



May 7, 2021

The Honorable Patrick Leahy
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
113 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Marsha Blackburn
357 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mazie Hirono
109 Hart Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
218 Russell Senate Office Building
Washington, DC 20510

Google Inc.
1600 Amphitheatre Parkway
Mountain View CA 94043

650 253-0000 main
google.com

Dear Senators,

Google LLC (“Google”) and YouTube, LLC (“YouTube”) appreciate the opportunity to respond to your March 29, 2021 letter regarding the issue of voluntary initiatives to fight online copyright piracy. We share your interest in fighting online piracy and fostering collaboration among stakeholders in this space.

The Internet has been a force for creativity, learning, and access to information. More music, video, written works, apps, and software are being created by more people in more places than ever before. This has led to a boom in creativity, both amateur and professional.¹ Digital video revenues are expected to grow from \$64 billion to \$119 billion between 2017 and 2022.² And in 2020, recorded music revenues grew 9.2% to \$12.2 billion in the U.S., largely driven by growth in digital streaming.³ It has also led to tremendous economic opportunity around the world. In fact, the United Nations estimates that digital technologies are responsible for as much as 15% of the global economy — and in some countries that number is as high as 30%.⁴

Google and YouTube are proud to be a part of this growth. At Google, 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. Google’s investment in Search and discovery efforts across multiple

¹ See, CCIA, *The Sky Is Rising* (2019), available at <https://skyisrising.com>.

² Juniper Research, *OTTs Vs TV Networks ~ 3 Winning Strategies*, available at <https://www.rbr.com/wp-content/uploads/OTTs-vs-TV-Networks-3-Winning-Strategies.pdf>.

³ RIAA, *Year End Music Industry Revenue Report 2020*, available at <https://www.riaa.com/wp-content/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf>

⁴ United Nations Conference on Trade and Development, *Digital Economy Report 2019*, available at https://unctad.org/system/files/official-document/der2019_en.pdf.



products makes it easier for audiences to find and access legitimate content on the web. And with YouTube has expanded economic and creative opportunities for artists, creators, small businesses, journalists, and more. In addition, by investing in emerging talent and cultural institutions, YouTube is helping the next generation of creative talent reach the world. Today, around 2 billion people around the world come to YouTube every month, and we see more than 500 hours of video uploaded every minute, making it one of the largest living collections of human culture ever assembled in one place. Over the last three years, YouTube has paid out more than \$30 billion to creators, artists, and media organizations.

We understand that a key part of preserving and encouraging the creative economy is ensuring that creators and artists have a way to manage their creative works online. This is why we take seriously the ever-evolving challenge of copyright infringement and invest significantly in technology, tools, and resources that prevent copyright infringement on our platforms. We also work with others across multiple industries to combat piracy. These efforts are having an effect: around the world, online piracy has been decreasing, and spending on legitimate content is rising. Despite these positive trends, we know there will always be more to do, and we remain committed to this work. Thank you for providing us with the opportunity to elaborate on our efforts to support copyright protections and combat online piracy in our answers to your questions below.

Answers to Questions

Question 1:

At the Committee's hearing in December, we heard from witnesses about voluntary steps that your companies could take, without further delay, to meaningfully curb online copyright piracy. These include (1) providing copyright owners and creators with mechanisms to search for copyright piracy, at scale, on your platforms; (2) standardizing efficient mechanisms for sending takedown notices that would reduce deficient or improper notices and accelerate the takedown of infringements identified in such web forms; and (3) taking steps to prevent the continued reappearance of the same infringing material on the same platform after it has been properly taken down.

...

Based on the Committee's year-long review, we have identified three voluntary measures that your company could take to address online copyright piracy. Will you commit to implementing these measures? If so, when? If not, why not?

We support the Committee's efforts to address online copyright piracy and already implement these and other effective voluntary measures. We remain committed to working with the Committee and a range of stakeholders to identify additional areas for collaboration.

First, we provide copyright owners and creators with mechanisms to search for alleged copyright infringement, at scale, across our platforms.

For more than a decade, Google and YouTube have made substantial investments in streamlining the copyright removal process. These investments allow us to process copyright removal requests across our services effectively and efficiently. As part of this work, Google and YouTube have continuously invested in tools to help rightsholders identify allegedly infringing content and submit notices at scale.

