

COPYRIGHT AND TRADEMARK

Why it matters to startups:

For startups that encounter user-generated content—digital services where artists connect with fans, e-commerce platforms, podcasting sites, and website infrastructure companies—existing balanced legal frameworks, including Section 512 of the Digital Millennium Copyright Act (DMCA) and the judicial decision in *Tiffany v. eBay*, ensure that startups aren't automatically held liable for alleged infringement by users. These frameworks strike a valuable balance that is especially important to startups, because the law provides certainty and guards against mere threats or unaffordable legal exposure putting startups out of business. Startups also benefit from other existing balanced intellectual property frameworks, including the fair use doctrine of copyright law, which, for instance, protects copying of application programming interfaces (APIs) necessary to build software that is interoperable with other systems.

KEY TAKEAWAYS:

- Startups need balanced intellectual property frameworks that encourage innovation and interoperability and limit their exposure to costly litigation over intellectual property.
- 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.

What policymakers can do:

Congress should avoid decreasing certainty or imposing unwarranted costs and risks 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. 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 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.



STARTUP SPOTLIGHT

Aravenda

(Vienna, Va.)

Carolyn Thompson, Founder & CEO

Aravenda provides enterprise software for consignment stores, pawn shops, estate sales, online sellers, and other resellers handling third-party items.

"I can see where brands who have a lot of money would want to have screening [for trademark counterfeits] in place and be able to afford it. But the small businesses can't—there are 26.5 million...resellers in the United States alone that are reselling somebody else's stuff. They're not in the business of figuring out and documenting where exactly each item came from."

