

*Before the*  
**United States Patent and Trademark Office**  
Alexandria, VA

*In re*

Future Strategies in Anticounterfeiting and  
Antipiracy

Docket No. PTO-C-2023-0006

**COMMENTS OF  
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

In response to the notice of public roundtable and request for comments published by the U.S. Patent and Trademark Office (“USPTO”) in the Federal Register at 88 Fed. Reg. 33872 (May 25, 2023), the Computer & Communications Industry Association (“CCIA”)<sup>1</sup> submits the following comments in response to selected questions.

**1. Please identify current anticounterfeiting and antipiracy strategies and any trends you see in how often these practices are guiding the public's plans for addressing these issues in the future.**

Leading digital services are committed to ensuring a safer and more trustworthy Internet. Responsible services invest heavily in protecting users from illegal or dangerous content and conduct, consistent with their terms of service and applicable law. These robust trust and safety practices include intellectual property policies and compliance with regulatory regimes like notice-and-takedown, as well as voluntary efforts to proactively prevent, remove, or limit the distribution of allegedly infringing materials. Many online intermediaries engage with rightsholders and brand owners extensively and have established programs that encourage information sharing between stakeholders that enable the identification of and enforcement

---

<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.cciagnet.org/members>.

against counterfeit and infringing goods.<sup>2</sup> Industry also works with law enforcement to find and hold bad actors accountable and protect consumers.

Businesses of varying sizes have developed unique, customized solutions for their respective environments. Under current law each company has the flexibility to address these problems in a way that suits their business case, resources, and potential harm to consumers and rightsholders. While larger services may be able to invest aggressively in complex, highly automated systems, smaller or more resource-constrained services (e.g., startups and SMEs) tend to rely upon manual responses. All responsible services consider intellectual property matters in their content moderation processes, however, and choose strategies appropriate for their particular circumstances.

These efforts require participation and collaboration from all stakeholders. Digital services cannot be expected to tackle infringement proactively in a vacuum; they need input from rightsholders and brand owners. There should also be an understanding that there is no one-size-fits-all solution that will be appropriate for every platform or in every context — there must be proportionality.

**3. Please indicate how consumers are educated about the harms and dangers that may result from the use and sale of counterfeited or pirated products.**

Marketplaces and e-commerce websites educate consumers around potential harms from infringing goods to keep them safe online by providing clear terms of service and policies, informing users these kinds of materials are not permitted. When content is removed based on these policies, services provide clear communication about why action was taken and potential

---

<sup>2</sup> See CCIA Comments to the Department of Commerce, Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations, Docket No. DOC-2019-0003 (July 29, 2019), <https://www.cciagnet.org/wp-content/uploads/2019/07/DOC-2019-0003-0001-CCIA-Comments-Counterfeiting-Pirated-Goods-Trafficking-Report.pdf>, at 2-5 (discussing current practices to address counterfeits online including examples of collaboration with brand owners).

future consequences if a user continues to violate their rules. Some online services also provide information to users regarding counterfeits and intellectual property to help them avoid posting or sharing content that violates the site's terms of service.<sup>3</sup>

- 4. Please describe current anticounterfeiting and antipiracy strategies that may be available, identifying which elements have proven successful and those that have not. Your answer should identify the targets of anticounterfeiting and antipiracy efforts, such as ecommerce platforms, physical markets, and social media.**

As stated above in response to Question 1, successful strategies must be collaborative, flexible, and proportionate.

- 8. Please indicate whether any strategic plans to combat counterfeiting and piracy might include collaboration with private or public parties, and if a strategic plan is not collaborative, please explain why not. If a strategic plan does include collaboration, please describe the anticounterfeiting and antipiracy strategies employed in the collaboration.**

A collaborative approach that brings together stakeholders including IP owners, online services, and consumers is key to effectively combating infringement at scale, while also fostering expression and creativity.<sup>4</sup> These categories also increasingly overlap and intersect. For example, many CCIA members are highly successful content creators and benefit from IP protection, in addition to intermediary protections. Many Internet users are also part of the creative economy; a 2019 study found that nearly 17 million American creators earned incomes from posting their personal creations on nine platforms in 2017, collectively earning \$6.8 billion.<sup>5</sup>

---

<sup>3</sup> See, e.g., Meta's IP Help Centers on Facebook, <https://www.facebook.com/help/399224883474207>, and Instagram, <https://help.instagram.com/535503073130320>, as well as Meta's Anti-Counterfeiting Guide, <https://www.facebook.com/business/tools/anti-counterfeiting/guide>.

<sup>4</sup> Josh Landau, *World IP Day: Promoting Progress*, Disruptive Competition Project (Apr. 26, 2021), <https://www.project-disco.org/intellectual-property/042621-world-ip-day-promoting-progress/>.

