Senate Committee on the Judiciary
Subcommittee on Intellectual Property

"Senate Judiciary Subcommittee on Intellectual Property
116th Congressional Report"

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Senator Tillis- Senate Judiciary Subcommittee on Intellectual Property
116th Congressional Report

Senator Thom Tillis (R-NC) continued to deliver results on behalf of North Carolinians and Americans across the country during the 116th Congress. Over the past two years, Senator Tillis led the fight on protecting intellectual property, while introducing legislation to help make much needed improvements to decade's old intellectual property laws. As the Chairman of the Senate Judiciary Subcommittee on Intellectual Property, Senator Tillis held seventeen hearings, sent dozens of oversight and policy letters to agencies, and led legislative efforts to address the nation's most pressing intellectual property issues. Senator Tillis believes it is essential to have strong intellectual property protections, but also to help ensure that innovation is encouraged for American entrepreneurs, startups, and businesses.

1. Reviving the Intellectual Property Subcommittee

On February 7, 2019, Senate Judiciary Committee Chairman Lindsey Graham and Ranking Member Dianne Feinstein announced that Senator Tillis would be the Chairman of the Senate Judiciary Subcommittee on Intellectual Property. The subcommittee disbanded in 2007, but Senator Tillis worked diligently to restart it. The subcommittee has jurisdiction over federal intellectual property laws, as well as the United State Patent and Trademark Office, the United States Copyright Office, and oversight of the functions of the federal government as they relate to intellectual property, patents, copyrights, trademarks, and trade secrets.

2. Constituent Meetings

Following the February 2019 restart, Senator Tillis and his staff began stakeholder outreach and meetings, interacting with stakeholders from diverse backgrounds. During 2019, Senator Tillis held over 90 stakeholder meetings, which included small business owners, inventors, creators, entrepreneurs, congressional staff, agencies, and interest groups. Senator Tillis continued the productive meetings in 2020, meeting with over 50 stakeholder groups. Since the start of the COVID-19 pandemic, meetings have been virtual to ensure safety while continuing engagement on the most imperative IP issues facing American creators and innovators.

3. Hearings

Senator Tillis kicked off the first subcommittee hearing on February 26, 2019. The Intellectual Property Enforcement Coordinator (IPEC) Vishal Amin came before the subcommittee to update and answer questions on the 2019 Annual IP Report to Congress. Since the first hearing, Senator Tillis held sixteen additional hearings thus far ranging from oversight to promoting innovation to reviewing patent eligibility to a yearlong review of the Digital Millennium Copyright Act (DMCA).

In 2019, Senator Tillis' primary focus was reforming patent subject matter eligibility. This specific area of intellectual property law is one that Senator Tillis heard from small businesses owners, start-ups, entrepreneurs, and businesses throughout the country. Senator Tillis held three hearings with 45 witnesses that included judges, academics, witnesses from the private sector, and former Patent and Trademark Office directors. The three hearings were very beneficial because they allowed academics, policy specialist, business leaders, and entrepreneurs share their perspective on the issue of patent reform. Under the 2019-2020 section in the appendices, you will find direct links to the full hearings.

In 2020, Senator Tillis shifted his focus to copyright law and, specifically, reviewing the DMCA. The DMCA, which was enacted by Congress in 1998, is the foundational law that governs the relationship between copyright protections and the internet. The DMCA provides online service providers with a limitation on copyright liability if, among other requirements, they take down copyrighted material they learn about and deal with repeat offenders. However, almost everything about the internet changed in the past 22 years and the law simply has not kept pace with technology. Senator Tillis held five hearings thus far, and the last one is set for December 15, 2020. Under the 2019-2020 section in the appendices, you will find direct links to the full hearings.

4. Public Outreach- Press Releases

Senator Tillis approached his role as Chairman of the subcommittee with a focus on what is best for North Carolina, specifically, the IP-based companies that create thousands of high-paying jobs in North Carolina. When it comes to his work on intellectual property issues, Senator Tillis made it a priority to keep North Carolinians updated on his work, accomplishments, hearings, and legislative proposals. Since restarting the subcommittee, Senator Tillis issued a total of 23 press releases on his Senate webpage.

5. Letters

During the 116th Congress, Senator Tillis worked to evaluate the most vital intellectual property issues, reducing red tape, and guaranteeing that innovation and creation are encouraged by our intellectual property laws. Senator Tillis sent over 50 letters during the 116th Congress to multiple agencies, and Congressional leadership. Senator Tillis focused on conducting oversight of the United States Patent and Trademark Office, the Department of Justice, and the United State Copyright Office. During the ongoing COVID-19 pandemic, Senator Tillis also sent letters to both Senate Majority Leader Mitch McConnell and Senate Minority Leader Chuck Schumer to ensure that funding is available to protect the intellectual property of COVID-19 medical research and to help bolster cybersecurity initiatives through grant opportunities.

