15 December 2020

The Hon. Thom Tillis  
Chairman  
Senate Judiciary Committee  
Subcommittee on Intellectual Property  
226 Dirksen Senate Office Building  
Washington, DC 20002

The Hon. Chris Coons  
Ranking Member  
Senate Judiciary Committee  
Subcommittee on Intellectual Property  
226 Dirksen Senate Office Building  
Washington, DC 20002

Dear Chairman Tillis and Ranking Member Coons:

My name is Ruth Vitale, and I am the CEO of the nonprofit advocacy organization CreativeFuture. We are a coalition of Americans who create – over 560 organizations and companies and over 260,000 individuals. We make our living creating in film, television, music, book publishing, and photography.

I would like to thank Chairman Tillis, Ranking Member Coons, and the rest of the Subcommittee for these important hearings on the Digital Millennium Copyright Act, 22 years after its passage. I also want to thank the incredible and tireless staff in these Member offices. As someone who has spent only a few years of my life in public policy, I have been endlessly impressed by their commitment.

Before taking the helm of CreativeFuture, I produced and distributed over 100 independent films for three decades, including movies as diverse as Dirty Dancing, Mad Hot Ballroom, Hustle & Flow, and Bloody Sunday.

I know and have worked with many in America’s creative communities. And many of them have lent their voices and support to CreativeFuture’s efforts.

I speak to you today on behalf of the millions of people in the creative communities in the United States and all over the world for whom piracy is an existential challenge.

Piracy is deadly for us. It kills creativity. It kills jobs. And fighting piracy is a never-ending battle, all across the internet and around the world.

America’s creative industries contribute more than $1.3 trillion to GDP and employ almost 5.7 million Americans. The U.S. core copyright industries are a leading export, outpacing other major industries including aerospace, agriculture, and pharmaceuticals.

But today, the American creative economy is under siege by digital piracy and an American legal framework that allows criminal enterprises to profit from our work to the tune of billions of dollars. A 2019 study commissioned by the U.S. Chamber of Commerce estimates that global piracy costs the U.S.
economy at least $29.2 billion in lost revenue each year, and perhaps as much as $71 billion annually. The Chamber report also found that “digital video piracy” alone results in losses of between 230,000 and 560,000 American jobs every year.

This is a staggering loss for the economy, American jobs, and especially for the creative industries. And it is made all the more staggering because it is facilitated by some of America’s biggest and most financially successful companies in the tech industry.

To make matters even worse, the COVID-19 pandemic and the ensuing production and work stoppages have impacted our communities in devastating ways. Film and television production has been slow to restart in America, movie theaters remain closed in parts of the country, and live indoor events may not return until well into 2021. Many of these jobs, without further support from the government, may never come back.

For all of these reasons, our communities are facing an existential crisis and need help now, more than ever. The inability to enforce meaningful copyright protections in the U.S. is, in part, due to the failure of the DMCA to live up to its promise of a framework for truly effective protection of copyright through cooperative efforts between online service providers and creatives. Instead, the burden of enforcement has shifted almost entirely to creatives while internet platforms enjoy what have become overly broad safe harbors from responsibility for the infringement they facilitate.

In this environment where immediate help is called for, voluntary initiatives could be a bright spot on the horizon. Though the policy disagreements between the copyright community and Silicon Valley are profound, there have been positive examples of voluntary agreements between our communities and certain online platforms and service providers that we can and should look to as templates for further constructive engagement.

One initiative that was extremely successful due to cross-industry cooperation was CreativeFuture’s Follow the Money campaign in 2015 – an effort to reduce legitimate advertisements running on pirate websites.

We worked with the Trustworthy Accountability Group (“TAG”) to directly reduce the presence of 76 major brands’ advertising on pirate sites. By working with leading advertising agencies to revise their digital media practices to promote brand safety, this effort had a significant impact far beyond just those brands that we contacted, affecting both the advertising ecosystem as a whole and the profitability of ad-supported infringing sites.

Major brands have virtually eliminated their ad presence on infringing websites, stopping the flow of significant revenue to those criminal enterprises. Some of those sites replaced the legitimate ads with less profitable, unseemly ads, which removes the aura of legitimacy from their illicit sites.