Google's voluntary initiatives in this space include:

- **Offering Free Access to Custom Search APIs:** Google has partnered with rightsholder industry associations to provide millions of dollars' worth of access to Google's Custom Search API to help them locate infringing content on the web.
- **Developing the Trusted Content Removal Program (TCRP):** Google also provides a tool for copyright owners with a proven track record of submitting accurate notices and a consistent need to submit thousands of webpages each day. TCRP allows rightsholders or their enforcement agents to submit large volumes of takedown notices on a consistent basis across Web Search, Blogger, Docs/Drive, Photos, and Google Sites.

YouTube's voluntary initiatives in this space include:

- **Building Content ID:** In 2007, YouTube launched Content ID, a first-of-its-kind copyright management system that helps rightsholders effectively manage their works on YouTube. Rightsholders or their agents who are granted access to Content ID provide YouTube with reference files for the works they own, along with metadata such as the title and detailed ownership rights. Based on these references, YouTube creates digital "fingerprints" for the works in question and then scans the platform to determine when content in an uploaded video matches the reference content. Rightsholders 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 and to address ownership conflicts and disputes among Content ID partners and uploaders. Over 98% of copyright issues on YouTube are handled through Content ID. And today, thousands of partners use Content ID to manage their rights effectively (including many third party vendors that manage smaller and independent creators who are otherwise not affiliated with more traditional, institutional rightsholders). These partners in turn represent several hundred thousand artists and creators. Content ID has proven to be an effective revenue generation tool for rightsholders, generating an entirely new income stream from monetized claims. We have paid more than \$5.5 billion to rightsholders in ad revenue alone from content claimed and monetized through the tool.
- **Creating the Copyright Match Tool:** The Copyright Match Tool brings the power of Content ID matching technology to even 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 re-uploads of those videos. 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 collection of representative screenshots of the video. From this interface, rightsholders can choose to leave a video up, request removal, archive the match, or contact the uploader. Creators who choose not to distribute their content on the platform can use our private upload feature in conjunction with the Copyright Match Tool to help them effectively manage their content on YouTube. As of November 2020, over 1.5 million channels have access to the Copyright Match Tool.
- **Developing the Content Verification Program:** YouTube also offers a Content Verification Program for creators and rightsholders who have a regular need to submit high volumes of copyright removal notices and have demonstrated high accuracy in their prior submissions. This program makes it easier to search YouTube and quickly identify allegedly infringing videos.

Second, we provide efficient mechanisms for sending takedown notices, which can reduce deficient or improper notices and accelerate the takedown of claimed infringements identified in such webforms.



To help rightsholders submit copyright removal notices, Google and YouTube have developed a streamlined takedown submission process built around online webforms that rightsholders can use to submit removal notices for nearly all of Google's services. Today, hundreds of thousands of individuals use our webforms to issue copyright removal notices. The information we ask for in our webforms is consistent with the requirements of the DMCA and similar laws, and provides a simple and efficient mechanism for rightsholders from countries around the world to submit notices to us. Google and YouTube continue to invest substantial resources and engineering efforts into improving our procedures for receiving and processing copyright removal notices.

Because they are available to everyone, our copyright webforms are subject to a significant amount of abuse or otherwise invalid use, and we take this abuse of our tools seriously. We have a team dedicated to processing copyright removal requests, and when necessary, we request additional information or deny the request altogether. YouTube and Google carefully review takedown notices and depend on the counter notification process as a check against mistaken or abusive takedown notices. We also design our webforms to help us reduce abuse and misuse, and to ensure that rightsholders are providing us with the valid and complete information required by law. Uploaders are also empowered to push back on removal requests they believe are invalid by filing counter notifications.

Third, where appropriate, we take steps to prevent the continued reappearance of the same infringing material on the same platform after it has been properly taken down.

Where possible and appropriate, Google and YouTube use technology to prevent the reappearance of matching content on the same service. For example, Google Drive uses hash matching technology to prevent the public sharing of content that we previously removed pursuant to a notice. In addition, all of the tools in YouTube's Copyright Management Suite, including the webform, use technology to prevent the reupload of matching content, as described above.

That being said, even when Google and YouTube are given notice that a particular user was unauthorized to upload a particular work, only the rightsholder knows whether previous or subsequent uploaders are licensed to upload the content. In addition, this type of matching and filtering technology is inappropriate and/or technically infeasible for a number of our services. For example, Google does not have a copy of every media file available online and indexed in Search, making it technically infeasible for us to identify whether a newly indexed webpage includes the same music or video as one previously targeted by a copyright removal notice. Similarly, applying such a technology to private content on services like Gmail, Messaging, or Photos would raise significant user privacy concerns.

