

**HEARING BEFORE
THE UNITED STATES SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON INTELLECTUAL PROPERTY**

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I. Introduction

Chairman Tillis, Ranking Member Coons, and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Probir Mehta, and I am a Public Policy Director at Facebook, where I lead our global intellectual property (IP) policy work. Before coming to Facebook, I worked in government on issues around IP and trade, including more than ten years with the Office of the US Trade Representative.

At Facebook, we take creativity, copyright, and other IP rights incredibly seriously. The creators who choose to share their work on our platform are some of our most important partners and users, and we are proud to offer a free platform and free services that they can use to express themselves and connect with new audiences.

We work hard to foster creativity through the partnerships we have formed with rights holders across our platforms, and to support the business models that creators choose to use. Our community is enriched by the exchange of creative works and ideas, and we empower and protect content creators of all sizes and types—whether musicians, sports leagues, publishers, or television and movie studios—with new channels for sharing their content, driving offline viewership, and publicizing their creativity.

We are proud that creators find value in posting their content to Facebook—for example, using Facebook Live, Pages, or Groups. And we want to ensure that they have a trusted environment to share it. This means working hard to stop people from appropriating or misusing their work. To combat copyright infringement, we've put in place comprehensive policies and procedures to help creators of all sizes effectively and efficiently control how their content appears on our platform, and we have invested significantly in developing powerful IP tools. For example, we have built a world-class content management tool called Rights Manager, a global notice-and-takedown program, a comprehensive repeat infringer policy, user education hubs (to help prevent infringement in advance), and other sophisticated tools and initiatives that help rights holders control the use of their content and identify potential IP violations. We also work to detect and address infringing material ourselves. We have developed these tools and practices in close collaboration with rights holders, taking into account their changing needs and shifts in the online ecosystem, all while ensuring that users' rights to lawful freedom of expression are protected.

II. Partnering with Rights Holders

Our view is that Facebook and Instagram should empower content creators of all types. To facilitate this, we have a dedicated global Partnerships team who work with publishers, artists, creators, and others to help them maximize the value they get from Facebook and Instagram by reaching new audiences, engaging directly with fans, and promoting their work around the world.

Rights holders of all sizes use our products, including Facebook Pages and Facebook Live, to connect with their audiences and to promote their content and support their business. Musicians, for example, use Facebook to expand their reach and connect with fans. And for good reason—according to one recent analysis, nearly two out of three people discover new musical artists on social media. We have also partnered with a wide range of established rights holders, including movie studios, television networks, broadcasters, digital media publishers, and sports leagues, to help them gain visibility, reach new audiences, and experiment with new offerings, including for example, social-first productions.

And we are focused on supporting emerging creators, working closely with them to understand what they need to be successful on Facebook and Instagram. Our efforts have included helping creators engage and grow their community, manage their presence, and build their businesses on our platforms.

Many of our partnerships have resulted in new features. For example, we continue to enhance in-stream ads with new features and functionality to support monetizing more types of video content, and we've expanded the availability of fan subscriptions, Stars, and Paid Online Events so that fans can support their favorite creators.

We have also signed agreements with members of the music industry to enable new music-related experiences for users, artists, and songwriters on Facebook and Instagram. This includes a licensing program that currently covers the majority of music rights holders in over 90 music markets, including the US, UK, France, Germany, and Australia. We have this program because we believe there's value for Facebook, music rights holders, and our users when we enable people to freely express themselves and connect with others through music.

The partnerships we have formed with creators on our platform have been particularly important during the COVID-19 pandemic. While many venues and retail opportunities have been shuttered, Facebook has remained an important outlet for creators to continue to engage with their audiences and grow their businesses. That includes not only people traditionally thought of as creators like musicians and video creators, but also chefs providing cooking tutorials, fitness entrepreneurs teaching yoga to stay-at-home audiences, or comedians entertaining people on Facebook Live. Our partnerships have supported and strengthened those efforts, offering a meaningful resource during challenging times.

III. Reporting IP Infringement on Facebook and Instagram

We understand that online piracy is a significant problem—one that transcends any one platform, or any one country. And we're acutely aware of the negative effect it can have on the many

creators around the world whose work can be stolen and illegally shared. That's why we are so focused on tackling this issue in creative, far-reaching, and effective ways.

We have invested significantly in supporting rights holders via our IP protection work. This work begins with our policies. Facebook's Terms of Service and Community Standards, as well as Instagram's Terms of Use and Community Guidelines, prohibit users from posting content that infringes third parties' IP rights. We have detailed Intellectual Property Help Centers for both Facebook and Instagram, where users and rights holders can learn more about our policies and procedures.

To ensure quick and accurate handling of IP reports submitted under the DMCA, we provide dedicated channels for rights holders to report content that they believe infringes their rights. These include custom online reporting forms dedicated to copyright and other IP violations, through which rights holders can report different types of content they believe are infringing, including individual posts, photos, videos, or advertisements, as well as entire profiles, accounts, Pages, Groups, or Events. We also allow for rights holders to report multiple pieces of content in a single report, further enhancing and streamlining the reporting process.