In 2016, there were 20 billion ad impressions on the top pirate websites. In 2016 and 2017, at least 60 brands or agencies were placing large volumes of ads on pirate sites, some brands placing between 5 and 25 million impressions per month. By 2018, no premium advertisers could be identified at high volumes on pirate sites in the U.S.. This was an incredible success. And all we did was educate the advertisers and agencies about the problem – and point out how it was in their interest to fix it. Surely, this tactic can work elsewhere.
I would like to address an important voluntary effort by Silicon Valley to combat online infringement. This is YouTube’s development of sophisticated copyright protection monitoring tools, notably Content ID and a similar tool called Content Verification Program (CVP). Both allow certain approved partners to upload their libraries of content for fingerprinting, enabling YouTube to identify and reduce infringement on its platform.

This is encouraging and is also the kind of thing the DMCA sought to foster. Unfortunately, most individual creatives are not given access to these tools, nor are they given an explanation for why they are denied. For those people, YouTube offers instead a handful of increasingly unappealing options.

Despite this issue of access, I still would like to point to these tools as examples of potentially successful voluntary initiatives. I believe there could be far greater cooperation between YouTube and the creative community – at a minimal cost of time and effort. If tools like these were more widely available to individual copyright owners, for example, that would be a huge success for voluntary initiatives. And there is already progress toward this goal – thanks to Congress.

In December of last year, Members of Congress called upon Google and YouTube to convene a meeting with members of the creative community to discuss the limitations of YouTube’s copyright infringement monitoring tools, as well as the lack of access to these tools. For that roundtable, my organization, CreativeFuture, brought four of our members to participate – two of whom had been denied access to any of YouTube’s tools and one of whom had been given CVP years ago and then was suddenly denied access to any tool, without explanation.

That day, we proposed that YouTube provide access to these tools to a far greater number of creatives. We asked that the criteria used to determine whether a copyright owner is eligible to use its tools be transparent. And, in those cases when someone is denied, YouTube should make a human available for a simple appeals process.

Since the meeting in December, one of the creatives in attendance who had previously been denied access twice was finally granted access in February. He was given CVP. The other two creatives, however, were never even contacted by YouTube, despite YouTube’s verbal commitment that day in the hearing room. Our guest who lost his access to CVP and pleaded for help from YouTube remains without a tool to this day. As a result of their inability to protect their catalog of titles from infringement on YouTube, they have taken a job as a film professor in Oregon to make a living.

In February, twelve Members of Congress sent a letter to YouTube, following up on that December 6 roundtable with further questions. On March 6, YouTube responded and outlined its content protection tools, although, notably, did not answer any of the Members’ questions directly.

In its letter, YouTube touted Copyright Match as a tool that could be a good solution for “creators and rightsholders” who “experienced a higher amount of re-posting of their copyrighted content and needed to submit more regular claims.”

But, upon further research, according to YouTube’s own website, it became clear that Copyright Match is only “available to channels in the YouTube Partner Program.” While YouTube tells us that Copyright Match can technically be used for a “private” upload, it still requires an active YouTube channel with significant subscribership and an AdSense account.
Further, Copyright Match works only for video content. This tool cannot help the countless musicians whose music is routinely uploaded to YouTube without their permission – not just as standalone streaming audio files, but, in most cases, as background music (also known as underscore). Most users upload video with music that they have neither licensed nor paid for – and most music on YouTube falls into this category.

Television broadcasters and streaming platforms actually license the music used in their video content (programs, commercials, and promos). Why should YouTube not require its users to do the same, or enter into license agreements that would effectively cover their uploaders’ content?

As music composer Kerry Muzzey testified to this Subcommittee in June, it was only because of his rare access to Content ID as an individual that he found the tens of thousands of infringements on YouTube that he never knew existed. Given access before YouTube stopped granting Content ID to anyone but the largest copyright holders, Muzzey was shocked by what he found.

Indeed, his music was being used as underscore in more than 100,000 commercial videos without his knowledge - and Content ID was the singular reason he discovered those uses. Without this sort of digital fingerprinting, musicians have a near impossible task finding infringements on the platform.