While we believe our efforts in this space have been effective, targeted approaches, we remain concerned about the potential impact of "notice and staydown" regimes. A "notice and staydown" legal regime would require automated filtering which is often in conflict with protecting fair uses of copyrighted works. As a result, any obligation of this kind would be harmful to creativity, access to information, and free expression.

Question 2:

If you will not commit to implementing the voluntary measures we have identified, what additional measures can and will you take on a voluntary basis to address online copyright piracy? Please be as specific and detailed as possible.



As mentioned above, we currently implement a number of voluntary measures across both Google and YouTube to help prevent and limit online copyright piracy, and we remain committed to continuing to invest in these efforts and ongoing collaboration with rightsholders, creators, and the user community.

Some additional examples of Google's voluntary initiatives include:

- **Helping Users Find Compelling Legitimate Alternatives:** Google has developed a number of new strategies that promote authorized works in our search results. This includes providing Knowledge Panels at or near the top of search results and adding Watch and Listen Actions as features in Google Search that direct users to legitimate sources of movies and music.
- **Demoting Websites That Receive A Large Volume of Notices:** We have developed a “demotion signal” for Google Search that causes sites for which we have received a large number of valid removal notices to appear much lower in search results. We have also made it much harder for infringing sites to evade demotion by redirecting people to a new domain. Finally, we have added a “still-in-theaters/prerelease” flag for DMCA notices involving this category of content to enhance the Search demotion signal. Our research showed that demoted sites lost an average of 89% of their traffic from Google Search.
- **Accepting Removal Notices for Not-in-Index webpages:** While Google Search processes takedown notices for a large number of webpages every year, a large portion of them have never appeared in Google Search results. This is because Google Search accepts notices for webpages that are not even in our index at the time of submission. Nevertheless, Google will still proactively block the webpage from appearing in our search results and apply these notices to our demotion signal.
- **Accepting Removal Notices for Circumvention Tools:** Google Search has voluntarily implemented a notice and takedown process that allows rightsholders to notify us of webpages offering software tools or physical devices that purport to circumvent technological protection measures.
- **Accepting Removal Notices for Future Illegal Streams of Live Events:** Google Search has implemented a notice and takedown process that allows rightsholders to pre-notify us of webpages that advertise that they will illegally stream a live event in the future.
- **Removing Piracy-Associated Terms from Autocomplete and Related Search:** Google has taken steps to prevent terms closely associated with piracy from appearing in Autocomplete and Related Search and continues to work on refining those steps.
- **Voluntarily Removing Sites from Search Upon Receipt of Court Orders Against Third Parties:** Google has long deferred to the decisions of courts regarding what content may lawfully appear to web users in their jurisdictions. When a court decides that a website, as a whole, should be shut down or blocked, we typically honor that request when it's brought to our attention, and remove the site from Search Results in that jurisdiction to help the court to effectuate its order. We've deployed this policy to block many sites found unlawful by courts in Spain, Australia, and other countries, and would do so for the United States if appropriate orders were brought to us.
- **Improving Google Image Search:** We have worked directly with photographers and the stock photography industry to improve our product by encouraging people to view these images in the context of the websites where they are found. We've also added licensing information, as well as creator and credit metadata to images on Google Images.

- **Implementing Technical Restrictions to Prevent Piracy on Google Drive:** Google has established a full-time abuse engineering team dedicated to tackling abuse on Google Drive, including streaming piracy of popular media. Further, Google has implemented technical restrictions that deter those seeking to use this service to host infringing materials.
- **Investing in Measures to Follow the Money:** Google has invested in measures to ensure Google ad services are not used to support infringing activity including a partnership with the Trustworthy Accountability Group's (TAG) that has earned Google, TAG's Certified Against Piracy Seal. In 2021, we blocked and removed 46 million ads because they violated our policies related to copyrighted content.⁵

Some additional examples of YouTube's voluntary initiatives include:

- **Tackling Live Stream Abuse:** At YouTube, we have continually invested in Content ID as live streaming has become more prevalent. Content ID can be used to scan YouTube live streams for reuses of rightsholders' copyrighted content, including live sporting events and music festivals, as well as pre-recorded content.
- **Developing New Revenue Streams for Creators:** While the most significant way rightsholders and artists monetize content on YouTube is through Content ID, YouTube also enables creators to generate revenue from the sale of merchandise, ticket sales (including, in some instances, tickets to virtual events), and additional fan engagement tools like channel memberships, Superchat and Superstickers, which are chat messages that fans can purchase during a livestream to make their messages stand out. Over 140,000 channels earned money from Super Chats, Super Stickers, or channel memberships in the month of December 2020 alone -- an increase of over 140% since December 2019.
- **Combating Stream Ripping:** YouTube continuously invests in various approaches to combat stream ripping, including through (i) improvements to technical infrastructure, (ii) working together with third parties, with whom we have run various technical experiments and explorations, and (iii) other legal means, such as sending cease-and-desist letters and filing domain name disputes to prevent use of YouTube's trademarks or confusingly similar marks in association with stream-ripping sites.
- **Prohibiting "How to Bypass Payment" Videos:** In 2020, in collaboration with rightsholders, we updated our Community Guidelines to prohibit videos that show viewers how to use apps, websites, or other information technology to gain unauthorized free access to audio content, audiovisual content, full video games, software, or streaming services that normally require payment.
- **Investing in Partnerships with the Rightsholder Community:** We also partner with rightsholders of all types — music, film, TV, sports, news, and more — to make their content available to YouTube users through a variety of means. YouTube Music, YouTube TV, and YouTube Movies (in addition to our main YouTube platform) all provide users with access to content provided by our direct partners, who share in the revenues we generate.

⁵ See, https://services.google.com/fh/files/misc/ads_safety_report_2020.pdf.

While we are proud of these extensive voluntary efforts, we continue to work hard to effectively and efficiently fight piracy as it evolves over time. With this in mind, we currently are exploring other pilot programs and testing new tools in collaboration with rightsholders around the world.

Question 3:

To the extent you implement voluntary measures to combat online copyright piracy, including rights manager tools, will you commit to making such tools available to all content creators on fair and transparent terms? If not, why not?

Google and YouTube make our anti-piracy tools available to all content creators on fair and transparent terms. Our voluntary initiatives improve our systems and processes for all rightsholders, and everyone has access to both Google and YouTube's webforms. Hundreds of thousands of individuals use our webforms to issue copyright removal requests each year.

However, not every tool we offer is appropriate for every creator. For example, Rightsholders can apply for access to YouTube's Copyright Match Tool and Content ID via YouTube's Copyright Management Suite application form.⁶ We make those tools available to creators and rightsholders who meet our eligibility criteria, which are made public in YouTube's Help Center, and we work hard to make sure creators and rightsholders are matched with the tool that is suitable for their needs. Similarly, rightsholders can apply to join Google's Trusted Content Removal Program if they have a track record of submitting clear and accurate notices through our standard Web Search DMCA takedown form and have a justified need for a high-volume tool.⁷ This helps us ensure that these requests can be processed more efficiently.

We strive to expand access to some of our more powerful tools and features, while protecting other stakeholders, including other content creators, from the potentially significant disruption that can result from the misuse or abuse of these tools. Just one bad copyright notice can result in dozens of videos, webpages, or apps being temporarily removed from our services. With our more powerful tools, the impact is multiplied. As a result, we must account for the risk that some rightsholders may not be positioned to implement robust processes around the management of these tools, resulting in unintended consequences for others in the ecosystem whose own rights could be impacted.

For example, Content ID is a solution for rightsholders with the most complex rights management needs, such as movie studios, record labels, collecting societies, and other service providers who manage rights to distinct audiovisual content. To effectively use Content ID, users provide YouTube with reference files for the works they own, along with necessary metadata (such as the title and detailed ownership rights, often on a territory-by-territory basis), as set out in our response to Question #1. With Content ID, the impact of misuse and abuse is multiplied due to its automated nature: one bad reference file can impact hundreds or even thousands of videos across the platform. As a result, abuse and misuse can have a significant impact not only on free expression, but on the livelihoods of creators who generate revenues from the platform.

To account for abuse and misuse of our tools, we have dedicated teams working to detect and prevent abuse and misuse of each of our tools. We rely on a combination of humans and technology to detect suspicious behavior, request additional information where necessary, and provide users with the robust ability to contest the removal of their content through counter notice and appeals processes. We have also filed lawsuits against the most egregious abusers, including one instance of an individual who used the

⁶ See, https://support.google.com/youtube/contact/copyright_management_tools_form.

⁷ See, <https://support.google.com/legal/answer/7421674?product=websearch>.

takedown process to extort money from creators⁸ and another instance of a company uploading content only to file fake takedown notices for that very content in an attempt to bolster eligibility for Content ID.²

Question 4:

In the Committee's December hearing, witnesses provided examples of unwillingness by some platforms to engage in conversations with many content creators to combat online copyright piracy? Is this true? If so, why? If not, please detail steps you are taking to regularly engage with content creators and rights holders to combat online copyright piracy.

