



U.S. Copyright Office

[Docket No. 2021-10]

Technical Measures: Public Consultations

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notification of Inquiry: Public Consultations.

SUMMARY: The U.S. Copyright Office is announcing a series of consultations on technical measures to identify or protect copyrighted works online. The Office plans to hold a plenary session to launch consultations on this issue on February 22, 2022, to be followed by smaller sectoral consultations thereafter. To aid in this effort, the Office also is seeking public input on a number of questions.

DATES: Written statements of interest to participate in the consultations, along with a response to at least one of the questions in this notice, must be received no later than 11:59 p.m. Eastern Time on February 8, 2022. Written comments may be made for the record without expectation of participating in the consultations by that same deadline. The Office is planning to hold the plenary consultation via Zoom on February 22, 2022. The Office also plans to hold February 23, 2022 as a possible second day for plenary consultations, if needed. Subsequent industry-sector specific consultations will be announced at a later date via <https://www.copyright.gov/policy/technical-measures/>.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public submissions in this proceeding. All submissions are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments and statements of interest are available on the Copyright Office's website at <https://www.copyright.gov/policy/technical-measures/>. If electronic submission of comments or statements of interest is not feasible due to lack of access to a

computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Emily Lanza, Counsel for Policy and International Affairs, by email at emla@copyright.gov, or Jenée Iyer, Counsel for Policy and International Affairs, by email at jiyer@copyright.gov. They can each be reached by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Copyright Office’s 2020 Report, *Section 512 of Title 17* (“Section 512 Report”), acknowledged the important role that technologies and technical measures can play in addressing internet piracy. While the infringement of copyrighted material online has evolved alongside technological developments, stakeholders have engaged in a range of voluntary collaborations and developed a number of technical measures that supplement the legislative notice-and-takedown framework.¹

In a letter dated June 24, 2021, Senators Patrick Leahy and Thom Tillis requested that the Copyright Office “convene a representative working group of relevant stakeholders to achieve the identification and implementation of technical measures.”² The Senators emphasized that they continue to believe, as the Senate Judiciary Committee noted more than twenty years ago with the passage of the Digital Millennium Copyright Act, “that voluntary technology is likely to be the solution to many of the issues facing copyright owners and service providers.”³

The Office is now announcing that it will convene a series of consultations on technical measures for identifying or protecting copyrighted works online.

¹ See U.S. COPYRIGHT OFFICE, SECTION 512 OF TITLE 17 27–47 (2020) (“SECTION 512 REPORT”), <https://www.copyright.gov/policy/section512/section-512-full-report.pdf>.

² Letter from Sens. Thom Tillis & Patrick Leahy to Register Shira Perlmutter at 2 (June 24, 2021) (“Request Letter”).

³ *Id.*

Over the past decade or so, rightsholders across industries have developed and employed various technical measures to assist with the protection of their works. For example, the implementation of digital fingerprinting allows rightsholders to negotiate with service providers specific responses once an exact match to a fingerprint has been identified.⁴ Similarly, rightsholders have utilized digital watermarks, standard identifiers, and other tools to facilitate the use of their works, including downstream uses, while maintaining attribution and other copyright management information.⁵

Some technical measures to identify and protect copyrighted works online have been developed and deployed by or for online service providers and other stakeholders.⁶ Proprietary systems used internally by platforms to identify and filter potentially infringing uploaded material include Scribd's BookID,⁷ Dropbox's unique identifier system,⁸ and YouTube's ContentID. YouTube's ContentID program, for example, scans videos that are uploaded to YouTube against a database of files that have been submitted by copyright owners participating in the program. When a match is made, the owner is notified and has the option to block the

⁴ See Intellectual Property Owners Association, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 7 (Apr. 1, 2016).

⁵ See generally U.S. COPYRIGHT OFFICE, AUTHORS, ATTRIBUTION, AND INTEGRITY: EXAMINING MORAL RIGHTS IN THE UNITED STATES 87–88 (2019), <https://copyright.gov/policy/moralrights/full-report.pdf> (discussing digital attribution in the context of section 1202 protections).

⁶ Stakeholders have also collaborated in developing voluntary measures and best practices to address online infringement. Advertising networks and payment processors, for example, have implemented best practices to cut off payments and advertising revenues for web services offering infringing material. See e.g., *Anti-Piracy Policy*, MASTERCARD, <https://www.mastercard.us/en-us/vision/who-we-are/terms-of-use/anti-piracy-policy.html> (last visited Dec. 10, 2021). More formal agreements across industry sectors, like the RogueBlock program and domain name registry "Trusted Notifier" programs, have facilitated collaborative programs to address online piracy. See SECTION 512 STUDY at 39–41; *IACC RogueBlock*, IACC, <http://www.iacc.org/online-initiatives/rogueblock>; Press Release, Motion Picture Association of America, Inc., Donuts and the MPAA Establish New Partnership to Reduce Online Piracy (Feb. 9, 2016), <https://www.mpaa.org/wp-content/uploads/2016/02/Donuts-and-MPAA-Establish-New-Partnership-2.9.16.pdf>. Similar voluntary initiatives to address online piracy have been adopted in the United Kingdom and European Union; for example, in June 2018, content industries, service providers, advertising bodies, and other stakeholder groups signed the European Commission's Memorandum of Understanding on Online Advertising and IPR to limit advertising on websites that infringe copyrights or disseminate counterfeit goods. See EUR. COMMISSION, *Memorandum of Understanding on online advertising and IPR* (2018), reposted at <https://ec.europa.eu/docsroom/documents/30226>.

⁷ Scribd, a service that provides access to literary works and allows users to self-publish, has established BookID to filter uploaded works. *BookID*, SCRIBD, <https://www.scribd.com/copyright/bookid>.

