



LIBRARY COPYRIGHT ALLIANCE STATEMENT OF INTEREST IN PARTICIPATING IN CONSULTATIONS CONCERNING TECHNICAL MEASURES

The Library Copyright Alliance (“LCA”) consists of three major U.S. library associations: the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries. These associations represent over 100,000 libraries in the United States employing more than 350,000 librarians and other personnel. LCA wishes to participate in the consultations concerning technical measures announced in the Copyright Office’s December 22, 2021 notice of inquiry (“NOI”).

Libraries provide to their users a variety of Internet-related services. As a practical matter, libraries can provide these services only because the DMCA’s safe harbors limit libraries’ liability for their users’ online activities. The “mere conduit” safe harbor in section 512(a) has enabled libraries to provide Internet access to its users; the section 512(c) “hosting” safe harbor has permitted libraries to serve as institutional repositories for open access materials; and the section 512(d) “linking” safe harbor has allowed libraries to provide information location services to users. Libraries’ reliance on section 512 means that they are interested in the requirement for eligibility for the safe harbor. Because accommodating and not interfering with standard technical measures is a requirement for eligibility for section 512 protection, libraries are acutely interested in participating in the Copyright Office’s consultations concerning technical measures.¹

Although libraries are providers of online services within the meaning of the section 512 and in the context of this consultation, libraries also represent users. Unlike commercial Internet service providers, libraries are intrinsic parts of the communities they serve. A school or university library provides Internet services to the institution’s student and faculty, but it is also part of the institution. Thus, it shares the institution’s education and research mission, which could be adversely affected by filtering technologies. Likewise, public libraries’ mission of providing the public with equitable access to information could be undermined by filtering technologies.

¹ Although LCA recognizes that the NOI states that “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,” LCA believes that this separation is artificial and that this inquiry will inevitably inform the second.

Accordingly, LCA seeks to participate in the “industry-sector specific sessions” for both online service providers and users. (Faculty, students, and members of the public also create copyrighted works, but LCA does not seek to participate in the sessions for rightsholders.)

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?

The issue of online infringement has many dimensions and is constantly changing as business models and technologies evolve. The development of business models based on the streaming of content from secure servers has dramatically reduced infringement in certain sectors.

Additionally, large platforms have adopted filtering tools that enable rightsholders to prevent or profit from the uploading of unauthorized content. Search engines employ algorithms to demote websites that appear to host infringing content. Thus, online infringement no longer poses an existential threat to the content industries, to the extent it ever did. Although infringement may cause harm to some individual rightsholders, as it always has, the creative economy as a whole has never been healthier.

Broader implementation of technical measures could have serious negative implications for users. For example, if all rightsholders had access to powerful tools such as YouTube’s ContentID, far more fair uses would be blocked. The automation of the section 512 notice and takedown procedures has already led to a high rate of erroneous or abusive takedowns, and further automation likely will make this problem even worse. At the same time, noncommercial service providers such as libraries cannot afford to pay the high cost of adopting technical measures were they to become mandatory to retain eligibility for the section 512 safe harbor. Many have small budgets and lack the technical expertise to implement sophisticated filtering systems.

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?

LCA does not believe there is a role for government in identifying, developing, cataloging or communicating about existing or future technical measures for identifying and protecting works online. The government cannot and should not facilitate the adoption or implementation of such technical measures. The government does not have the technical expertise to engage

productively in such activities. Government involvement in filtering technologies also raises serious First Amendment issues.

Moreover, it remains unclear precisely what problem the Copyright Office's two track initiative relating to technical measures is intended to solve. Rightsholders use a wide variety of technological measures to limit access to their content and to protect it from infringement. These technologies are tailored to the type of work (*e.g.*, films, music, videogames, ebooks) and the mode of distribution. Likewise, service providers have developed tools rightsholders can use to remove infringing content from their platforms. Many of these tools are optimized to operate on specific platforms. These technologies are highly effective and responsive to the constantly evolving digital environment. Chapter 12 of Title 17 already prohibits the circumvention of these measures. Any government involvement in this area likely will impose costs that outweigh benefits and may even be counterproductive.

Respectfully,

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