Clearly, with YouTube presenting these “solutions” as our best option, our hopes of a cooperative solution were quickly dashed. I respectfully submit a copy of YouTube’s March 6 letter following my written remarks.

We find ourselves at an impasse again, with the same issues plaguing our creative communities’ members when attempting to keep their content off YouTube. There certainly must be a way for YouTube to grant any legitimate copyright holder the ability to simply decide whether they want their work on YouTube or not. We know YouTube has the technology to police its platform. By its own admission, thousands of rightsholders have Content ID today. This technology should be available to all copyright holders to make decisions about their work.

We asked in December and are asking again now for a commitment from Google and YouTube to work with us, under the continuing oversight of Members of Congress, to make its content protection tools more widely available to our communities and to make those tools even more effective on YouTube.

We also ask for transparency, as well as access to YouTube employees who can speak to members of our creative communities about applying for these tools and teaching them how to use them. This is a crucial step in avoiding what YouTube always cites when explaining why these tools are so well-guarded – that they will be abused.

But the only proof of this abuse that I could find is from an infographic put out by Re:Create, another Google-funded group, that has criticized the entire premise of these DMCA hearings. In its “infographic,” it also claims that abuse is rampant, and base this claim on a sample of just 1,826 notices over a six-month period from about seven years ago. The Google-funded report, Notice and Takedown in Everyday Practice, concludes that 4.2% of the sampled takedown notices were “fundamentally flawed,” or about 77 requests. Given the volume of notices sampled, and the importance of combatting the widespread harm from piracy, that percentage (even if true) shows that the system has not been widely abused.
I think we all know that the best way to prevent abuse is through education. And the best way to educate users is customer service. This is not a moonshot. If the parent company can make driverless cars, then making meaningful, easy-to-use content protection a reality for small creatives on YouTube should be a walk in the park.

Looking beyond YouTube, what else can be done?

Facebook, the world’s largest social media company, is rife with piracy. It has significant work to do to adequately protect creatives’ works on its platforms, which include Instagram.

When Facebook removed video length restrictions in 2016, allowing users to add full movies and television shows, it should have anticipated and been prepared for the inevitable flood of infringing content. Instead, while they have developed some tools to address piracy, those tools are not nearly effective enough – especially given Facebook’s engineering and financial resources. Put simply, Facebook has not prioritized addressing this problem.

Creatives have tried for years to work cooperatively with Facebook to improve these tools but too often have been met with polite disengagement. It has shown little interest in being responsive to the needs of content creators both big and small. As a result, Facebook provides a daily stream of infringing content to its 2.7 billion viewers around the world.

As with YouTube, we welcome a cooperative dialogue with Facebook to address these problems.

Now, let me turn to a company named Cloudflare. This is not a household brand, but anyone well-versed in the internet knows what it does. It provides, among other products, a “reverse proxy” service that masks the true IP address of websites. In other words, when you run a website, Cloudflare hides who you are.

While this lends much-needed protection to companies and individuals, it also means that no one, not even law enforcement, is able to ascertain the identity of the website owner without Cloudflare’s cooperation. This obviously creates problems for civil enforcement efforts aimed at piracy sites globally.

The problem with Cloudflare is not the services it provides, but the fact that it indiscriminately offers those services to all – regardless of whether they are legitimate organizations or notorious criminals involved in trafficking, drug dealing, radicalization, or other nefarious activities. This willful blindness has made Cloudflare the “service of choice” for bad actors.

Cloudflare was in the news in connection with the deadly shootings in El Paso and in Christchurch, New Zealand last year. One of Cloudflare’s clients was 8chan – an online message board home to the radicalization of both the El Paso shooter and the one at Christchurch.