6. Legislative Proposals

During the 116th Congress, Senator Tillis worked in a bipartisan effort to lead or co-sponsor eleven pieces of legislation that would help to strengthen intellectual property protections, fight counterfeit goods, reform patent eligibility, and improve innovation. You can find the full legislative proposals and co-sponsorships on page 82-83 of the appendix.

7. Conclusion

As Chairman of the subcommittee, Senator Tillis worked in a bipartisan effort with his Senate colleagues to address pressing issues in IP. During the 116th Congress, he worked diligently to ensure agency oversight, conduct hearings, listen to stakeholder input, and take action by proposing legislation. Senator Tillis looks forward to continuing the bipartisan work as Chairman in the 117th Congress.

Appendix

2019 Hearings

On February 26, 2019, Chairman Tillis held a hearing on Examining the 2019 Annual IP Report to Congress. Mr. Vishal Amin came before the committee to discuss what is included in the Annual IP Report. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/examining-the-2019-annual-intellectual-property-report-to-congress

On March 13, 2019, Chairman Tillis held a hearing on the Oversight of the United States Patent and Trademark Office. Mr. Andrei Iancu came before the committee to discuss the operations, programs, and initiatives of the United States Patent and Trademark Office. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/oversight-of-the-united-states-patent-and-trademark-office

On April 3, 2019, Chairman Tillis held a hearing entitled "Trailblazers and Lost Einsteins: Women Inventors and the Future of American Innovation." Ms. Robin L. Rasor, Dr. Barbara Gault, Dr. Patricia E. Bath, and Ms. Sandra K. Nowak came before the committee to testify about the diversity gap between men and women in innovation and patenting. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/trailblazers-and-lost-einsteins-women-inventors-and-the-future-of-american-innovation

On April 30, 2019, Chairman Tillis held a hearing entitled "World Intellectual Property Day 2019: The Role of Intellectual Property in Sports and Public Safety." Various experts from across the Sporting Industry came before the committee to discuss the effects IP laws have on their businesses and how important it is to improve these laws to protect their businesses. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/world-intellectual-property-day-2019-the-role-of-intellectual-property-in-sports-and-public-safety

On June 4, 2019, Chairman Tillis held a hearing entitled "The State of Patent Eligibility in America: Part I." 15 experts in IP policy and Law came before the committee to address issues relating to the unpredictability of the Patent eligibility process. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/the-state-of-patent-eligibility-in-america-part-i

On June 5, 2019, Chairman Tillis held a hearing entitled "The State of Patent Eligibility in America: Part II." 15 experts in IP policy and Law came before the committee to further address issues relating to the unpredictability of the Patent eligibility process. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/the-state-of-patent-eligibility-in-america-part-ii

On June 11, 2019, Chairman Tillis held a hearing entitled "The State of Patent Eligibility in America: Part III." 15 experts in IP policy and Law came before the committee to further address issues relating to the unpredictability of the Patent eligibility process. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/the-state-of-patent-eligibility-in-america-part-iii

On July 30, 2019, Chairman Tillis held a hearing on the Oversight of the United States Copyright Office. Director Karyn Temple came before the committee to provide important updates on the operational and policy activities of the United States Copyright Office. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/oversight-of-the-united-states-copyright-office

On September 11, 2019, Chairman Tillis held a hearing entitled "Innovation in America: How Congress can make our patent system STRONGER." 6 experts in IP policy and Law came before the committee to discuss the Stronger Patents Act and present their personal opinion on the proposed legislation and its effects. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/innovation-in-america-how-congress-can-make-our-patent-system-stronger

On October 30, 2019, Chairman Tillis held a hearing entitled "Promoting the Useful Arts: How can Congress prevent the issuance of poor quality patents?" 6 Academia and private sector experts came before the committee to discuss the U.S Patent system and how to improve the quality of issued patents. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/promoting-the-useful-arts-how-can-congress-prevent-the-issuance-of-poor-quality-patents

On December 3, 2019, Chairman Tillis held a hearing entitled "Fraudulent Trademarks: How They Undermine the Trademark System and Harm American Consumers and Businesses." 5 Academia and private sector experts came before the committee to discuss fraudulent trademarks and their impact on American consumers and businesses. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/fraudulent-trademarks-how-they-undermine-the-trademark-system-and-harm-american-consumers-and-businesses

2020 Hearings

On February 11, 2020, Chairman Tillis held a hearing entitled "The Digital Millennium Copyright Act at 22: What is it, why was it enacted, and where are we now." 8 Academia and private sector experts came before the committee to reevaluate the Digital Millennium Copyright Act (DMCA). You can find the full hearing on: https://www.judiciary.senate.gov/meetings/the-digital-millennium-copyright-act-at-22-what-is-it-why-it-was-enacted-and-where-are-we-now

