Library of Congress, U.S. Copyright Office
Notice of Inquiry:
Standard Technical Measures and Section 512
Docket No. 2022-0002
May 27, 2022

Google appreciates the opportunity to submit comments in connection with the U.S. Copyright Office (the "Office") Notice of Inquiry on Standard Technical Measures and Section 512. Google employs a range of voluntary technical measures across our products to identify and/or protect copyrighted works. All of these measures have been adopted voluntarily and iteratively over time, in cooperation with a broad spectrum of rightsholders and creators, based on our mutual interest in mitigating online infringement and supporting creativity and access to information. Forcing the development of standard technical measures ("STMs") will only impede the development of new voluntary technical measures. Based on this experience, we urge the Office to recommend against changes to Section 512(i).

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Question 1. Are there existing technologies that meet the current statutory definition of STMs in section 512(i)? If yes, please identify. If no, what aspects of the statutory definition do existing technologies fail to meet?

No. Under the statute, to qualify as a "standard technical measure," the technical measure must have been developed "pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standard process," must be available to any person on reasonable and non-discriminatory terms, and must not impose "substantial costs" on Online Service Providers ("OSPs"). We are not aware of any technology that has been developed in this way. This is not by accident.

The most effective voluntary technical measures, like YouTube's copyright management suite and Google's demotion signal in Search, are developed in a way that is unique and custom with respect to both the type of online service and the type of copyrighted work to which they are ultimately applied. Because of the large number of voluntary technical measures being individually developed, we do not expect any need for STMs to emerge.

Question 2. What has hindered the adoption of existing technologies as STMs? Are there solutions that could address those hindrances?

Because a large number of effective, voluntary initiatives have flourished, development of STMs is unlikely and unnecessary. The market has produced a wide range of accessible rights management tools for rightsholders of all types and sizes. Since 1998, a rich industry has grown up around online content and brand protection. Google's own content protection tools for rightsholders are numerous. They include YouTube's Content ID & Copyright Match tools; bulk reporting programs for trusted notifiers on YouTube, Search, and Drive; an algorithmic demotion signal for suspected "pirate sites" in Search; a rolling cipher to backstop YouTube's community guideline against downloading videos; and hash-matching to prevent public sharing of previously claimed infringing files on Drive. Because there is such a broad and diverse set of OSPs of all different sizes and types, a one-size-fits-all approach will not work and would stifle further innovation in this space.

Question 11. Adoption through rulemaking:

(a). What role could a rulemaking play in identifying STMs for adoption under 512(i)?
(b) What entity or entities would be best positioned to administer such a rulemaking?
(c) What factors should be considered when conducting such a rulemaking, and how should they be weighted?
(d) What should be the frequency of such a rulemaking?
(e) What would be the benefits of such a rulemaking? What would be the drawbacks of such a rulemaking?

As we detailed above, no STMs exist today because of the diversity of services, voluntary technical measures, and content online. When the DMCA was enacted, only a few online services existed. At the time, it may have seemed that a standards-based approach held the most promise for developing effective rights management and identification measures. As digital markets and technologies multiplied and diversified, however, it became clear that such an approach was both impractical and unnecessary because online services, copyright protection companies, and rightsholders began to develop a wide variety of technical measures to fit their evolving mutual needs. The voluntary, flexible, and organic nature of this cooperation enables stakeholders to innovate in a way that responds to the needs of rightsholders, protects the rights of users and creators, and integrates effectively with the complex architecture of a variety of products and services.

Congress should continue to allow space for services and rightsholders to work together voluntarily to develop and evolve copyright management tools. These tools are effective precisely because they are tailored to specific services and specific types of content. A rulemaking would not only fail to satisfy the requirements detailed in Section 512(i) to develop STMs, it would in fact deter progress in the development of voluntary initiatives and innovative

tools to identify and protect copyrighted works. As a result, we don't believe there is any role or need for a rulemaking at this time.

Question 12. Alternatives: Are there alternative approaches that could better achieve Congress's original goals in enacting section 512(i)?

Encouraging continued investment in voluntary technical measures and ongoing collaboration between stakeholders to solve new challenges remains the best approach.

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Google appreciates the opportunity to share its perspective and experience, and we look forward to continued engagement with the Office on this topic.