It is true that Cloudflare “fired” 8chan after the shootings and did the same for The Daily Stormer – the website used to inflame the violence in Charlottesville, Virginia in 2017. But why does it only respond to tragedies rather than take responsible action on its own? It is not like 8chan and The Daily Stormer were a couple of bad apples that slipped through Cloudflare’s net – at least seven terrorist organizations and other entities well-known for engaging in illegal activities use Cloudflare’s services. In short, Cloudflare has no safety net.
In a company blog, Cloudflare’s CEO Matthew Prince said that they “feel incredibly uncomfortable about playing the role of content arbiter and do not plan to exercise it often.” While it may be complicated to decide which websites are spouting hate speech or to decide which speech they find objectionable, it is abundantly clear which websites are dedicated to obviously illegal activities. In addition, enforcement organizations, like the Alliance for Creativity in Entertainment (ACE), regularly alert Cloudflare about the illegal piracy sites that are its customers. Nevertheless, Cloudflare continues to service those customers.

Which brings me to my simple request for voluntary action from all stakeholders in the internet ecosystem: Do not do business with illegal entities. Do not link to illegal websites in search. Do not advertise on pirate websites. Simply block unauthorized uploads of copyrighted content that has been explicitly designated as such by the bona fide copyright holder. And do not give piracy sites safe harbor behind your reverse proxy service when they are clearly illegal sites.

Companies like Cloudflare or Google are not public utilities obligated to serve anyone willing to pay for their services, nor are they governments required to protect speech at all costs. They are companies that should understand by now that mature American industries can only operate successfully if they are good corporate citizens, not by looking the other way. The DMCA was not intended to waive good citizenship.

Facebook has no obligation to allow demonstrably false and malicious information to be distributed over its platform. YouTube is not required to distribute anything anyone wants to upload around the world in seconds, with no concern for who created it; nor does the First Amendment require Google to return illegal websites in its search results. And Cloudflare has the right to deny service to any website trafficking in illegal activity – simply because it wishes to be an ethical corporate citizen.

In fact, most platforms have Terms of Service that enumerate these rights to deny service or remove content as they see fit. It is time we hold these companies to their own Terms of Service. And above and beyond that, it is time that we expect these companies to behave as responsible corporate citizens.

The internet that we have today was built on scale and world-class engineering. And today’s internet platforms have achieved a scale that was previously unimaginable. Every day, Google processes over five billion searches. 500 hours of content are uploaded to YouTube every minute. As Americans, we should be proud of these incredible feats of engineering. And yet, when it comes to illegal piracy proliferating on their platforms, these companies want us to believe that they have neither the scale nor the engineering talent to solve the problem. I know they can do better than this. I think we can all agree on that.

I thank you for your time and look forward to your questions.

Respectfully,

Ruth Vitale
Chief Executive Officer
March 6, 2020

Dear Members of Congress:

Thank you for your follow-up letter regarding how YouTube helps creators and rightsholders manage copyrighted works on its platform. We greatly appreciated the opportunity to meet with your staff and interested parties in December and look forward to continued collaboration in this area.

The Internet has been a force for creativity, learning, and access to information. At YouTube, supporting this free flow of ideas is core to our mission to give everyone a voice and show them the world. We build tools that empower users to access, create, and share information like never before — giving them more choice, opportunity, and exposure to a diversity of opinions. This openness has democratized how stories, and whose stories, get told. It has created a space for communities to tell their own stories. And it has created a platform where anyone can be a creator and can succeed. Around 2 billion people come to YouTube every month and we see over 500 hours of video uploaded every minute, making it one of the largest living collections of human culture ever assembled in one place.

In creating a global, open platform used by billions, YouTube also has expanded economic opportunity for small businesses, artists, creators, journalists, and more. The economic benefits have never been clearer: many creators make a living through the content they post on the platform. YouTube channels making over six figures in revenue are up 40 percent over the last year. And we have paid out more than $12 billion to the music industry...
— $3 billion in 2019 alone. We invest in emerging talent and cultural institutions, helping the next generation of creative talent reach the world.

We understand that a key part of preserving this creative economy is ensuring creators and artists have a way to manage their creative works online. This is why we invest significantly in technology, tools, and resources that prevent copyright infringement on our platforms. We also work with others across the industry on efforts to combat piracy. These efforts are having an effect: around the world, online piracy has been decreasing and spending on legitimate content is rising.

