subcommittee on Intellectual Property. We write to request the Copyright Office convene a representative working group of relevant stakeholders in order to identify and implement standard technical measures and recommend other necessary steps to stop online copyright theft and improve the digital ecosystem for creators, content owners, and lawful internet users.

As you know, we are actively considering whether legislative reforms and other measures are necessary to modernize copyright law. Last year, the Subcommittee on Intellectual Property held a year-long series of hearings on reforms to digital copyright law. The purpose of the hearings was to consider what reforms are needed to ensure the growth of creative industries without undermining incentives for digital platforms and technologies. Testimony from these hearings clearly demonstrate that online copyright piracy is on the rise and poses a real threat to America's copyright industries, which are consistently growing faster than the U.S. economy, contributing over \$2.5 trillion dollars to our economy, and employing over 11.7 million people.<sup>1</sup>

We appreciate and recognize the Copyright Office's own extensive contributions towards modernizing our copyright system, including last year's report and follow-on guidance related to safe harbors for online service providers (OSPs) and the notice-and-takedown system.<sup>2</sup> When Congress set up the safe harbors for OSPs over twenty years ago, it envisioned industry working together to identify standard technical measures (STMs) that service providers would accommodate.<sup>3</sup> Despite Congress's clear intent that stakeholders would "expeditiously"

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<sup>1</sup> *Copyright Industries in the U.S. Economy: The 2020 Report*, by Robert Stoner and Jéssica Dutra of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), (December 2020), <https://iipa.org/files/uploads/2020/12/2020-IIPA-Report-FINAL-web.pdf>,

<sup>2</sup> U.S. Copyright Office, Section 512 of Title 17: A Report of the Register of Copyrights (May 2020) ("Section 512 Report"), <https://www.copyright.gov/policy/section512/>

<sup>3</sup> Copyright law defines standard technical measures ("STMs") as "technical measures that are used by copyright owners to identify or protect copyrighted works..." which: (1) "have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process"; (2) "are

commence “voluntary, interindustry discussions to agree upon and implement the best technological solutions available...” no STMs have been designated through this envisioned process.<sup>4</sup>

The Copyright Office helpfully has identified statutory ambiguities and other issues—from a lack of incentives for OSPs to participate in standards setting to the inappropriateness of one-size-fits-all technologies—that “may impact...what technologies may be eligible for adoption.”<sup>5</sup> It held online discussions last autumn to lay the groundwork for sustained engagement on the important issue of “STMs”.<sup>6</sup>

We are concerned that the failure to make progress on this important issue facilitates abusive practices and interferes with the ability to expeditiously take action against bad actors to the detriment of individual creators, small business owners, and lawful internet users. The Committee believed twenty years ago—and we continue to believe—that voluntary technology is likely to be the solution to many of the issues facing copyright owners and service providers.

Accordingly, we ask that you convene a representative working group of relevant stakeholders to achieve the identification and implementation of technical measures. This working group should be diverse and include representatives of internet and content users, content creators both large and small, individual and independent, and OSPs. Additionally, this working group should include appropriate stakeholders within government, including but not limited to the National Telecommunications and Information Agency, the National Institute of Standards and Technology, and the Patent and Trademark Office. The purpose of this working group is for the Copyright Office to produce a report identifying and clarifying what STMs currently exist in the marketplace and should be adopted by online service providers in order to fulfill the obligations expected by Congress in enacting the DMCA. We recommend that you consider having technology/copyright sector specific subgroups to consider STMs that may be specific to a particular form of content (i.e., text, image/visual, audio, audio-visual, etc.).

In addition to producing this report, we also ask that you issue a notice of inquiry and produce a report answering the following questions as soon as possible.

1. How would you improve upon the existing definition of standard technical measures (“STMs”) in Section 512 of Title 17 to ensure that such measures are integrated into the intermediary liability safe harbors as Congress originally intended? What changes may need to be made to account for developments, including changes to technology and market dynamics, since the DMCA was enacted?
2. Do you agree that the failure to adopt and implement STMs facilitates abusive practices? Please provide evidence and data, where appropriate.

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available to any person on reasonable and nondiscriminatory terms”; and (3) “do not impose substantial costs on service providers or substantial burdens on their systems or networks.” 17 USC 512.

<sup>4</sup> The Digital Millennium Copyright Act of 1998, S. REP. 105-190; Section 512 Report, *infra* note 2, at 67.

<sup>5</sup> Letter from Acting Register Maria Strong to Senators Tillis and Leahy, June 20, 2020, <https://www.copyright.gov/laws/hearings/response-to-may-29-2020-letter.pdf>

<sup>6</sup> See <https://www.copyright.gov/events/stm-discussion/>

3. Would adopting and implementing STMs or other standard measures assist in ending online copyright piracy?
4. Please identify any technical measures currently used by your industry or sector, or that you are aware of, to identify or protect copyrighted works. Which of these would qualify as “standard technical measures” under the current statutory definition?
5. Are there recommendations for actions the Copyright Office or others could take to improve data on these measures?
6. What obstacles are there for service providers to accommodate any of these measures, including STMs?
7. How can the government facilitate the adoption of copyright-enhancing standards? Are there standards that would be useful for federal agencies to be aware of while implementing statutory or regulatory provisions, including procurement provisions, grants, or required data inventories?
8. As Congress considers how best to revise digital copyright law for the twenty-first century, what statutory provisions should we consider enacting in order to further the adoption of standards?

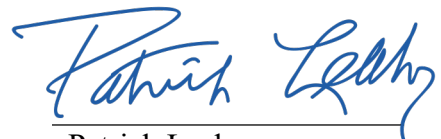
Thank you for your prompt attention to this matter. While Congress may still need to revise copyright law for the twenty-first century in order to end copyright piracy, we believe this stakeholder process and notice of inquiry will result in significant progress on this issue and will inform any potential legislative efforts. If you have any questions, please do not hesitate to contact us.

Sincerely,



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Thom Tillis  
United States Senator



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Patrick Leahy  
United States Senator