



September 29, 2020

The Honorable Jerrold Nadler  
Chairman, House Judiciary Committee

The Honorable Jim Jordan  
Ranking Member, House Judiciary Committee

Dear Chairman Nadler and Ranking Member Jordan,

We write to express our appreciation for your attention to the Copyright Office's long-awaited report on Section 512 of Title 17, United States Code. As the organization representing the major music streaming services, DiMA participated in the Copyright Office's roundtables during the development of the report, and in the roundtables held by your offices over the summer. We are grateful for your commitment to hearing the voices of all stakeholders and taking their positions into account as you continue to review the Office's report.

The Digital Millennium Copyright Act, and Section 512 in particular, provides a conceptual framework that allows internet companies to respect copyright while also enabling creators of all types to develop, distribute, and monetize their works in a variety of ways. As technology and businesses have evolved with the existing, settled law, stakeholders from all sides have been able to collaborate and drive revenues back into the arts industries.

The legal certainty created by the passage of Section 512 and the courts' interpretation of the law in the twenty-plus years since then has fostered innovation. DiMA members have been able to build different business models to bring digital music to consumers based in part on this settled law. Changes to the legal landscape could have broad impact on existing businesses and the next innovations, which is why we urge particular caution when reviewing this law.

While we recognize the work the Copyright Office put into developing the Section 512 report, we are concerned by the Office's statements that seem to call into question existing case law, including on repeat infringer policies and the Section 512(c) safe harbor. For example, courts have provided significant insight into the specific contours of the law's repeat infringer requirements. Technology companies have long relied on those insights and decisions. Specific to the Section 512(c) safe harbor, the Copyright Office concluded that it has been interpreted too broadly and that services that modify content or promote consumption of certain content may not be eligible. That conclusion runs directly in opposition to relevant case law.

Furthermore, the Copyright Office's Section 512 report discusses "Knowing Misrepresentation" and the abuse of notice and takedown. Abuse of notice and takedown plagues the entire ecosystem, from rightsholders to online service providers (OSPs). Section 512, as currently written, allows OSPs the flexibility to develop tools that make sense for their products and systems, and OSPs have worked collaboratively with rightsholders to minimize abuse. However, problems do remain in this area, requiring diversion of resources from legitimate takedown requests. DiMA remains committed to engaging with stakeholders to work towards solutions to this challenge.

As you continue your review of the current law and the Copyright Office's report, we firmly believe any changes to the current legal regime must be approached with caution, input from all stakeholders, and due consideration of the existing business models and technology that benefit all stakeholders (including internet platforms, rightsholders, and users) today.

Once again, we thank you for your commitment to ensuring all voices are heard and for the open process in which you are reviewing the existing law.

Sincerely,

Digital Media Association