<sup>5</sup> Robert Shapiro & Siddhartha Aneja, *Taking Root: The Growth of America's New Creative Economy* (2019), <https://www.recreatecoalition.org/wp-content/uploads/2019/02/ReCreate-2017-New-Creative-Economy-Study.pdf>.

**10. Please identify effective technologies for use in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers, such as counterfeited product identification devices or advanced algorithms to secure supply chains and identify counterfeited goods online. Please explain how any anticipated strategies will improve an overall anticounterfeiting and antipiracy strategy.**

Some major e-commerce providers voluntarily provide legal tools for trademark or brand owners, such as Amazon's Brand Registry,<sup>6</sup> eBay's Verified Rights Owner program,<sup>7</sup> and Meta's Brand Rights Protection.<sup>8</sup> These brand registration programs allow the service to better utilize automated tools to identify and remove confirmed counterfeit products. Through enrollment, brand owners provide relevant information to the service about their products that better enables the service to proactively address counterfeits, and to streamline brand owners' reporting process. In enforcing their strict prohibitions against counterfeiting, in many cases services will take more extensive action than merely removing content that is specifically reported to them, and are exploring ways to remove additional suspected counterfeit content on a proactive basis, with some already doing so 99% of the time.<sup>9</sup>

These programs require information from the trademark owners, who are in the best position to accurately and efficiently distinguish counterfeit products from authentic goods. Cooperation with brand owners is therefore a critical component for e-commerce sites, online marketplaces, and other third-party intermediaries in order to effectively address counterfeiting.

Additionally, some websites invest considerable resources in elaborate systems that provide copyright holders with additional tools to protect content, in addition and cumulative to

---

<sup>6</sup> Amazon Brand Registry, <https://brandservices.amazon.com/>.

<sup>7</sup> eBay, Verified Rights Owner Program, <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>.

<sup>8</sup> Meta's Business Help Center: About Brand Rights Protection, <https://www.facebook.com/business/help/828925381043253>.

<sup>9</sup> Amazon, Brand Protection Report, <https://brandservices.amazon.com/progressreport>; Meta's IP Transparency Report: Proactive Enforcement, <https://transparency.fb.com/reports/intellectual-property/proactive-enforcement/facebook>.

notice-and-takedown compliance. Examples include YouTube’s Content ID and Copyright Match Tool,<sup>10</sup> Google’s Trusted Copyright Removal Program,<sup>11</sup> Meta’s Rights Manager,<sup>12</sup> and Pinterest’s Content Claiming Portal.<sup>13</sup> These voluntary, additional layers of protection can expedite action against alleged infringement, and often provide rightsholders opportunities not just to remove infringing content, but also to track and monetize their works online.

However, content filtering by automation is not always effective or accurate. In particular, “off-the-shelf” filtering technologies tend to be focused only on specific classes of works, and cannot necessarily provide meaningful protection to content on sites whose users can create many different types of works. Automated tools are also unable to take into account context or nuance of individual uses, so may result in over-removal of non-infringing, fair uses. These false positives merit particular attention because any unjustified content filtering or takedown may suppress lawful expression.<sup>14</sup>

**11. Please describe how online enforcement activities intersect with trademark and copyright laws or procedures. Do online enforcement strategies include employing existing trademark laws to combat online counterfeiting? Do online enforcement strategies use existing copyright laws to combat online piracy? If so, please describe in detail those activities, and provide any suggestions for maximizing these practices.**

Notice-and-takedown frameworks under U.S. copyright law (17 U.S.C. § 512) established an efficient way to expeditiously remove allegedly infringing content from Internet services, while fostering cooperation between relevant stakeholders. Under both existing

---

<sup>10</sup> YouTube, *Access for all, a balanced ecosystem, and powerful tools* (Dec. 6, 2021), <https://blog.youtube/news-and-events/access-all-balanced-ecosystem-and-powerful-tools/>.

<sup>11</sup> *How Google Fights Piracy* (Nov. 2018), [https://www.blog.google/documents/27/How\\_Google\\_Fights\\_Piracy\\_2018.pdf](https://www.blog.google/documents/27/How_Google_Fights_Piracy_2018.pdf), at 38.

<sup>12</sup> Meta Rights Manager, <https://rightsmanager.fb.com/>.

<sup>13</sup> Pinterest, *Introducing the Content Claiming Portal, a new tool to help creators claim their content and decide how it appears on Pinterest* (Apr. 19, 2021), <https://newsroom.pinterest.com/en/post/introducing-the-content-claiming-portal-a-new-tool-to-help-creators-claim-their-content-and>.

