

## Why it matters to startups:



Patent quality is essential to innovative, high-tech startups. High-quality patents can be a valuable asset for many emerging companies. Low-quality patents—those that claim things that were already known or that are written in vague, overbroad terms that are difficult to understand—on the other hand lack value and can fuel abusive litigation that harms startups. Unfortunately, many startups will only interact with the patent system in the context of abusive litigation. For example, patent assertion entities—also known as “patent trolls”—use patents to try to coerce startups to take quick settlements, knowing startups cannot afford costly patent litigation. Competitors can also use patent litigation to distract startups and slow down or stall new market entrants. Weak and overbroad patents are especially easy to misuse because they can be asserted against many startups’ basic activities. Startups benefit when the U.S. Patent and Trademark Office (PTO) and the courts weed-out weak and overbroad patents and when they can afford to defend themselves against frivolous or abusive lawsuits.

## Key takeaways:

- Startups need patent laws that protect truly new inventions and prevent the issuance of low-quality patents that stifle innovation.
- Policymakers must focus on patent quality, preserve tools to clear out weak, overbroad, low-quality patents, and foster affordable mechanisms for startups to defend themselves in frivolous or abusive lawsuits.

## What policymakers can do:

Patent law had been improving for startups and innovation. Developments in the past decade had leveled the playing field in litigation and given startups easier and cheaper defenses when weak or overbroad patents were asserted. Policymakers should prioritize patent quality—not falling into the trap of placing quantity over quality—and avoid legislative or policy changes which could upset existing balance or give bad actors more leverage over startups.

### Startup Spotlight on Patents

**TheraTec**  
(Bloomington, MN)  
Tony Hyk, CEO

[TheraTec](#) is a telehealth startup that is improving outcomes and reducing healthcare costs

“[W]e recently had an unpleasant experience with a patent troll—one of these companies that doesn’t really exist anywhere but on paper, and just buys up patents in order to sue people. Earlier this year one sued us, and at the same time sued several of our competitors and suppliers, trying to assert a meaningless patent. ...It was a nuisance because we had to pause our development and spend resources defending the meritless suit.

Congress and the PTO should seek ways to improve the quality of U.S. patents and ensure affordable ways to weed-out low-quality patents. For example, the 2011 America Invents Act created inter partes review, a procedure through which the PTO can take a second look at patents and cancel those that never should have been granted. Around the same time, the Supreme Court decided key cases confirming that abstract ideas performed on a computer are not patent eligible and that startups cannot be sued for infringement in far-flung corners of the country. Despite these successes, in the past few years some have sought to overturn improvements. Policymakers should instead preserve progress made over the past decade and further endorse tools that promote quality and reduce costs of defending against costly patent lawsuits.

## Why it matters to startups:

Many startups encounter user-generated content—for example, digital services where artists connect with fans, podcasting sites, and website infrastructure companies. These companies and the users and creators who rely on them interact with the copyright system on a daily basis. Startups rely on Section 512 of the Digital Millennium Copyright Act (DMCA), which provides the notice-and-takedown process for resolving claims of online copyright



infringement. This framework strikes a valuable balance and is especially important to startups, because the law provides certainty and guards against mere threats of unaffordable legal exposure putting startups out of business.

### Key takeaways:

- Changing the framework for online copyright claims would have an outsized, negative impact on startups that encounter user-generated content.
- Mandating filtering technology—which is very expensive and inherently error-prone—would create high costs and risks for startups without catching much (if any) more infringement.
- Policymakers should protect Internet users and Internet-enabled creators against abusive copyright threats and improper takedown notices.

Startups, Internet users, and Internet-enabled creators also face abusive copyright litigation threats. For example, “copyright trolls” threaten to sue in the hopes of coercing startups, users, and creators to take quick settlements. Companies routinely receive improper takedown notices from purported rightsholders using DMCA claims to remove non-infringing content they do not like. And the threat of steep statutory damages and imbalanced procedures for resolving infringement claims compound these problems.

## What policymakers can do:

Congress should avoid decreasing certainty or imposing unwarranted cost and risk on emerging Internet companies, especially considering that these startups infrequently encounter infringing content. Today’s startups need the same legal frameworks afforded to their predecessors in order to compete. Larger Internet companies have the resources to absorb increased cost and risk. Startups do not.

Policymakers should also avoid requiring Internet companies to proactively filter all user posts to try to detect infringement. This would not catch much (if any) additional infringement but it would impose a lot of new costs and risks and create substantial barriers to entry.

Policymakers should adopt changes to combat abuse of the current copyright system. For example, the law should discourage the sending of improper takedown notices. Congress should improve the recently-enacted process for resolving so-called “small claims,” so that startups and users accused of infringement are afforded basic protections that are prerequisite to fair court proceedings. And policymakers should consider ways to restore balance to the overall copyright system and avoid giving bad actors even more leverage over startups, Internet-enabled creators, and everyday Internet users.



### Startup Spotlight on Copyright

**6AM City**  
(Greenville, SC)  
Ryan Heafy, COO

[6AM City](#) is a hyper-local media company focused on activating communities

"Put simply, one of the biggest liabilities for our company would be changes in how copyright is handled for online content. . . . We would be concerned if copyright law made it too difficult to share content, and if the law made it difficult or impossible to write a blog and comment on, or link to, other material. We are at a happy medium with copyright law right now."