

March 29, 2022

The Honorable Richard Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
United States Senate
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairmen Durbin and Leahy and Ranking Members Grassley and Tillis,

We write to emphasize how critical it is that balanced, certain laws continue to govern allegations of copyright infringement online—and to express our concern with proposed changes to the Digital Millennium Copyright Act (DMCA) that would make it harder for us and businesses like ours to innovate and succeed. As startups, online service providers, investors, and support organizations, we have devoted ourselves to helping people do new and great things online. We are creating unique online communities; we are providing platforms for all forms of informational, educational, and expressive content; and we are allowing creators and small businesses to reach untapped markets in novel ways.

All of that is rooted in laws like § 512 of the DMCA. Yet proposals like the *Strengthening Measures to Advance Rights Technologies (SMART) Copyright Act of 2022* would undermine the certainty created by the DMCA. As policymakers consider any amendments to copyright law, even ones that might seem minor, it is absolutely vital that you take the time to understand the realities we face—and to build laws that work for us and our communities across the country (and in your states), instead of advancing proposals that work against us.

Section 512 of the DMCA gives us certainty we need to innovate, launch, and compete. It allows us to remove alleged copyright infringement when we find out about it. While such infringement happens to us relatively rarely (if ever), the DMCA helps us avoid complex—potentially ruinous—litigation over infringement we had no knowledge of or involvement in. Indeed, we cannot know the full universe of copyrighted works, and we cannot accurately identify infringement on our own. For those of us just starting out, we cannot review every user’s posts, hire armies of content moderators, build content filters, or spend to license and maintain imperfect technology. And for those of us that are more established, laws like the SMART Act would have made it difficult—if not impossible—for us to become what we are today.

Changing the DMCA could easily make our work too expensive, difficult, or risky. But the SMART Act would do just that. For example, the bill would authorize the Copyright Office to mandate copyright upload filters. It would create ambiguous legal terms, like “relevant service providers,” that we would have to wade through during drawn-out lawsuits few of us could afford. It would generate a complex maze of “standard” and “designated” technical measures that apply to different companies in different ways—we would have to figure out which ones we had to adopt and if we got it wrong we would be back

in court. This is all setting aside any actual copyright infringement, because the bill would allow large rightsholders to sue us just over whether we were using the right technologies.

Finally, it is not just about our businesses. Many of us know, first-hand, how improper copyright takedowns force our user's non-infringing posts offline. Over-reliance on technology promises to exacerbate those concerns, stripping your constituents of expressive, creative, and economic opportunities. With stakes this high, we hope you will reconsider the SMART Act and instead focus on pro-innovation proposals that can expand opportunities for us and our users.

Sincerely,

Arkatecht

CitiQuants Corp

Cloudflare, Inc.

Concert Archives

Digital4Startups Inc.

Etsy

Gust, Inc.

Hacom LLC

hobbyDB

iAccess Innovations

IncentiLock

Lakeshore Advantage

Niolabs

Onfleet, Inc.

Orange County Startup Council

OZVP V LLC

Patreon

PIE (Portland Incubator Experiment)

Pinterest

Redbubble

Reddit

Routegy

TeacherCoach

TheraTec, Inc.

Vimeo

cc: Honorable Members of the Senate Committee on the Judiciary