<sup>14</sup> See, e.g., EFF, *Automated Copyright Filter Can’t Detect Infringement or Irony* (2020), <https://www.eff.org/takedowns/automated-copyright-filter-cant-detect-infringement-or-irony>.

copyright law<sup>15</sup> and trademark law,<sup>16</sup> there is no obligation on the part of online service providers to proactively monitor or enforce infringements. Rather, this is a matter of discretion and policy for each service, and should remain that way. The imposition of proactive enforcement obligations would be less effective, would inevitably negatively impact free speech and legitimate trade, and would introduce untold unintended consequences — digital services would be disincentivized from innovating and would do only what the law required, benefiting no one.

Online services have worked to make their reporting processes as efficient and easy as possible to facilitate swift removal of content that violates company policies. Businesses comply with requisite obligations under current law regarding trademarks and content protected by U.S. copyright law, and many online services exceed these obligations with online tools providing verified rightsholders priority access to tools for expeditiously flagging and removing potentially infringing products.<sup>17</sup>

**12. Please describe any fraudulent documentation or materials you have observed in the furtherance of online counterfeiting and piracy activity. For example, after reporting infringements to platforms, have you seen fraudulent materials attached to a counter-notification?**

Tools intended to reduce infringement regularly receive fraudulent and abusive notices, as well as over-reaching reports purportedly based on copyright that in fact are complete fabrications intended to remove content considered undesirable by the claimant. As one member company has noted, “fabricated copyright infringement allegations can be used as a pretext for censorship and to hinder competition.”<sup>18</sup> Publicly documented examples that digital services and

---

<sup>15</sup> 17 U.S.C. § 512(m).

<sup>16</sup> *Tiffany v. eBay*, 600 F.3d 93 (2d Cir. 2010), and related case law.

<sup>17</sup> See, e.g., Meta’s IP Reporting API, <https://www.facebook.com/business/help/1785616748438429>.

<sup>18</sup> *How Google Fights Piracy* at 8.

users have experienced include: extortion schemes tied to the notice-and-takedown process;<sup>19</sup> blatant disregard for fair use;<sup>20</sup> notice-and-takedown abuse as a business model, such as reputation-related removals masquerading as copyright;<sup>21</sup> abuse to target competitors in online marketplaces;<sup>22</sup> and flawed automated systems that broadly target unrelated content.<sup>23</sup>

Therefore, services balance their work to protect intellectual property rights with their work to protect users' free expression online. For example, "Google is committed to ensuring that it detects and rejects bogus infringement allegations, such as removals for political or competitive reasons, even as it battles online piracy,"<sup>24</sup> and Meta's tools "ensure that lawful expression, such as fair use and other copyright exceptions, are protected."<sup>25</sup>

**13. Please provide any data you have on counterfeiting and piracy, including any data showing how the activities may adversely or disproportionately affect certain industries or companies.**

Many businesses voluntarily publish data in their recurring transparency reports on enforcement of their terms of service, including on intellectual property issues.<sup>26</sup> Some services release reports regularly that detail removals on counterfeit goods, in addition to takedowns

---

<sup>19</sup> Julia Alexander, *YouTube gets alleged copyright troll to agree to stop trolling YouTubers*, The Verge (Oct. 15, 2019), <https://www.theverge.com/2019/10/15/20915688/youtube-copyright-troll-lawsuit-settled-false-dmca-takedown-christopher-brady>.

<sup>20</sup> Brief for Amici Curiae Automattic, Google, Tumblr, & Twitter, *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2015), [https://www.eff.org/files/2015/10/30/lenz-automattic\\_google\\_twitter\\_tumblr\\_amicus.pdf](https://www.eff.org/files/2015/10/30/lenz-automattic_google_twitter_tumblr_amicus.pdf).

<sup>21</sup> Andrea Fuller, Kirsten Grind & Joe Palazzolo, *Google Hides News, Tricked by Fake Claims*, Wall St. J. (May 15, 2020), <https://www.wsj.com/articles/google-dmca-copyright-claims-takedown-online-reputation-11589557001>.

<sup>22</sup> Alexandra Alter, *A Feud in Wolf-Kink Erotica Raises a Deep Legal Question*, N.Y. Times (May 23, 2020), <https://www.nytimes.com/2020/05/23/business/omegaverse-erotica-copyright.html>.

<sup>23</sup> Ernesto Van der Sar, *Bizarre DMCA Takedown Requests Censor EU 'Censorship' News*, TorrentFreak (Aug. 11, 2018), <https://torrentfreak.com/bizarre-dmca-takedown-requests-censor-eu-censorship-news-181011/>.

<sup>24</sup> *How Google Fights Piracy* at 8.

<sup>25</sup> Meta, Rights Manager: Protecting our users, <https://rightsmanager.fb.com/#user-protection>.