**YouTube’s Copyright Management Suite**

Everyone has access to [YouTube’s Copyright Management Suite](https://www.youtube.com), which gives rightsholders control of their copyrighted material on YouTube. We work with rightsholders to match them to appropriate features based on the scale of their copyrighted content on YouTube and the resources they have dedicated to responsibly manage their content online. **We are always working to expand access to more powerful features while balancing the need to protect creators, viewers, and other rightsholders from the potentially significant disruption that can result from the misuse of these tools.**

There are three main tools that make up our Copyright Management Suite: the webform, Copyright Match, and Content ID. All of these tools use technology to prevent the reupload of matching content. **We have invested over $100 million to develop and operate these tools.**

1) **Webform.** For most users, the webform is the most streamlined and efficient way to submit copyright claims. All creators have access to the webform and it is available in 80 languages. It is designed for infrequent use, such as by creators who hold few copyrights and scarcely find their content on YouTube. For the vast majority of rightsholders, the webform is the only tool they need. A history of complete and valid requests is often the best indicator for YouTube and for the rightsholder that additional tools may be appropriate.

2) **Copyright Match.** After extensive collaboration with creators, we found that there was a segment of creators and rightsholders who experienced a higher amount of reposting of their copyrighted content and needed to submit more regular claims. With this in mind, we built the Copyright Match Tool to bring the power of Content ID matching technology (described in detail below) to more creators and rightsholders. Creators using the Copyright Match Tool simply need to be the first to upload a video to YouTube and then they are shown subsequent uploads of those videos. For rightsholders that do not distribute their content on the platform, they can use our private upload feature in conjunction with the Copyright Match Tool to help them effectively manage their content on YouTube. For each video match, the Copyright Match Tool shows the user information on total views, the channel that uploaded it, what percentage of the video is made of their content, and a few screenshots of the video. From this interface, rightsholders can choose to leave a video up, request removal, archive the match, or contact the uploader. In order to prevent abuse or misuse, to access this tool creators and rightsholders need to demonstrate a history of valid takedown notices through our webform.

3) **Content ID.** This is our solution for those with the most complex rights management needs, such as movie studios, record labels, collection societies, and other service providers who hold rights to distinct
audiovisual content. For smaller independent creators, we also provide access to a number of vendors that can manage rights on a daily basis through our system. YouTube and its Content ID partners enter into an agreement that sets the parameters for the use of the tool and allows YouTube to make appropriate use of the copyright owner’s content for the purpose of making Content ID function. Partners provide YouTube with reference files for the works that they own, along with metadata such as the title and detailed ownership rights. Based on these references, YouTube creates digital "fingerprints" for the copyright owner’s works, and then conducts automated scans of the platform to determine when content in an uploaded video matches the reference content. Copyright owners use YouTube’s content management system (CMS) — the interface for managing the use of their content on the platform — to instruct the system to either block, monetize, or track matching content. The CMS interface provides highly granular access control to assist users who have specific, complex, or even conflicting ownership rights. For example, rights may be specific to certain countries (e.g., a video may be monetized in one country and blocked or tracked in another). In addition, reference files that reflect flawed ownership data can create issues among Content ID partners. Content ID is designed to address ownership conflicts among Content ID partners and manage disputes with uploaders. The system creates a queue of pending claims, for example, when the system is uncertain whether a claim should be made. As a result, Content ID requires users to make a high level of operational investment, without which other rightsholders could have their rights impaired and lawful expression could be inappropriately impacted.

Eligibility and Access

As mentioned earlier in this letter, everyone — regardless of size or need — has access to the webform. It remains the most streamlined and efficient way to submit claims. Google has invested considerable resources into making the webform easy to use and effective for the vast majority of use cases.

We offer access to Copyright Match and Content ID to new applicants who apply via YouTube’s Copyright Management Suite application form. The eligibility criteria for each copyright management tool is described in YouTube’s Help Center. A history of sending YouTube complete and valid copyright takedown requests to remove allegedly infringing content serves as the primary indicator that an applicant both needs scaled tools and understands copyright. The rightsholder also should own the rights to a variety of distinct audiovisual content that is frequently uploaded to YouTube. We have found that those with significant experience managing their content on the platform are most able to navigate the complexity of copyright licensing.

