

January 19, 2021

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Thom Tillis
Chairman, Subcommittee on Intellectual
Property
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chris Coons
Ranking Member, Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham, Chairman Tillis, and Ranking Member Coons,

Thank you for your additional questions for the record related to the December 15 Subcommittee on Intellectual Property hearing entitled *Can Private Agreements and Existing Technology Provide a Solution to Online Piracy?*

I appreciate your time and interest in these important issues, and I look forward to continuing this vital work with you in 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Noah S. Becker", is placed over a light gray rectangular background.

Noah S. Becker

**Noah S. Becker –
The Role of Private Agreements and Existing
Technology in Curbing Online Piracy
Questions for the Record
Submitted January 19, 2021**

QUESTIONS FROM SENATOR COONS

1. Testimony at last week’s hearing suggests that voluntary measures have not sufficed to combat widespread digital piracy. Some have suggested that the federal government should play a role in establishing, regulating, mediating, or otherwise overseeing standard technical measures, best practices, or other currently voluntary arrangements designed to prevent the unauthorized distribution of copyrighted works.
 - a. Should the federal government serve a role in connection with such standard technical measures, best practices, or other currently voluntary arrangements?

Senator Coons, I thank you for your interest and your valuable leadership on these issues.

In my opinion, it is imperative that the federal government serve a role in encouraging and even mandating standard technical measures, particularly when we speak of mega platforms owned by Google and Facebook. Perhaps a metric based on revolving quarterly profits could be used to identify platforms that must adhere to these standards, while not burdening burgeoning platforms with the costs of managing the technology behind such measures. But no platform should be allowed to profit from piracy, regardless of size.

If platforms are not held liable for what is uploaded to them, and artists are nonetheless held liable to manage their own copyright protection, the platforms will never make meaningful changes. We need federal assistance – the same type of assistance that was given to these platforms 22 years ago when section 512 was written into law. That unlimited safe harbor must be reversed to provide new life to the American creator economy.

- b. If Congress were to conclude that the federal government should play a role, what role should that be, and what entity is best-positioned to serve in that capacity?

I travelled to Washington, D.C., in December 2019 for a roundtable that had been organized by eight Members of Congress. Those Members had called on Google to attend the roundtable and hear from creators about their frustrations with the lack of access to YouTube’s content protection tools. I participated in a Copyright Office discussion about standard technical measures in 2020. Both of these are examples of how government can bring stakeholders together to advance discussions. However, neither has yet to yield meaningful results. Perhaps Congress can bring stakeholders together in 2021 and demand actual progress on issues important to the creative communities.

- c. Are there non-governmental entities that would be equally or better situated to serve in this role? If so, how would you suggest that we incentivize them to do so?

I believe that there is an excellent opportunity here for collaboration between the federal government and private vendors to ensure better enforcement and compliance for copyright holders. Let us assume that we can all agree that platforms should provide simple, automated tools for all copyright holders to prevent infringement of their work on the platforms. I would not expect the federal government to design, implement, or operate the complex fingerprinting or copyright identification technologies needed to create this cross-platform solution. I would imagine however, in a manner perhaps similar to how the military contracts with private vendors, outside vendors could competitively bid to provide the technology required to help creators enforce their copyrights and for platforms to comply with this requirement.

Large companies could be compelled to provide fingerprinting technology to creators wishing to enforce infringements on the platforms. For example, any platform with revolving annual revenue of a certain size, say greater than \$100 million annually, could be required to provide robust, automated copyright identification tools for all copyright owners. If a platform does not have the capacity to develop these tools, or would rather prefer to use a private vendor to provide them, they could be compelled to choose from a list of specific vendors pre-approved by the federal government. (Simbals/Adrev, BMAT, PEX, etc., just to name a few).

It would be quite easy to create this pre-approved list of vendors for “non-compliant” platforms that could then partner with a vendor to come into compliance with federal guidelines for providing these copyright identification tools for every copyright holder.

Wealthy platforms that do not comply should be heavily fined and penalized, full stop.

