



March 17, 2020

The Honorable Thom Tillis
Chairman
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20515

The Honorable Christopher A. Coons
Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Chairman Tillis and Ranking Member Coons,

Internet Association (IA) appreciates the Subcommittee’s interest in the impact of foreign copyright regimes, particularly that of the recent European Union Copyright Directive (“EUCD”). Many IA members operate internationally and have great interest in ensuring that copyright systems in foreign markets encourage innovation, protect creative works, and empower users. The substance of the EUCD is very different from the U.S. copyright framework – a framework that has fueled the most successful creative and tech communities in the world. Implementing EUCD-style policies in the U.S. would upset the delicate balance of our creativity-oriented copyright system.

IA represents over 40 of the world’s leading internet companies.¹ IA’s mission is to foster innovation, promote economic growth, and empower people through the free and open internet.

The U.S. copyright system has a strong and innovation-oriented copyright framework that protects creators’ legitimate rights, benefits consumers, and enables innovation – including through the safe harbors and limitations and exceptions in the Digital Millennium Copyright Act (DMCA). In fact, the DMCA creates a balanced system that supports diverse stakeholders, providing rights holders, creators, internet companies, technology industries, and users the tools necessary to grow a robust online ecosystem.

The changes to copyright made by the EUCD impose unwarranted liability on internet companies and will have a disproportionately large impact on the ability of smaller companies to compete. IA is concerned that the changes could have unintended consequences that hurt both the technology and creative industries. IA is not alone in these concerns. Creators, startups, and consumers from around the world, along with millions of European citizens, raised concerns about the potential impact of the EUCD.²

Specifically, article 17’s vague and untested obligations may effectively require internet services that offer large amounts of user-generated material to filter content, without regard for the inevitable consequences of such filtering, including the removal of protected speech; content protected by the “fair use” doctrine; content for which accurate and comprehensive rights ownership data is not available; and misidentified, legally distributed works from all types of online platforms. Furthermore,

¹ Internet Association, *Our Members*, Internet Association, 2020, <https://internetassociation.org/our-members/>.

² Save The Internet, *Stop the censorship-machinery! Save the Internet!* Change.org, 2018, <https://www.change.org/p/european-parliament-stop-the-censorship-machinery-save-the-internet>.



such requirements do not reflect the significant differences in capabilities of platforms and services, the voluntary nature of related improvements in content protection, existing information gaps in the content licensing market, and the damaging effect of false positives and overblocking for both creators and consumers.

In addition, article 15 requires platforms and services to obtain licenses for the use of press publications with some exceptions, including hyperlinks, facts, and “individual words and very short extracts.” This vague right for publishers has created uncertainty for online services that index websites, aggregate news headlines, and refer online users to third-party articles. The interpretation of some policymakers that the EUCD requires platforms to negotiate licenses with publishers for any type of reference to press publications may lead to some platforms limiting the availability of their services – services that increase access to information, allow users to share and discuss articles, and promote publisher content. Article 15 risks reducing access to news for consumers and limiting the diversity of press publication and online platforms. In contrast, U.S. copyright law appropriately provides strong rights for publishers but has always permitted using brief sections of copyrighted material for legitimate purposes. The EU’s scheme is an outlier with respect to international norms as well; Article 10(1) of the Berne Convention protects the right to provide “quotations from a work lawfully made available to the public.”

The internet industry and the creative ecosystem both flourish under the balance of the U.S.’s innovation-oriented copyright regime.³ If changes similar to the EUCD were to be implemented in the U.S., they would risk thwarting the continued growth of the commercial internet.

Thank you for the opportunity to weigh in on these developments and for your commitment to protecting the public’s interest in a balanced, innovation-oriented copyright system.

Sincerely,

Mike Lemon
Senior Director, Federal Government Affairs & Counsel
Internet Association

³ Floor 64, *The Sky Is Rising!* TechDirt, January 2012, <https://www.techdirt.com/skyisrising/>.