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**Congress Should Modernize Digital Copyright Law to Protect Americans'  
Content**

by

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World IP Day should be an occasion to remind Congress of the pressing need to make giant Big Tech online platforms more accountable for the enormous amount of copyright infringement that occurs on their websites.

Each day, staggering amounts of music, movies, and other media are unlawfully uploaded by users of internationally popular websites like YouTube, Facebook, and Twitter. These infringing copies are streamed to Internet audiences worldwide, depriving American creative content owners of millions of dollars in revenues every year, not to mention their lawful rights.

Congress needs to modernize copyright law by establishing a "notice-and-stay down" system. When an online platform receives a notice that its website is hosting infringing content, it should be responsible for making sure that the content it takes down stays down.

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## **1998 Act Is as Outdated as Dial-Up Internet**

Section 512 of Digital Millennium Copyright Act of 1998 (DMCA) established a "notice-and-takedown" system for addressing online infringements. When a copyright owner notifies an online platform about infringing content posted on its user-upload website, the platform receives legal immunity if it expeditiously removes the content. But the system was designed for the dial-up Internet of the late 1990s, when web surfers were a tiny fraction of those today and user-upload sites all but non-existent.

Regardless of the merits then, the balance that Congress struck in 1998 between promoting online innovation and copyright protection is now skewed against copyright owners. Individual artists and smaller companies are hard-pressed to send online platforms hundreds or even thousands of takedown notices for infringing postings of the same music recording, movie, or TV show. Many copyright owners lack the money and time to send repeat notices when new postings of their copyrighted content quickly reappear in multiple places on the same platform.

Today, Section 512 decisively favors Big Tech social media platforms like Facebook and Twitter. Those platforms generate ad revenues based on the number of views of content uploaded by their users, whether lawfully or unlawfully. So long as they have overbroad immunity, they have little incentive to ensure that once infringing content is removed it does not reappear.

A "notice-and-stay down" system is needed to provide stronger protection in the world of high-speed broadband mass volume user uploads. An online platform that receives a takedown notice regarding specific infringing content on its site should be obligated to remove future postings of the same infringing content. Establishing a "stay down" requirement for retaining immunity would make online platforms more proactive in dealing with serial re-postings of infringing copies of video, music, and other media.

## **What the Digital Copyright Act of 2021 Would Do**

A draft bill released in December 2020 by Senator Thom Tillis called the "[Digital Copyright Act of 2021](#)" includes a "notice-and-stay down" provision. When a takedown notice identifies specific webpages or "representative lists" of pages with infringing copies, the online platform must expeditiously remove new postings of the same content. Immunity also would depend on its compliance with "reasonableness best practices" established by the U.S. Copyright Office to combat online infringements.

For major online platforms, a key best practice should be routine use of an automated content recognition service that flags new uploads of infringing copies of video and sound recordings. YouTube's Content ID and Audio Magic are two technologies that perform those kinds of functions. To receive legal immunity, major online platform services should be required to use similar content recognition technologies – and to make them accessible to all interested copyright owners. Content ID, for example, is made available only to a limited number of copyright owners.

Some critics of "notice-and-stay down" wrongly claim that it would be used to censor political speech and overly burden smaller online platforms. Because ideas are not copyrightable, people may freely express views using their own words, images, and sounds. And the proposed Digital Copyright Act would leave untouched a website users' ability to raise "fair use" objections to a takedown request involving unlicensed use of copyrighted content for parody, criticism, and commentary on public interest matters. But freedom of speech has never meant that a person has free rein to use someone else's intellectual property without permission.

Importantly, the Digital Copyright Act aims at a lighter touch for smaller online platforms. It directs the Copyright Office to establish best practices that account for "the type and size of the service provider and the scale of infringement" that occurs on the platform. A Big Tech-owned platform would be expected to do more than a small startup to keep infringing content from reappearing on its website.

Online infringement is global problem that hits American copyright owners especially hard. Congress should combat it by reforming the law to make clear that the privilege of immunity for Big Tech online platforms comes with a responsibility to ensure that infringing copies of creative works are taken down – and stay down.

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