



**BEFORE THE
U.S. COPYRIGHT OFFICE**

Technical Measures: Public Consultations

Docket No. 2022-10

**STATEMENT OF INTEREST OF THE
COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to submit the following written statement of interest to participate in the public consultations on technical measures, along with responses to all relevant questions in [Notice of Inquiry](#) (NOI) published by the U.S. Copyright Office in the Federal Register on December 22, 2021.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. As our responses below detail, we believe that effective technical measures are a critical component to combating infringement online and that the Copyright Alliance is well positioned to participate in these public consultations and assist the Copyright Office in working towards meaningful solutions.

1. Rightsholders: Please identify any technical measures currently used or in development by you, your organization, company, industry, or sector to identify or protect copyrighted works online. How do these technical measures affect your ability to protect your copyrighted works online?

There are existing technologies capable of identifying and/or protecting unauthorized copyrighted material and infringing activities online. In fact, some of these are “off-the-shelf” technologies that are easy to implement and affordable for online service providers (OSPs) of all types and sizes.

Some OSPs have already implemented technologies that identify and/or protect copyrighted works from infringement on and through their services, sites, and platforms. However, the problem is that these technologies are usually not voluntarily made available to *all* types of copyright owners and OSPs have refused to come to the table with other stakeholders to have them formally adopted as widely recognized standards under section 512(i).¹ This has led to a lack of uniformity among and access to existing technical measures that makes it difficult for those copyright owners who do not have access to combat infringement. On the other hand, OSPs prefer the status quo because it allows them to avoid adopting and implementing standard technologies.

Copyright owners currently utilize a range of technical measures, either developed themselves, by OSPs, or by third parties that enable them to identify, and in some cases protect against online infringement. Technical measures used by copyright owners to identify infringement include such technologies as Google Image’s Usage Right feature²

¹ See *The Role of Private Agreements and Existing Technology in Curbing Online Piracy: Hearing before the Senate Subcommittee on Intellectual Property*, 116th Cong. 3 (2020) (written statement of Keith Kupferschmid).

² The International Press Telecommunications Council (IPTC), *Quick guide to IPTC Photo Metadata and Google Images*, IPTC.org (In 2018, Google Images introduced new features that allow for the display of an “image’s creator, credit line and a copyright notice” alongside the image instantly upon display. The technology works by reading the corresponding embedded IPTC International Press Telecommunications Council (IPTC) photo metadata fields from the image file.) <https://iptc.org/standards/photo-metadata/quick-guide-to-iptc-photo-metadata-and-google-images/> (last visited February 2, 2022).

and Picture Licensing Universal System’s (PLUS) image recognition tools.³ Some copyright owners employ third-party web crawler technologies to scan the internet for infringement, however, many OSPs block these tools from their services.⁴ Other technologies can be used to both identify and protect works from infringement. Some examples of technical measures that have been developed by copyright owners or third parties who license use of their technologies to copyright owners and can be used to both identify infringement and protect works include Audible Magic, AdRev detection services, PEX Attribution Engine, and measures developed by the Coalition for Content Provenance and Authenticity (C2PA) as part of the Content Authenticity Initiative (CAI).⁵

OSPs like YouTube, Facebook, Scribd, and Dropbox have implemented technologies capable of identifying and removing unauthorized copyrighted material posted by their users. Additionally, as the Copyright Office’s 512 Report notes, fingerprinting and filtering systems are used by various OSPs, including Facebook, SoundCloud, Twitch, Vimeo, and Verizon Wireless.⁶ Examples of technical measures offered by OSPs and used by those copyright owners who are given access to the measures by the OSP to identify infringement and protect their work include Facebook Rights Manager, Spotify’s digital rights management and encryption tools, and a suite of YouTube services including Content ID, Copyright Match, and the Content Verification Program. The problem with many of the tools that have been developed by OSPs is that they are complex tools that function within parameters set by their operators, they’re not

³ The Picture Licensing Universal System is a cooperative, multi-industry initiative that “provides a system that clearly defines and categorizes image usage around the world, from granting and acquiring licenses to tracking and managing them well into the future.”