⁸ Dropbox utilizes a different approach. Upon receiving a takedown notice and disabling access to the file, Dropbox adds the file's unique identifier, or hash, to a blacklist. If a user attempts to share a file with the same hash, it is blocked. See Greg Kumparak, *How Dropbox Knows When You're Sharing Copyrighted Stuff (Without Actually Looking at Your Stuff)*, TECHCRUNCH (Mar. 30, 2014, 4:38 PM), <https://techcrunch.com/2014/03/30/how-dropbox-knows-when-youre-sharing-copyrighted-stuff-without-actually-looking-at-your-stuff/>.

video from being viewed, monetize it by running advertisements, or track its viewership statistics.⁹ Examples of broadly-available technical measures include filtering technologies like Audible Magic, universal data formats, and registries like the Picture Licensing Universal System (PLUS).¹⁰ Audible Magic’s filtering technology, which uses Automatic Content Recognition to match uploaded audio and video files against files registered with its database, operates similarly to ContentID but is broadly available for licensing by online platforms.¹¹

While these collaborations and technical measures may constitute reasonable, effective, and flexible approaches to curbing online infringement, as the Office noted in its Section 512 Report, their strictly voluntary nature presents inherent limitations.¹² The absence of comprehensive coverage and the exclusion of certain stakeholder interests during the development stages could hinder a measure’s sustainable success. One commenter to the Section 512 Study noted that “voluntary initiatives can create potential for . . . disadvantaging those who are not involved in the relevant discussions or parties to the ultimate agreement, including the public, creators and providers of innovative new services.”¹³ The Office therefore recommended in the Section 512 Report that a “key feature of any future voluntary measure should . . . involve cooperation among rightsholder organizations, all sizes of OSPs, individual creators, and users.”¹⁴ In addition to inclusivity, the Office also emphasized the importance of flexibility, accountability, and comprehensive reporting.¹⁵

II. Consultations

The consultations will address current and forthcoming technologies for identifying or protecting works online, including the technologies’ availability, their use-cases, and their

⁹ See *How Content ID Works*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2797370>.

¹⁰ *The System: What is PLUS?*, PLUS, <https://www.useplus.com/aboutplus/system.asp>.

¹¹ If there is a match, the database relays to the platform owner information and rules specifying how the rightsholder wants the file to be used. See *Technology*, AUDIBLEMAGIC, <https://www.audiblemagic.com/technology/>.

¹² See SECTION 512 REPORT at 173–74.

¹³ Independent Film & Television Alliance, Comments Submitted in Response to the U.S. Copyright Office’s Dec. 31, 2015, Notice of Inquiry at 11 (Apr. 1, 2016).

¹⁴ SECTION 512 REPORT at 174–75.

¹⁵ See *id.* at 175.

limitations. These consultations on the voluntary identification and implementation of technical measures are separate from the Office's forthcoming notice of inquiry on Standard Technical Measures ("STMs"), which will focus specifically on the interpretation of section 512(i) of the DMCA, 17 U.S.C. 512(i), and the definition and identification of STMs within the scope of the statute.

The consultations will consist of one plenary session and a series of smaller, industry-sector specific sessions. The plenary session will occur on February 22, 2022. If a sufficient number of participants appear, the Office will divide the plenary session into multiple breakout rooms. The plenary session, whether it proceeds in one room or several, will be viewable to the public.

Based on the responses received to this notice and the outcome of the plenary session, the Office will identify specific industry-sector based groups that will form the basis for the smaller sessions to follow. Schedules may be adjusted as needed by the Copyright Office, with advance notice given to the participants. At the current time, we anticipate this process continuing through late Spring 2022.

Members of the public who seek to participate in the consultations should submit, via *regulations.gov*, a written statement of interest answering at least one of the questions listed in section III below. The Copyright Office strongly encourages participation by individuals with experience currently using or developing relevant technologies. Both the plenary and industry-sector based sessions will be held virtually over Zoom.

The Office will notify participants of their assigned industry-sector based session not later than one week after the plenary session is held. The Office appreciates the flexibility of potential participants.

The Office will be inviting other government agencies, including but not limited to the National Telecommunications and Information Agency (NTIA), the National Institute of Standards and Technology (NIST), and the U.S. Patent and Trademark Office (USPTO), to

participate in the consultations and provide technical and operational input, as requested by Senators Leahy and Tillis.¹⁶

III. Statement of Interest Questions

Below are questions to consider ahead of the plenary session, as these topics will underlie the discussions. To aid in the discussion, several of the questions focus on particular categories of actors. The Office recognizes that individuals and entities at any given time might be acting as rightsholders, intermediaries, or users. Please provide an answer to at least one of these questions in your written statement of interest to participate in the consultations in order to assist in effectively organizing these consultations. For those who do not wish to participate in the consultations, the Office will also accept, by the date above, written comments for the record responding to at least one of the questions below.

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?
2. Online service providers: Please identify any technical measures currently used or in development by your organization, company, industry, or sector to identify or protect copyrighted works online. How do these technical measures affect your ability to provide services to your users?
3. Users: How are you, or your organization, company, industry, or sector affected by technologies implemented by rightsholders and service providers to identify or protect copyrighted works online?
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)?

¹⁶ Request Letter at 2.

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

For both comments and statements of interest, please indicate which question(s) above you are answering in your submission. For those who wish to participate in the consultations, please also indicate your organization's request to participate in the consultations in the written statement of interest and identify the individual (name, title, contact information) who will be participating in the plenary and industry-sector based sessions.

Dated: December 16, 2021.

Shira Perlmutter,
Register of Copyrights and
Director of the U.S. Copyright Office.

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