



Written Testimony of Katherine Oyama
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Committee on the Judiciary
Subcommittee on Intellectual Property
“The Role of Private Agreements and Existing Technology in Curbing Online Piracy”
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Chairman Tillis, Ranking Member Coons, and distinguished members of the Committee: Thank you for the opportunity to appear before you today to discuss the important role of voluntary initiatives and existing technology to combat online piracy. I welcome the opportunity to discuss the ways that YouTube supports the creative ecosystem and helps creators and rightsholders manage copyrighted works on our platform.

As you know, the internet economy has grown to be a pillar of global economic strength and opportunity. Digital platforms are helping millions of consumers find legitimate content across the internet, facilitating almost \$29 trillion dollars in online commerce each year.¹ Services that host original, user-generated content are stimulating an explosion of new creativity by making it easier than ever for creators of all types, amateur and professional, new and established, to find their audiences.

The result is that more photography, music, video, software, and books are being created by more people than ever before.² In 2019, the global recorded music market experienced its fifth consecutive year of growth.³ Streaming revenues grew by 22.9% to

¹ United Nations Conference on Trade and Development, Global e-Commerce sales surged to \$29 trillion (March 29, 2019), available at <https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=505>.

² CCIA, The Sky Is Rising (2019), available at <https://skyisrising.com>.

³ IFPI, The Global Music Report: The Industry In 2019 (May 4, 2020), available at <https://www.ifpi.org/news/IFPI-issues-annual-Global-Music-Report>.

\$11.4 billion and account for 56.1% of the total recorded music revenues.⁴ Globally, digital video revenues are expected to grow from \$64.0 billion in 2017 to \$119.2 billion in 2022.⁵ By creating new and growing revenue streams and allowing U.S. creators to reach global audiences, digital services have become a central and important part of the creative economy.

None of this would be possible without the framework of the Digital Millennium Copyright Act (DMCA) safe harbors. The clear rules governing notice-and-takedown in Section 512(c), together with carefully reasoned legal opinions interpreting the statute's key terms, have provided – and continue to provide – crucial certainty for all DMCA stakeholders, yielding enormous benefits for platforms, creators, and rightsholders of all kinds. Not only have the DMCA safe harbors allowed for innovation and creativity to flourish on the web, they have also facilitated the development of new rights management technology and encouraged industry collaboration on voluntary initiatives to effectively tackle piracy online. The market has produced a wide range of accessible rights management tools for rightsholders of all types and sizes.

In my testimony, I will highlight (1) YouTube's contributions to the creative ecosystem; (2) our investment in tools to help creators and rightsholders manage their rights on our platform; and (3) the role of the DMCA safe harbors in encouraging and facilitating these efforts.

YouTube's Role in The Creative Ecosystem

At YouTube, supporting the free flow of ideas and creativity is core to our mission to give everyone a voice and show them the world. With this in mind, 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 viewpoints. Today, around 2 billion people come to YouTube every month and more than 500 hours of video are uploaded every minute, making it one of the largest living collections of human culture

⁴ *Id.*

⁵ 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>.

ever assembled in one place. This openness has democratized how stories, and whose stories, get told.

In creating a global, open platform, YouTube also has expanded economic opportunity for small businesses, artists, creators, journalists, rightsholders, and more. Today, millions of channels from over 90 different countries earn revenue from their videos by participating in our YouTube Partner Program (YPP). Through YPP, creators earn revenue generated from advertising that is shown to viewers before or during a video. For many, sharing video content on YouTube is not just a hobby, but a business. Globally, the number of creators earning five figures annually increased more than 40% from December 2018 to December 2019. Research done by Oxford Economics estimated that in 2019, the creator ecosystem on YouTube added \$16 billion to the US GDP and created 345,000 jobs.⁶ YPP helps creators find their audiences and launch businesses. For example, [Mr. Kate](#), a husband and wife lifestyle team, have leveraged their success on YouTube (4 million subscribers) to build a multi-faceted accessory and homeware product line carried in top retailers. They recently had an HGTV special and are Webby, Streamy, and Shorty Award nominees and winners. Similarly, creator [Kati Morton](#), a licensed marriage and family therapist, brought her practice to YouTube and built a global mental health online community that has over 1 million subscribers and over 83 million lifetime views on her videos. She's written a book and continues to expand her business, online and off.

We have also sought to find new ways to deliver value to creators, artists, and fans alike throughout the COVID-19 pandemic. YouTube has developed entirely new revenue streams for the creative industries and opportunities for creators to engage directly with audiences around the world, including through live streams. To help creators move events online, we created and shared “playbooks” to help with live streams and other [digital events](#), empowering artists to plan, promote, and stream content in direct engagement with fans. We've since directly supported thousands of live streams, many coming from first-time live streamers, resulting in a 400% increase year over year in

⁶ Oxford Economics, From Opportunity to Impact: Assessing the Economic, Societal and Cultural Impact of YouTube in the US (2020), available at <https://bit.ly/37ijR7n>.

demand for live stream support. In the United States, our YouTube Spaces team hosted over 8,500 creators at 160 online events this year.