⁴ U.S. Copyright Office, Section 512 of Title 17: A Report of the Register of Copyrights (May 2020), footnote 948, at 177.

⁵ The Content Authenticity Initiative (CAI) is a cross-industry network of “hundreds of creators, technologists, journalists, activists, and leaders who seek to address misinformation and content authenticity at scale.” Launched in 2021, the Coalition for Content Provenance and Authenticity (C2PA) includes Adobe, Arm, BBC, Intel, Microsoft, and Truepic, and aims to “to accelerate the pursuit of pragmatic, adoptable standards for digital provenance.” See <https://contentauthenticity.org/our-members>.

⁶ Copyright Office 512 Report, *supra* note 4, at 177.

implemented with any consistency within an OSP's platform or among OSPs, and they are not available to all types of copyright owners.⁷

4. To what extent are any of these technical measures being adopted or discussed as part of any within-industry or cross-industry endeavors, initiatives, or agreement(s)?

Some technical measures have been adopted through voluntary agreements among industry stakeholders. While OSPs have publicly expressed a willingness to work with the copyright community to develop technical measures to address online piracy, in practice they have not worked with stakeholders to implement tools that are widely accessible and effective.⁸ Instead, when they do make technological measures available, they are often foisted on the creative communities in take-it-or-leave-it fashion with little regard for the creative communities' input or needs. Further, individual creators and small copyright owners have largely been left out of voluntary agreement discussions. With no incentive to adopt and implement standard technologies, many of the technical measures offered by OSPs are the result of voluntary agreements with specific industries and are only available to select partners.

5. Are there any other processes that are ongoing for identifying voluntary solutions or to identify and implement technical measures? Are there alternative processes, other than those that may currently be in place, that would better identify and implement technical measures? Please be specific, as different technical measures may have different solutions in different industry sectors.

There is a long and successful history of stakeholders developing voluntary agreements to further mutual objectives, but their success has been dependent on the existence of some type of incentive for OSPs to participate. Examples of effective voluntary agreements include the Trustworthy Accountability Group (TAG), the Principles for User Generated

⁷ Keith Kupferschmid, *YouTube Infringement Tools Are All Foam and No Beer for Small Creators (Part 1)*, COPYRIGHT ALLIANCE BLOG (August 24, 2021), <https://copyrightalliance.org/youtube-infringement-tools-part-one/>.

⁸ Kupferschmid written statement, *supra* note 1, at 3.

Content Services, trusted notifier agreements, and payment processor agreements.⁹ Stakeholders were incentivized to participate in those voluntary initiatives for a variety of reasons, including (i) not being quite sure what the law was on a particular issue because of conflicting court decisions in different jurisdictions, (ii) pending litigation that presented risks to both sides, (iii) the possibility of legislation being enacted that would change the playing field, (iv) customer relations, or (v) some combination of all of these.

Voluntary solutions are often the result of private discussions and agreements among stakeholders, and so it's difficult to say what processes are ongoing or what technical measures are currently the subject of voluntary agreement discussions. What's clear is that the success of any alternative voluntary processes depends on a number of factors, including (i) stakeholder incentives and a willingness to participate, (ii) multilateral stakeholder involvement, (iii) a willingness to listen to and address concerns raised by the participants, (iv) setting practical goals based on agreed upon guidelines or principles, and (v) ensuring agreements are revisited so that they remain effective over time.

6. To what extent would the adoption and broad implementation of existing or future technical measures by stakeholders, including online service providers and rightsholders, be likely to assist in addressing the problem of online copyright piracy? What are the obstacles to adopting and broadly implementing such existing or future technical measures? Would the adoption and broad implementation of such existing or future technical measures have negative effects? If so, what would be the effects, and who would be affected?