When YouTube responds to an applicant who completes YouTube’s Copyright Management Suite application form, YouTube always explains the tools available to a given applicant. We also indicate that, if the applicant believes they should be eligible for additional tools, they are welcome to apply again in 90 days. In the interim, the best course of action for any rightsholder is to make use of the tools we do provide in order to illustrate that there exists an issue that they need a more scaled tool to fully address, that they own rights in the content, and that they understand copyright removal processes. If an applicant wishes to appeal the initial decision and provide additional information for us to consider, they may respond directly to the email. We are working on ways to more efficiently reevaluate and respond to these applicants.

YouTube endeavors to make the Copyright Match Tool and Content ID available to as many creators and rightsholders as possible without sacrificing accuracy and quality. Unfortunately, we have found that even major rightsholders can mismanage these tools, resulting in unfair or inaccurate claims on legally uploaded content.
When considering access to powerful tools, we also must account for the risk that some rightsholders may not have implemented robust processes around the management of these tools, resulting in unintended consequences for other creators, rightsholders, and users. For example, inaccurate claims have been placed on public domain NASA footage, white noise, public interest journalism, and original videos from popular creators, in many cases disabling those videos until we were able to take corrective action.

Even our experience with our webform has highlighted the significant risks that misuse of the Copyright Management Suite can create for the ecosystem. In 2019, more than 10% of copyright takedown requests from the webform were assessed by our review team as a likely false assertion of copyright ownership of the allegedly infringed work. We terminate tens of thousands of channels a year for sending such requests, and have even taken legal action in egregious cases to protect creators. An additional 19% of webform submissions were either legally incomplete or demonstrated a misunderstanding of the removal process.

Given the outsized negative effect that misuse of our tools has on the broader YouTube ecosystem — including other rightsholders — we work to ensure that we match rightsholders with the copyright management solution that best suits their needs and the resources they can dedicate to responsibly managing the tool. However, the webform ensures that all copyright owners have an avenue for recourse.

Copyright Management on other Google Products and Services

Webforms for copyright removal requests also are available for other Google products and services.¹ In addition to our content removal webform, Google provides a scaled tool for use in Search, Photos, Drive, Sites, and Blogger for copyright owners having a proven track record of submitting accurate notices and a consistent need to submit thousands of webpages each day. Google created the Trusted Copyright Removal Program (TCRP) to further streamline the submission process, allowing copyright owners or their enforcement agents to submit large volumes of webpages on a consistent basis.

In addition to removing pages from search results when notified by the copyright owners, Google also factors in the number of valid copyright removal notices we receive for any given site as one signal among the hundreds that we take into account when ranking search results. Consequently, sites for which Google has received a large number of valid removal notices appear much lower in search results. This “demotion signal” amplifies the power of DMCA takedown notices because each delisted URL can have an effect on the entire domain.

The combination of efficient processing of takedown notices and the demotion signal gives copyright owners a powerful tool against rogue sites. As new rogue sites emerge, copyright owners can target their removal notices at these new sites, providing Google information we can use to update the ranking signal.

Conclusion

Following the roundtable, we agreed to take a closer look at some of the specific cases and experiences raised. We found that in 4 out of 5 cases, the rightsholder in question already had some of their works represented in Content ID through distributors or other service providers. Some applications were also declined for technical

¹ For Google’s webforms and more information on submitting a copyright removal request, see: https://support.google.com/legal
reasons. For example, some of the applicants applied with an email address that did not have a history of filing takedown requests. These issues are common among applicants.

With this in mind, and in response to some of the misunderstandings about eligibility and access to our suite of tools, we have improved the information we provide on our help center and in response to inquiries through our application form. This includes further improving our automated processes, providing more detailed responses to applications, and updating our help center with clearer information about our tools. We also are working on looking at past applications and will be proactively reaching out to rightsholders and creators who may be eligible for additional tools.

We are proud of the work we have put into our Copyright Management Suite and appreciate the opportunity to detail our efforts. Thank you again for the opportunity to respond to your letter.

Regards,

Leslie Miller
VP, Government Affairs & Public Policy, YouTube