2. Much of last week’s testimony focused on the role of social media platforms and content owners in policing digital piracy. Some voluntary agreements designed to thwart online copyright infringement have also involved domain name registries, payment processors, and advertising networks.
 - a. Among these industries, who do you believe has been most effective in voluntarily combating digital piracy, and who should do more?

Social media platforms have been most pro-active in policing digital piracy. YouTube has been the leader, primarily because it was subject to a major copyright infringement lawsuit by Viacom in its infancy. While their protection tools are robust and effective, they are not available to all copyright holders.

My company, Adrev, has access to YouTube’s tools and we provide that access to our clients who have been locked out of YouTube’s tools. However, many creators cannot

afford to pay a company like mine for this service. As stated in my testimony, YouTube's main failure here is the lack of access for independent creators.

Facebook rolled out their tools much later and has made it even more difficult for creators to access and has been more opaque about who can access its tools. Facebook is a much wealthier platform than YouTube, and should be doing much more.

- b. Are there additional entities that are playing or should be playing a role in voluntarily combating digital piracy?

My general sense tells me that multibillion dollar companies like Google and Facebook should be making far larger financial contributions to creators whose work is on their platforms. These contributions should exceed simple advertising revenue sharing and include new and ongoing licensing agreements.

Millions of musicians, for instance, have had their work stolen and used in videos on YouTube without any financial compensation. Often, YouTube shares revenue with the infringing account instead. Why shouldn't YouTube block uploads of videos containing music that is neither owned by the uploader nor licensed by YouTube itself?

The damage that has been done to the creative communities by this decades-long loss of compensation is irreparable. These platforms' profits come at a cost of lives ruined through rampant piracy. These platforms know this; they have knowingly profited from piracy for the last twenty years.

Fines, penalties, or mandated contributions could fund independent organizations or companies that could work with these creators – at no cost to the copyright holder – to police the global internet for infringement of their work.

We have spoken predominantly platforms that allow video uploads like YouTube and Facebook, but these problems extend much further.

The behavior of global streaming giant Spotify is highly disturbing as well. Its platform is also rampant with copyright abuse, fraud, and piracy. However, its responses to DMCA takedown notices can take weeks, if not months. This lack of responsiveness of Spotify, and other aforementioned platforms, is directly correlated to the fact that there is no great legislative or judicial burden on these platforms to respond or take action.

3. We heard testimony about YouTube's Content ID, Facebook's Rights Manager, and other software tools available to match user-posted content against databases of copyrighted material. Some have expressed concerns that requiring all platforms to use such tools would be unduly burdensome and serve to entrench larger, more established platforms. How do you suggest that we make this type of anti-piracy technology available to all creators without stifling innovation?

Requirements for either using proprietary technology for automated filtering of infringement or a third-party vendor could be determined by metric like a company's market capitalization or its organic search traffic. There are many different quantitative metrics one could use to determine who has to build or lease filtering systems and who are nascent with few users or little to no monetization and may simply be mandated to use a third-party vendor.

The most flagrant issue is that these platforms are reaping billions from infringement. We understand the need for innovation, and the need to not hamper small, upstarts with onerous regulations. But creativity *is* innovation, and this current environment is keeping millions of American from continuing to create and innovate while also being fairly compensated. This common wisdom that only Silicon Valley is innovative is absurd. Art and culture fuel innovation and serve mankind just as much as Silicon Valley does. And, we both deserve to be fairly compensated when our work is used or distributed by others.

In addition to art fueling innovation, we also know that it fuels millions of jobs and over \$1 trillion in GDP. We must protect this vital sector of the American economy.

4. Some witnesses warned that voluntary agreements can exclude and disadvantage smaller entities in the creative ecosystem, including creators, content owners, internet users, and internet platforms. If voluntary anti-piracy agreements are to remain truly voluntary, how do we ensure that everyone has a seat at the table?

These issues will never be properly addressed purely under voluntary guidelines. True change will require either legislative reform to the DMCA and Section 512 or new legislation. We must require, not ask nicely, that these platforms have the obligation to more proactively address piracy on their platforms. In the meantime, I urge Congress to continue to ask in its role as convener and continue these discussions between Silicon Valley and copyright holders. In that role, Congress can certainly ensure that any resulting voluntary agreements include smaller entities.

I thank you humbly for your time.