

May 27, 2022
Via Regulations.gov
United States Copyright Office
Library of Congress

**Re: Docket No. 2022-2 Notice of Inquiry
Standard Technical Measures**

Independent Film & Television Alliance (IFTA) represents independent production and distribution companies, which invest in and produce most of the film and television content in the U.S. IFTA Members are Main Street USA small business owners who reside, employ, finance, and produce commercially and creatively successful films and television programming. IFTA appreciates the opportunity to provide the views of independent film producers and distributors and has been active in the important public consultations regarding this Federal Register Notice¹ regarding Standard Technical Measures (“STM”) provided for under Section 512(i), as well as the USCO led consultation about technical measures in general.

Question 1 – *Are there existing technologies that meet the current statutory definition of STMs in Section 512(i)? If yes, please identify.*

As a threshold matter, the designation of a Standard Technical Measure does not change an OSPs' obligations to act expeditiously to a Notice of infringement for each infringing file so massive online piracy will continue even if STMs are adopted.

While the underlying technology of a STM may help the rightsholder identify unauthorized copies (or manage for other purposes), designating this type of technology a STM would still not ensure that small business can access the STM process and the STM once adopted, nor does the current Law allow a rightsholder to petition for designation and use of an already deployed technical measure such as Google's Content ID. Content ID and similar tools developed by individual platforms or OSPs always will remain outside the system because there is no incentive or consequence for OSPs to have that technology declared a STM, and no affirmative obligation for such measures deployed by OSPs to be available to all rightsholders.

Also, the current Law is unclear as to whether general technology that exists today such as fingerprinting, identifying illegal copies, or blocking the upload of illegal full-length copies is within the definition of “Standard Technical Measure” and could be the subject of a petition for a STM and adoption as such.

Question 3 regarding two processes for adopting STMs formal and informal.

As a threshold matter, it is hard to predict how long a timeline, and the cost to participate in a voluntary STM process because it has never been utilized.

¹ Federal Register Vol. 87, No. 81 at 25049 (Wednesday, April 27, 2022) <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-08946.pdf>

IFTA believes that any process must have the weight of government behind it and a formal process is the most appropriate in adopting a Standard Technical Measure. As a practical matter, a formal process would require that the government bear a substantial portion of the costs of a STM process, and that would in turn provide a better opportunity for participation by independent creators and companies.

Independent rightsholders are unlikely to have the resources to develop or gain consensus behind a STM, or meaningfully participate in a complex, technical and costly process currently required for a STM's adoption. USCO overseeing a formal STM process would provide rightsholders with the benefit of transparency and insight inherent in a government facilitated rulemaking procedure.

Once a "voluntary" STM is adopted, it is unclear what government oversight is available to ensure access to the STM for "any person on reasonable and nondiscriminatory terms". The government should ensure that independent companies and creators can access adopted STMs as copyright protection tools.

Question 5 - Consensus

Section 512(i)(2)(A) states that a STM must be developed pursuant to a "broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process". IFTA believes that a formal process led by USCO would ensure the broadest possible input into an expensive technical and legal process. Small business owners and individual creators are hit hard by the lack of tools available to them for copyright protection and the government must ensure their input and access to all facets of the discussions and formal adoption process.

IFTA also believes that the word "voluntary" in this provision should not be used by OSPs to escape the STM process altogether.

Question 6 – Availability

Section 512(i)(2)(B) states that a STM must also be available to "any person on reasonable and nondiscriminatory terms". IFTA believes that any technical measure that can be used to protect copyright and is provided to some rightsholders, should be provided to any rightsholder. Therefore, any designated Standard Technical Measures adopted through a government led process must require that all rightsholders who want to access the STM can do so. Neither technical measures, nor an adopted STM should be doled out by OSPs solely to its affiliated or favored rightsholders.

Question 10 - Obligations with respect to Section 512, and specifically (a) Is the loss of the Section 512 safe harbors an appropriate remedy for interfering with or failing to accommodate STMs

The need for copyright protections tools for U.S. independent producers and distributors to combat massive online piracy and protect their investment in U.S. produced content has never been greater. The availability of a "voluntary" STM process pursuant to Section 512(i) has not resulted in the adoption of any STM. IFTA believes that if there are no consequences for OSPs who do not comply with this provision of Copyright Law, such as loss of their safe harbor from copyright infringement liability, there is no incentive for the OSPs to voluntarily participate in a STM process and provide reasonable access to all copyright owners. Conversely, since the dormant STM process is currently "voluntary", the consequence of loss of safe harbor would be another reason why OSPs would not engage in a STM process. Unless good faith participation in a STM's process is

mandatory, or a loss of immunity from copyright infringement served as a consequence for lack of participation in adoption of STMs, the disincentives to the OSPs to participate in development and deployment of such tools will continue keep the STM process dormant while the reality of massive infringement continues to damage the U.S. Independent film and television industry.

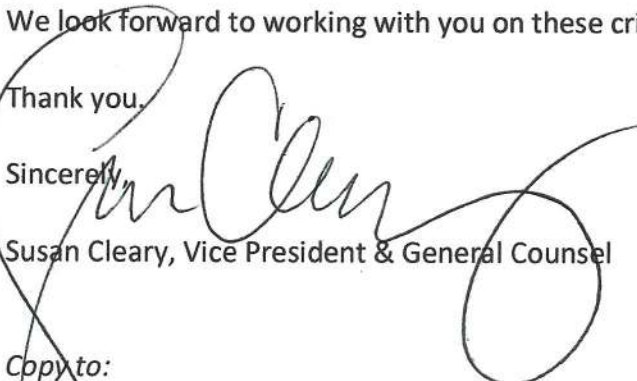
Conclusion

IFTA believes that government should play an important role in a formal process ensuring that a Standard Technical Measure is adopted by all stakeholders and reasonable and nondiscriminatory access is provided to all rightsholders. It also can ensure that a STM and access to it are regularly reviewed. The government, including the United States Copyright Office, and the Library of Congress, has the expertise and resources needed to review copyright protection technology and measures already deployed in the online marketplace, as well as those technical measures being developed, and may impact the future digital marketplace. The government can communicate and catalog this information and make it available so that all rightsholders understand what measures are being employed and how those measures protect copyright. The government should convene and facilitate meaningful discussions amongst and gather information from all stakeholders with respect to these copyright protection measures so that there is transparency. Most importantly, while there are “voluntary” technological measures and systems in place such as Google’s Content ID to block uploads of illegal copies of copyrighted works, independent rightsholders have been completely shut out of those copyright protection tools.

We look forward to working with you on these critical issues.

Thank you.

Sincerely,


Susan Cleary, Vice President & General Counsel

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Jean M. Prewitt, President & CEO

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