YouTube is also committed to ensuring rightsholders earn money both from their content and from user-generated content through our subscription-based and advertising-supported models. Our partnerships with major record labels, performing rights organizations, a multitude of independent labels and music publishers, television networks, and movie studios generate substantial revenues for the creative industries. We've paid over \$12 billion to-date to the music industry alone, and continue to evolve our products in a way that delivers value to rightsholders. Our music subscription service, YouTube Music, has over 30 million paid subscribers across 95 countries. Moreover, we invest in emerging talent and partner with artists who are pushing the bounds of creativity and embracing YouTube in unique and powerful ways to tell their stories. In 2019, we featured Billie Eilish in our "Artist Spotlight Stories," after having promoted her as an "Artist on the Rise" in 2017. She earned both a #1 album and #1 song in the US before being nominated for, and winning, five Grammys in 2020. This year, her YouTube channel topped 36 million subscribers and her hit "Bad Guy" topped 1 billion views on YouTube. To celebrate the latter milestone, we [created](#) an innovative "infinite music video" experience with 15,000 of the many cover versions of "Bad Guy" that helped propel the song into the Top Songs charts in over 50 markets. Furthermore, through our rights management tools, discussed below, we enabled the rightsholders of the original song to earn revenue from those fan-uploaded cover versions from over 140 countries.

We have also worked tirelessly to build an ecosystem from the ground up to help media companies expand their audience reach and develop additional revenue streams. For example, ABC's YouTube channel for [Jimmy Kimmel Live](#) has grown to 17.5 million subscribers with over 10 billion views, quickly becoming an important part of ABC's ad sales strategy. YouTube has become an important tool for the film and television industry, not only to share trailers and clips, but also as a platform for original content. [Netflix](#), for example, has been able to build audience engagement by connecting actors with their fans. We also partner with and support the short film community, like

[Omeletto](#) and [Slamdance](#), to help highlight and provide a platform for the work of emerging filmmakers. In addition, YouTube TV, our live TV streaming service, has over 3 million paid subscribers and features 85+ live TV channels. Finally, with one of our rights management tools, Content ID, YouTube has created an entirely new revenue stream for rightsholders from user generated content – paying more than \$5.5 billion to rightsholders in ad revenue alone from content claimed and monetized through the tool.

YouTube’s ability to bring audiences together has been particularly important over the last year. We partnered with prestigious film festivals around the world (including Sundance and Tribeca) to bring the “We Are One: A Global Film Festival” to over 1.6 million viewers. Over 10 days, the film community united in support of these festivals and COVID-19 relief efforts. On Easter Sunday, we live streamed Andrea Bocelli’s “Music For Hope” performance from the Duomo di Milano, which helped people from all over the world connect in solidarity; it has since received over 41 million views. Post Malone live streamed a tribute concert to Nirvana that has been watched over 14 million times. The original live stream also raised over \$800,000 for a YouTube COVID-relief fundraiser that has since eclipsed \$7 million in donations. In October, we joined with the National Independent Venue Association (NIVA) to raise awareness about the challenges facing the live music sector. The Save Our Stages music festival was live streamed on YouTube and featured 35 artists (including Reba McEntire, Dave Matthews, and the Roots) performing live from 25 independent music venues across the country, such as the Ryman Auditorium in Nashville and the Apollo Theater in New York City. The festival raised over \$1.3M for NIVA’s relief fund and enabled music fans across the country to take part in a shared live music experience for the first time since the pandemic began.

YouTube’s Copyright Management Suite

A key part of preserving this creative economy is ensuring creators and artists have a way to manage and earn revenue from their creative works online. This is why we invest significantly in technology, tools, and resources that prevent copyright infringement on our platforms. Everyone has access to [YouTube’s Copyright Management Suite](#), which includes three main tools: the webform, Content ID and Copyright Match. These tools

give rightsholders control of their copyrighted material on YouTube and all of them use technology to prevent the reupload of matching content. We also work with others across the industry on efforts to combat piracy.

For most users, the public webform is the most streamlined and efficient way to submit copyright claims. All rightsholders have access to the webform and it is available in 80 languages. Hundreds of thousands of individuals use our webform to issue copyright removal requests on millions of pieces of content each year. These removals are global in reach.

Content ID is our solution for those with the most complex rights management needs, such as movie studios, record labels, music publishers, and other service providers that hold rights to audiovisual content. Thousands of rightsholders use Content ID to enforce their rights effectively. These partners in turn represent several hundred thousand artists and creators of copyright protected content. Rightsholders or their agents 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 conducts automated scans of 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.

