



December 16, 2016

The Honorable John Kerry
United States Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Penny Pritzker
United States 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 (EC) recent copyright reform proposal¹ and ask that you work with EU policymakers to avoid harming startups, creators, and users on both sides of the Atlantic.

Our companies were built 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 or building content filtering technology—which has, at best, questionable effectiveness—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. Since startups are the primary driver of new net job growth,² this would have a tremendous negative impact on economic growth in both the U.S. and Europe.

Under current law in the U.S. and the EU, responsible online platforms that respond promptly when notified of user copyright infringements by disabling access to specifically identified infringing material cannot be held economically liable for such infringements. This limitation on intermediary liability has placed responsibility for expression where it belongs, helped drive

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

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

significant capital into the internet economy, and facilitated the growth of innumerable small, internet-enabled startups, while also respecting the rights of content holders.

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 do not have the knowledge or resources to accurately identify potentially infringing content and make judgement 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 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—a sum that far exceeds the annual revenue of many startups. No sensible investor would fund a company that needed to set aside even a fraction of 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. Such tools are only available for a narrow range of media (e.g., video and music); yet, the EC’s proposed rules would apply to *all* user-generated content platforms. For sites that allow users to sell physical goods, distribute remixed content, or publish blogs, no filtering tool will accurately identify alleged infringements. The EC’s proposal would nevertheless force these platforms to spend significant sums of money on technology with little to no applicability to their businesses. And, even for media that existing filtering tools can theoretically process, these systems are both underinclusive and overinclusive. That is, automated filtering systems are technically incapable of accurately identifying and removing many types of copyrighted content, and also routinely block original material and non-infringing uses. Indeed, despite its large investment in Content ID, YouTube still had to hire a team of employees to deal with false identifications. Forcing startups to bear such costs would give large incumbents a major regulatory advantage.

The EC’s proposals represent a significant and 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.

³Engstrom, 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>

Sincerely,

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cc: The Honorable Anthony L. Gardner, United States Ambassador to the European Union