Each report submitted by a rights holder is processed by our IP Operations team, a global team of trained professionals who provide around-the-clock coverage in multiple languages, every day of the year. If a report is complete and valid, the team will promptly remove the reported content—typically in less than 24 hours, and often within hours or even minutes. If any information is missing, or if the team needs to clarify anything, more information may be requested, and rights holders can communicate directly with the team via email in those situations. We believe that this manual processing is important in striking the right balance to ensure that rights holders have clear and effective processes for enforcing their rights, and that content is removed only in response to complete and valid reports, to help safeguard users' lawful free speech rights.

In line with the structure established by the DMCA, Facebook or Instagram users who believe that a takedown request is not justified can file a counter-notice. If we receive a proper counter-notice, we will restore the removed content unless the reporting party notifies us within fourteen days that they have filed a lawsuit for copyright infringement.

When we receive a report of infringement in a specific post, we do not limit our review to the individual post, but in appropriate circumstances instead look at the entire account, Group, or Page to determine whether it is dedicated generally to infringing activity. Where such an account, Group, or Page is dedicated to infringing activity, we will disable the actor even if the rights holder has reported just a single piece of content. In addition to outright removals, we may take other actions, including prohibiting the posting of content for a set period of time or, in the case of repeat infringers, disabling their Facebook or Instagram accounts, as appropriate.

Although we continue to look for ways to get better, our notice-and-takedown process has been helping us steadily improve our enforcement against IP-infringing content on our platforms. In general, we take removal action on 80-85% of reports that we receive. In the first six months of 2020, we took down over 2.5 million pieces of content from Facebook, and over 1.2 million pieces of content from Instagram, based on copyright reports.

IV. Going Beyond Notice-and-Takedown Requirements

We are committed to developing additional tools and programs that help rights holders more effectively identify and report potentially infringing content. In some instances, our tools eliminate the need for rights holders to report any content at all. It can be difficult for Facebook to independently identify what content rights holders may believe infringes their rights without input from the rights holders themselves. Only rights holders know the extent of their rights, or what entities they may have licensed their content to, and to what degree. That said, we have developed many of these tools and programs cooperatively with rights holders. This collaboration has resulted in enhancements to Facebook's policies and procedures over the years. Our collaboration with rights holders is a central component of our approach to stopping IP infringement, as it provides insight into trends and developments that we address through our enforcement measures.

As just one example of this collaboration, we built and have further enhanced our scaled content management and matching tool, called Rights Manager, based on feedback and input from all types of rights holders. Rights Manager is a video-, audio-, and image-matching tool that we developed for creators to identify content on Facebook and Instagram, including Live videos, that match rights holders' copyrighted content. Rights holders of all sizes—from individual creators to television and movie studios, sports leagues, music entities, and others—can have access to Rights Manager, subject to a simple application process.

Once approved, participating rights holders can upload reference files of their copyrighted content directly into Rights Manager. Thereafter, when a match to a user's uploaded video is detected, the rights holder can decide what action to take on that matching video, depending upon the rights holder's particular needs and circumstances. These actions include the capability to block the content from being viewed by anyone other than the uploading user. In some instances, if a rights holder chooses to block all content matching certain criteria, it can significantly reduce their need to submit future reports (though users maintain the ability to dispute blocks where appropriate).

Rights Manager gives rights holders many other options as well. For example, instead of blocking content, rights holders may choose to monitor it for insights about how their content is performing on the platform—consistent with rights holders' desire to understand the current and potential audience for their content. Alternatively, rights holders can choose to place a banner on matching user videos that links to a promotional destination of their choice, or they can claim ad earnings from the video (which allows them to gain the revenue that is generated from ads that may run on the matched video). Importantly, use of Rights Manager is free for rights holders.

Our collaboration with rights holders has also allowed us to invest in proactive measures to identify and remove infringing activity entirely on our own—typically before a report from a rights holder is ever even submitted. We're working to test new approaches to this challenge using technologies like machine learning. Our partnerships have informed other measures as well. These include steps we have taken to stop the spread of third-party links dedicated to infringement on our platform, as well as to remove content related to devices that facilitate illicit streaming of copyrighted material.

V. Conclusion

As Facebook's experience shows, the current US copyright system has been an effective means of encouraging collaboration among members of the creative ecosystem, and strengthening the commitment of platforms to removing infringing material, while instilling confidence in artists and others to continue to innovate and create. The success of Section 512 can be seen in the thriving ecosystem of US internet companies that have developed since the law's enactment. Working cooperatively with rights holders, platforms have developed a variety of tools to fight infringement in the online environment—tools that go beyond simple compliance with the law. For our part, we have invested significantly in creating tools like Rights Manager, which help rights holders and platforms work together to more effectively identify and address infringement.

We are always looking for ways to improve our enforcement and the tools we provide, and we look forward to a productive dialogue with this Committee and other stakeholders on how we can continue to do so.