

United States Senate

WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

May 29, 2020

Maria Strong
Acting Register of Copyrights and Director
United States Copyright Office
101 Independence Avenue, SE
Washington, D.C. 20559

Dear Acting Register Strong:

We write to congratulate you and your office for the *Section 512 of Title 17* report you published last week. This report culminated an extensive study of how copyright law's safe harbors for online service providers are working 22 years after Congress enacted the Digital Millennium Copyright Act (DMCA) with the dual goals of providing certainty for online service providers and adequately protecting the rights of copyright owners. In addition to the Copyright Office's internal expertise, we understand that this report is based on substantial public inputs in the form of about 93,000 written comments received and statements made across public roundtables in New York, San Francisco, and Washington, D.C.

The *Section 512* report is exhaustive in its evaluation of section 512 and is invaluable in the insights it provides Congress, particularly as the Senate Judiciary Committee Subcommittee on Intellectual Property holds a series of hearings this year on DMCA reform, of which section 512 is a significant component. It confirms what we have been hearing from stakeholders: that online service providers feel that section 512 has worked well and was critical to the growth of the internet, and that copyright owners and creators think that section 512 has put an overwhelming—and unmanageable—burden on them to police the internet for infringement. We took particular note of the Copyright Office's conclusion that the balance Congress originally intended with section 512 has been skewed by numerous changes that have occurred since 1998. And we are interested in further exploring the report's recommendations in the twelve categories you identified, including eligible types of service providers, repeat infringer policies, knowledge requirements, misrepresentation, and notice forms.

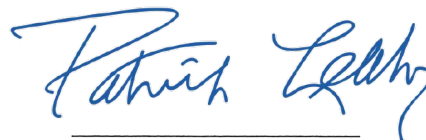
To further assist the Subcommittee, we ask that you supplement the substantial technical assistance and advice found in your *Section 512* report by answering, by no later than June 29, 2020, the following questions:

1. The report identifies numerous provisions within section 512 that would benefit from clarification, possibly because courts have misapplied them, or revision, because they have not worked in practice as anticipated. Congress may not be able to address all of these provisions in DMCA reform. Based on the Copyright Office's expert analysis and understanding of the issues, which clarifications or revisions would be the most beneficial for improving section 512?
2. The report identifies several guiding principles; one is that twenty-first century internet policy cannot be one-size-fits-all, and that revisions to section 512 should take into account differences within and among stakeholder classes. With respect to which specific provisions of section 512 is it most important that Congress recognize these differences? Does the Copyright Office have examples of how Congress has handled this in other areas of copyright law with legislative text? Is it something that the Copyright Office think should be handled by regulations?
3. The report discusses non-statutory approaches that could improve the effectiveness and operation of section 512 without legislative amendment. Some of these would involve the Copyright Office facilitating additional voluntary initiatives between copyright owners and online service providers, as well as helping to identify standard technical measures that can be adopted in certain sectors. As we look toward introducing legislation, we are particularly interested in whether the Copyright Office can help stakeholders identify and adopt standard technical measures without congressional action. What is the Copyright Office's timeframe for engaging on these matters, and would the Copyright Office's effort benefit from designated funding or additional regulatory authority?
4. The Copyright Office was clear in its report that its primary charge was to evaluate the operation and effectiveness of section 512 in light of Congress's goals with the DMCA. The Copyright Office also made clear that its recommendations assumed maintaining section 512's notice-and-takedown framework. But if Congress were starting from scratch, is this the approach that the Copyright Office would recommend? What type of system does the Copyright Office think best balances the interests of curbing online infringement while also providing certainty to service providers? In particular, what does the Copyright Office think of "notice and staydown"? And, significantly, if Congress were redesigning section 512 today, should the interests being balanced be the same ones as those in 1998 when the internet was in its infancy?

Sincerely,



Thom Tillis
United States Senator



Patrick Leahy
United States Senator