Why it matters to startups:

Many startups encounter user-generated content—for example, digital services where artists connect with fans, e-commerce platforms, podcasting sites, and website infrastructure companies. These companies and the users and creators who rely on them routinely interact with the copyright and trademark systems. And these startups rely on balanced legal frameworks—like Section 512 of the Digital Millennium Copyright Act (DMCA) and the judicial decision in Tiffany v. eBay—which ensure companies should not automatically be held liable for alleged infringement by users that the company has no knowledge of or direct involvement in. In practice, companies establish notice-and-takedown processes for resolving allegations of online infringement, removing accused content upon receipt of a complaint. These frameworks strike a valuable balance that is especially important to startups, because the law provides certainty and guards against mere threats of unaffordable legal exposure putting startups out of business. Startups, Internet users, and Internet-enabled creators also face abusive copyright litigation threats and improper trademark takedowns. For example, companies routinely receive takedown requests from purported rightsholders seeking 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—stifling speech, economic opportunity, and creativity online.

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 monitor or filter all user posts to try to detect infringement. This would not catch much (if any) additional infringement, but 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 systems. For example, the law should discourage the sending of improper takedown notices. And policymakers should consider ways to restore balance to the overall copyright and trademark systems to avoid giving bad actors even more leverage over startups, Internet-enabled creators, and everyday Internet users.

Key takeaways:

● Changing the framework for online copyright and trademark 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 threats and improper takedown notices.

Startup Spotlight

hobbyDB
(Superior, CO)
Christian Braun, CEO

hobbyDB is an online collectibles database.

“We follow the rules laid out by the DMCA, and the structure of that system has worked well for us. We’ve only had one party make a couple of complaints. These complaints were valid and were properly dealt with on our platform. We wish that there was a similar straightforward process for trademark issues. Ideally the DMCA would just be extended to cover alleged trademark infringements as well. It would make it much easier to run a user-generated content business.”