While there is no silver bullet solution, effective technical measures are an essential component of combating online copyright piracy. Technologies capable of identifying and removing infringing material and activities are already being used today, and many can be easily implemented (or re-tooled, as necessary) and are affordable for OSPs of all types and sizes. If made available to all copyright owners on reasonable and nondiscriminatory terms, these technologies could be adopted as standard technical measures and finally ensure that section 512 realizes Congress' intent that rightsholders

⁹ Id. at 5-7.

and OSPs work together to combat existing and future forms of online infringement.

One key benefit of standardizing existing technologies as standard technical measures (STMs) is that it would reduce pressure on the notice and takedown system. Effective STMs would make it easier for copyright owners to identify infringing material and activities and accurately report that information to service providers in a takedown notice. Additionally, uniform technical measures that are adopted by a wide range of service providers would make it easier to report infringement related to a single work to multiple OSPs and reduce the likelihood of the material appearing back online after being taken down. Both OSPs and copyright owners agree that the notice and takedown system has come under strain, in part because of the high volume of notices that are sent. Implementing effective technical measures and making them available on fair and non-discriminatory terms would go a long way towards relieving pressure on the notice and takedown system by reducing the volume of notices and ensuring they are more efficiently responded to.

As noted in the responses above, the main obstacle to adopting and broadly implementing existing and future technical measures is that OSPs are not currently incentivized to work with copyright owners. It's essential that any process aimed at establishing STMs is based on the understanding that section 512(i) does not require consensus from *all* stakeholders across every industry to meet the statutory requirements of an STM. Section 512(i) requires only "broad" consensus.¹⁰ Thus, there can be significant flexibility in agreeing to STMs across different types and sizes of copyright owners, OSPs, users and services. There does not need to be, and should not be, a one-size-fits-all approach.

A potential negative effect of the adoption and broad implementation of an existing or future technology as an STM is that the technology becomes outdated or ineffective as online piracy morphs in the future. However, requiring the development and adoption of STMs to be an ongoing and flexible process would ensure that technological measures adapt along with changes in internet usage and online piracy.

¹⁰ Digital Millennium Copyright Act, § 512, 17 U.S.C., § 512(i).

7. Is there a role for government to play in identifying, developing, cataloging, or communicating about existing or future technical measures for identifying or protecting copyrighted works online? Can the government facilitate the adoption or implementation of technical measures, and if so, how? Are there technical measures or other standards used to protect copyrighted works online of which the government should be aware when implementing statutory or regulatory provisions, such as requirements for procurement, grants, or required data inventories?

While the government may not be in the best position to develop technical measures, it can play a much-needed role in identifying, cataloging, and communicating about existing and future technical measures. In the case of designating STMs, the government can bring stakeholders together and incentivize them to work together until they agree on a workable solution. We believe the Copyright Office should take the lead in facilitating these discussions, as well as recognizing that existing technical measures that have been developed in the marketplace can be adopted as standard. Other government agencies could also be included in the process as advisors to assist the Office with input on technological aspects. Finally, the appointment of a Chief Technology Officer within the Copyright Office might also help to designate the most effective and up-to-date technical measures.

8. Please identify any other pertinent issues not referenced above that the Copyright Office should consider in these consultations.

We believe the following issues should be considered by the Copyright Office throughout the public consultation process.

- The development and implementation of standard technical measures should not be considered a substitute for, but rather an addition to, technological measures implemented through voluntary agreements.

- It should be recognized that section 512(i) requires that a service provider accommodate *and* not interfere with standard technical measures. That means it is not sufficient for an OSP to merely not interfere with an STM—they must also accommodate the STM through effectively adopting and implementing it.
- It should be recognized that 512(i) does not require *all* OSPs to adopt STMs. During the standard-setting process under section 512(i), stakeholders, in conjunction with the government, can decide when an OSP must accommodate the STM.
- Any processes for identifying and designating technical measures should involve the people on the front lines of DMCA enforcement including technologists, engineers, product managers and investigators.
- Individual creators, who lack standard tools to identify and combat infringement, must be involved in any discussions surrounding the identification and designation of technical measures.

We thank you for the opportunity to submit these comments. Kevin Madigan would like to participate in the public consultations on behalf of the Copyright Alliance, and his contact information is provided below.

Respectfully submitted,

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