Google and YouTube have worked closely and consistently with rightsholders and content creators for many years. We engage in frequent meetings with representatives of rightsholders and their industry associations to track the latest developments in piracy, share information, and educate them about how to use our tools. Over the last year alone, we have met with content creators and rightsholders many times, offering education on our tools, training and direct technical support, and open discussions around how we can work more collaboratively. In 2020, we also participated in several public meetings with rightsholders, including a discussion on standard technical measures hosted by the U.S. Copyright Office. We also frequently meet with members of the public interest and user communities. Finally, we work hard to bring together different types of stakeholders in this space. Just this past March, we brought together representatives of the rightsholder, technology, and public interest communities to discuss copyright enforcement tools across our products and to identify opportunities for further collaboration.

Question 5:

Finally, to what extent do you believe the issue of online copyright piracy can be resolved by your companies working proactively with content creators? In other words, is the issue of online copyright piracy most effectively resolved through legislative changes or can it be better addressed by private actors working together constructively on a voluntary basis?

The problem of piracy will never be fully resolved. Unfortunately, bad actors will continue to find ways to circumvent enforcement. However, studies have shown that as access to legitimate alternatives increases, piracy declines.¹⁰ The Internet has facilitated this access and created more opportunities for creators of all types to create, distribute and monetize their works. Digital platforms including YouTube, Amazon, Netflix, Spotify, Pandora, Hulu, and more are helping millions of consumers find legitimate content across the internet, facilitating almost 29 trillion dollars in online commerce each year.¹¹ In addition, services that host original, user-generated content, such as YouTube, Instagram, Etsy, and Pinterest, are stimulating an explosion of new creativity by making it easier than ever for creators of all types, amateur and professional, new and

⁸ See, YouTube L.L.C. v. Brady, No. 19-353 (D. Neb. filed Aug. 19, 2019), available at <https://www.courtlistener.com/recap/gov.uscourts.ned.84712/gov.uscourts.ned.84712.1.0.pdf>.

⁹ See, YouTube LLC and Google LLC v. Pirate Monitor LTD, Pirate Monitor LLC and Gábor Csupó, No. 3:20-cv-04423-JD (N.D. Cal. filed Feb. 19, 2021), available at <https://www.courtlistener.com/docket/17319653/60/schneider-v-youtube-llc/>.

¹⁰ See, e.g., J. Poort and J. Quintas, *The Decline of Online Piracy: How Markets—Not Enforcement—Drive Down Copyright Infringement*, 34 AM. U. INT'L L. REV. 807 (2019), <https://www.ivir.nl/projects/global-online-piracy-study/>; A. Cuntz and K. Bergquist, *Exclusive Content and Platform Competition in Latin America*, WIPO Economic Research Working Paper No. 63, 2020, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_63.pdf.

¹¹ United Nations Conference on Trade and Development, *Global e-Commerce sales surged to \$29 trillion* (March 29, 2019), available at <https://unctad.org/press-material/global-e-commerce-sales-surged-29-trillion>.

established, to find their audiences. We believe that by continuing to invest in these compelling alternatives and effective voluntary initiatives, we can continue to build on the progress we have made in this space.

Question 6:

We also ask that you, as industry leaders in each of your respective areas, consider engaging directly with relevant stakeholders to find ways to voluntarily address copyright piracy. Please identify next steps you intend to take to facilitate such discussions.

We welcome your invitation to engage directly with relevant stakeholders to find ways to voluntarily address copyright piracy. As we set out in our response to Question 4, we regularly meet with rightsholders and other constituent groups, and we value their feedback. In fact, our engagement with rightsholders for more than a decade has enabled us to deliver the sophisticated tools, features, and functionalities that we detailed above. In addition to the day-to-day and week-to-week dialogue with stakeholders that we consider ordinary course, we expect to facilitate additional, broader stakeholder discussions as we continue to find common ground and solutions to online piracy. We are also always happy to participate in discussions hosted by the PTO, USCO, and other entities.

Conclusion

We appreciate the opportunity to share the ways that Google and YouTube continue to support the creative ecosystem and our thoughts on the role of voluntary initiatives. We take pride in being a leader on copyright protection and are grateful for the opportunity to showcase this important work. Thank you for your attention and the opportunity to contribute our views.

Sincerely,



Mark Isakowitz
Vice President
Government Affairs & Public Policy, US & Canada
Google



Katherine Oyama
Director
Government Affairs & Public Policy
YouTube