



The Honorable John Kerry
Secretary, U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Penny Pritzker
Secretary, U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

The Honorable Michael Froman
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Secretary Kerry, Secretary Pritzker and Ambassador Froman:

We write to express our strong opposition to the European Commission's recent copyright reform proposal¹ and ask that you work with EU policymakers to avoid what would be a disastrous outcome for startups, creators, and users on both sides of the Atlantic. Our companies were built in reliance on long-standing principles of openness and limited liability that have governed the development of the internet in both the EU and U.S. The EC's proposal to force online platforms to proactively police their users' conduct by purchasing content filtering technology would raise the cost of operating an online platform startup to untenable levels, diminishing investment capital for new companies and threatening to bankrupt existing portals. As startups like ours are responsible for virtually all new net job growth in this country,² the negative impact this new obligation would have on innovation and economic growth is difficult to overstate.

Under current law in the U.S. and the EU, online platforms that respond promptly when notified of user copyright infringements by disabling access to the specifically identified infringing material cannot be held economically liable for such infringements. This limitation on intermediary liability has helped drive significant capital into the internet economy and facilitated the growth of innumerable small internet-enabled startups.

Just as critically, under existing rules, startups are not obliged to affirmatively police their platforms for infringing activity, since portals—often fledgling startups—are in no position to know who owns particular content, whether the use of that content is authorized, or whether copyright exceptions sanction the use of content independent of the copyright holder's authorization. Policymakers correctly determined that these questions are best answered by the content owners themselves. Startups simply cannot afford to spend their limited resources identifying potentially infringing content and making judgment calls on whether or not to remove that material. That the content monitoring obligation the EC seeks to impose on startups comes in the form of a requirement to implement automated filtering tools rather than human review does not make the proposal any less financially ruinous. YouTube spent more than \$60 million building its Content ID filtering technology. No sensible investor would fund a company that needed to set aside even a fraction of

¹ <https://ec.europa.eu/digital-single-market/en/news/proposal-directive-european-parliament-and-council-copyright-digital-single-market>

² Kauffman Foundation, "The Importance of Young Firms for Economic Growth," <https://goo.gl/hmtjon>

that amount to pay for a filtering system. Indeed, a survey of venture investors across the EU and U.S. found that a majority of investors reported a disinclination to fund online portals if new laws required those companies to proactively filter user uploads.³

Setting aside the cost, content filtering tools are ineffective for many platforms, as they are only available for a narrow range of media, though the EC's proposed rules would apply to all user-generated content platforms. For sites that allow users to sell physical goods or publish remixed content, no filtering tool will be able to accurately identify alleged infringements. Even for media that existing filtering tools can theoretically process, these systems are prone to failure. Despite its large investment in Content ID, YouTube still had to hire a team of employees to deal with false identifications. No startup could bear such costs.

The EC's proposals represent a dangerous shift away from the long-standing, commonsense policies that allowed the internet to become the dominant economic and cultural medium of our time. We encourage you to work on behalf of the U.S. startup ecosystem and push back against a new copyright regime that would only serve to diminish investment, job creation, and creative output. If Europe adopts these dangerous policies targeting online startups, it will chill innovation both in the EU and the U.S. to the detriment of economic and cultural growth throughout the world.

³ Engstrom, Evan, Matthew Le Merle, and Tallulah Le Merle, "The Impact of Internet Regulation on Early Stage Investment," Fifth Era and Engine, (November 2014). <https://goo.gl/xTDA9D>