Thanks to the different options that Content ID gives copyright owners, it's a growing revenue-generation tool for creators. Through Content ID, creators and rightsholders can earn money from videos posted by an uploader. Rightsholders choose to monetize 90% of all Content ID claims, opening up a multitude of new revenue streams for themselves. In the music industry, rightsholders choose to monetize over 95% of Content ID claims. As a result of our continued efforts to improve Content ID, we are also now able to scan all YouTube live streams for matches to copyrighted content. 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. Smaller, independent creators who are not positioned to make that necessary investment can still get access to Content ID through a number of vendors that can manage their rights on a daily basis.

After extensive collaboration with creators, we found that there was an additional segment of the creative community who could benefit from another way to submit claims more regularly. With this in mind, we recently built the Copyright Match Tool to bring the power of Content ID matching technology 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. Creators who do not 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.

We offer access to Copyright Match and Content ID to new applicants via [YouTube's Copyright Management Suite application form](#). The eligibility criteria for each copyright management tool are described in [YouTube's Help Center](#). This year, in response to feedback we heard from creators, we have enhanced the information we provide in our Help Center and in response to inquiries through our application form.

Our efforts to fight piracy on YouTube do not stop with our Copyright Management Suite. As the challenge of online piracy evolves, we are continually working with rightsholders to improve our policies, tools, features, and functionality. For example, earlier this year, we acted on concerns we heard from content industry stakeholders by updating our Community Guidelines to prohibit “how-to” videos that show users how to gain unauthorized free access to audio, audiovisual content, software, or subscription services that would normally require payment. We have also continuously invested in various approaches to combat illegal stream ripping, including by improving our technical infrastructure and working together with third parties to run various technical experiments and explorations.

Our dedication to finding ways to collaborate with users, rightsholders, and other digital services extends to public policy initiatives and industry best practices. 2018's Music Modernization Act was the product of extensive, bipartisan, and industry-wide efforts to develop a solution to licensing issues that have plagued the industry for too long. We are hopeful that this work will improve the flow of royalties to songwriters in the United States, and be a positive precedent for future joint efforts with the creative community.

Preventing Abuse and Misuse of our Tools

We work hard to prevent abuse across our tools and empower uploaders to push back on requests and claims they believe are invalid. Abuse and misuse of our tools can cause significant disruptions to all members of the YouTube ecosystem – creators, viewers, and rightsholders. Just one bad copyright notice can result in dozens of videos being temporarily removed from YouTube. With Content ID, the impact 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 others who rely on the platform.

In one highly-publicized instance, a news channel with access to Content ID uploaded a reference file of a news story containing public domain footage from NASA of a Mars rover. In doing so, they triggered inappropriate claims against all other news channels and creators using the same footage, even against NASA's own channel. In another case, YouTube took legal action against a user who was filing false DMCA notices and using our copyright strike system to pressure innocent creators into paying them large sums of money.⁷ There have also been news reports of foreign government officials hiring takedown vendors to remove content critical of them by falsely alleging copyright infringement.⁸

⁷ 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>.

⁸ See Ecuador's President Used Millions Of Dollars Of Public Funds To Censor Critical Online Videos, BuzzFeed News, Sep. 24, 2015, available at

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, terminate thousands of accounts each year that misuse our tools, and provide users with the robust ability to contest the removal of their content through counter notice and appeals processes. For Content ID, we frequently remove reference files that are low-quality or invalid, and we provide an opportunity for uploaders to dispute claims they believe were made in error. Though less than 1% of all Content ID claims made in the first half of 2020 were disputed, over 55% of disputes were resolved in favor of the uploader. We take the challenge of abuse seriously, and while we are always working to expand rightsholders' access to more powerful tools, we must balance that goal against the need to protect others in the creative community from the significant disruption that can result from the misuse of copyright management tools.

The Role of the DMCA Safe Harbors

At YouTube, we are proud of the work we have done to create a powerful new platform for free expression and access to information, to support the digital creative ecosystem, and to develop industry-leading rights management tools. All of these efforts have been underpinned by balanced copyright law, including the system of shared responsibility in the DMCA that has allowed both the internet and creativity to thrive. Our work at YouTube is just one example of both the innovation and collaboration that the DMCA has spurred.

In passing the DMCA, Congress established clear copyright “rules of the road” for service providers and rightsholders — encouraging investment in online services and providing copyright owners with unprecedented, efficient enforcement options. Explicitly declining to condition safe harbors on unilateral and rigid technology mandates, Congress intended to allow the online enforcement ecosystem to evolve over time and

<https://www.buzzfeednews.com/article/jamesball/ecuadors-president-used-millions-of-dollars-of-public-funds>.

to encourage innovation in rights management. Indeed, one of the major strengths of the DMCA safe harbors has been the statute's ability to accommodate innovative technologies far beyond what Congress could have envisioned 22 years ago. In this way, the DMCA has fostered continued voluntary collaboration between online service providers and rightsholders as both opportunities and challenges online have evolved.

Conclusion

We appreciate the opportunity to share the ways that YouTube continues to support the creative ecosystem and our thoughts on the role of voluntary initiatives. Thank you for your attention and the opportunity to contribute our views.