<sup>26</sup> See, e.g., YouTube, Copyright Transparency Report, [https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-22\\_2022-7-1\\_2022-12-31\\_en\\_v1.pdf](https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-22_2022-7-1_2022-12-31_en_v1.pdf); Google Transparency Report, Content delistings due to copyright, <https://transparencyreport.google.com/copyright/overview>; Meta Transparency Center, Intellectual Property, <https://transparency.fb.com/data/intellectual-property/>; Pinterest Transparency Report, Intellectual property policies enforcement, <https://policy.pinterest.com/en/transparency-report#section-intellectual-property-policies-enforcement>.

related to copyright and trademark claims.<sup>27</sup> Transparency reports may include not only figures about the number of materials taken down, but also the number of fraudulent or abusive notices that are not removed and, in some cases, data about proactive measures undertaken.<sup>28</sup>

Furthermore, studies consistently show that piracy rates fall when consumers have broad access to lawful means of digital media consumption,<sup>29</sup> such as when legitimate services like Spotify and Netflix enter new markets.<sup>30</sup> Ultimately, the most effective way to prevent infringement is to ensure that members of the public, most of whom want to pay for content, can lawfully consume works digitally whenever and wherever they want. As a Department of Commerce Internet Policy Task Force green paper co-led by USPTO recognized, “the availability of licensed offerings is an important element in combatting online infringement. Providing consumers with attractive legal avenues to enjoy copyrighted content in the manner of their choosing decreases the lure of illegitimate services.”<sup>31</sup>

---

<sup>27</sup> See, e.g., Google Search, Content delistings due to counterfeit, [https://storage.googleapis.com/transparencyreport/report-downloads/counterfeit-delistings\\_2021-6-1\\_2022-5-31\\_en\\_v1.pdf](https://storage.googleapis.com/transparencyreport/report-downloads/counterfeit-delistings_2021-6-1_2022-5-31_en_v1.pdf); Meta, Transparency Center, Intellectual Property: Proactive enforcement, <https://transparency.fb.com/reports/intellectual-property/proactive-enforcement/facebook/>; Amazon, Brand Protection Report, <https://brandservices.amazon.com/progressreport>.

<sup>28</sup> See, e.g., WordPress.com, Intellectual Property, <https://transparency.automattic.com/wordpress-dot-com/intellectual-property/intellectual-property-2022-july-1-dec-31/>; Tumblr, Copyright and Trademark, <https://transparency.automattic.com/tumblr/copyright-and-trademark/copyright-and-trademark-2022-jul-1-dec-31/>.

<sup>29</sup> Karl Bode, *Studies Keep Showing That the Best Way to Stop Piracy Is to Offer Cheaper, Better Alternatives*, Vice (Feb. 26, 2019), [https://www.vice.com/en\\_us/article/3kg7pv/studies-keep-showing-that-the-best-way-to-stop-piracy-is-to-offer-cheaper-better-alternatives](https://www.vice.com/en_us/article/3kg7pv/studies-keep-showing-that-the-best-way-to-stop-piracy-is-to-offer-cheaper-better-alternatives).

<sup>30</sup> See, e.g., Scoop Media, *Netflix is killing content piracy* (Feb. 26, 2019), <https://www.scoop.co.nz/stories/BU1902/S00685/netflix-is-killing-content-piracy.htm>; Copia Institute, *The Carrot Or The Stick? Innovation vs. Anti-Piracy Enforcement* (Oct. 8, 2015), <https://copia.is/library/the-carrot-or-the-stick/>.

<sup>31</sup> Department of Commerce Internet Policy Task Force, *Copyright Policy, Creativity, and Innovation in the Digital Economy* (July 2013), <http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>, at 77.

**14. Please share your thoughts on what more the USPTO or government and private parties can do to ensure entities, including under-resourced individuals and small businesses, can readily enforce their intellectual property rights against counterfeited or pirated goods. What other solutions have you seen or can you envision?**

Contemplating how under-resourced individuals and small businesses can enforce their IP rights should also include protecting creators and users exercising their fair use rights from overzealous rightsholders and brand owners. Policymakers should also consider how smaller and under-resourced online services can be in compliance with Section 512 and still face ruinous litigation costs for allegedly infringing user-generated content.<sup>32</sup>

Respectfully submitted,

Ali Sternburg  
Vice President, Information Policy  
Computer & Communications Industry Association (CCIA)  
asternburg@ccianet.org

August 23, 2023

---

<sup>32</sup> CCIA, *Copyright Reform for a Digital Economy* (2015), <https://ccianet.org/wp-content/uploads/2015/08/Copyright-Reform-for-a-Digital-Economy.pdf>, at 15 (“The Story of Veoh”). See also Joshua Metzger, *Winning But Losing: Lessons From An Internet StartUp*, Techdirt (Apr. 24, 2013), <https://www.techdirt.com/2013/04/24/winning-losing-lessons-internet-startup/>.