On March 10, 2020, Chairman Tillis held a hearing entitled "Copyright Law in Foreign Jurisdictions: How are other countries handling digital piracy?" 8 Academia and private sector experts came before the committee to offer testimony about how other countries have been dealing with online copyright infringements. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/copyright-law-in-foreign-jurisdictions-how-are-other-countries-handling-digital-piracy

On June 2, 2020, Chairman Tillis held a hearing entitled "Is the DMCA's Notice-and-Takedown System working in the 21st Century?" 8 Academia and private sector experts came to testify on the value of Section 512 of the Digital Millennium Copyright Act ("DMCA") to users and

creators who rely on it, and to also point out its shortcomings and failures. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/is-the-dmcas-notice-and-takedown-system-working-in-the-21st-century

On July 28, 2020, Chairman Tillis held a hearing entitled "How Does the DMCA Contemplate Limitations and Exceptions like Fair Use?" 9 Academia and private sector experts came to provide testimony regarding how the Digital Millennium Copyright Act (DMCA) contemplates the limitations and exceptions in the Copyright Act, such as Fair Use. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/how-does-the-dmca-contemplate-limitations-and-exceptions-like-fair-use

On September 16, 2020, Chairman Tillis held a hearing entitled "Are reforms to Section 1201 needed and warranted?" The U.S Copyright office, along with a panel of Industry and Academic experts, came before the committee to testify on how section 1201 has worked for copyright owners and to discuss practical implementation of potential reforms. You can find the full hearing on: https://www.judiciary.senate.gov/meetings/are-reforms-to-section-1201-needed-and-warranted

On October 6, 2020, The Subcommittee on Intellectual Property rescheduled their committee meeting due to the Supreme Court Confirmation hearings, but has been rescheduled to December 15, 2020

2019- Press Releases

On February 6, 2019, Sen. Tillis released a press release titled "Tillis & Rep. Flores Introduce Bill to Restore Balance and Integrity to the Patent System." The legislation would help ensure that alternative procedures for challenging drug patents do not tilt the playing field contrary to Hatch-Waxman's design.
You can find the full press release here:
https://www.tillis.senate.gov/2019/2/tillis-rep-flores-introduce-bill-to-restore-balance-and-integrity-to-the-patent-system

On February 7, 2019, Sen. Tillis released a press release titled "Tillis & Coons to Lead Senate Judiciary Subcommittee on Intellectual Property." This release announced that Senator Thom Tillis (R-NC) and Chris Coons (D-DE) were selected to serve as Chairman and Ranking Member of the Senate Judiciary Subcommittee on Intellectual Property. You can find the full press release here:https://www.tillis.senate.gov/2019/2/tillis-coons-to-lead-senate-judiciary-subcommittee-on-intellectual-property

On February 28, 2019, Sen. Tillis released a press release titled "Tillis & Coons Hold First Senate Judiciary Subcommittee on Intellectual Property Hearing." The Senate Judiciary Subcommittee on Intellectual Property, held their first subcommittee hearing of the 116th Congress to examine the 2019 Annual Intellectual Property Report to Congress. You can find the full press release here: https://www.tillis.senate.gov/2019/2/tillis-coons-hold-first-senate-judiciary-subcommittee-on-intellectual-property-hearing

On April 2, 2019, Sen. Tillis released a press release titled "Tillis, Klobuchar & Schumer Introduce Bipartisan IP Legislation to Allow Federal Trademark Protection for State and Local Flags and Symbols." The FLAG Act would amend the Lanham Act, the federal trademark law, to allow governmental entities to obtain federal trademark registration for their flags, insignias, and seals at the USPTO.
You can find the full press release here: https://www.tillis.senate.gov/2019/4/tillis-klobuchar-schumer-introduce-bipartisan-ip-legislation-to-allow-federal-trademark-protection-for-state-and-local-flags-and-symbols

On April 10, 2019, Sen. Tillis released a press release titled "Tillis & Coons Send Bipartisan Letter To USPTO to Raise Concerns About Serial Attacks on Patent System." Sen. Tillis and Sen. Coons sent a bipartisan letter to the Director of the U.S. Patent and Trademark Office Andrei Iancu about abuse of the Inter Partes Review (IPR) process in the form of "serial" petitions. You can find the full press release here: https://www.tillis.senate.gov/2019/4/tillis-coons-send-bipartisan-letter-to-uspto-to-raise-concerns-about-serial-attacks-on-patent-system

On April 17, 2019, Sen. Tillis released a press release titled "Sens. Tillis and Coons and Reps. Collins, Johnson, and Stivers Release Section 101 Patent Reform Framework." The bipartisan and bicameral framework on Section 101 comes just months after Senators Tillis and Coons revived the Senate Judiciary Subcommittee on Intellectual Property. You can find the full press release here: https://www.tillis.senate.gov/2019/4/sens-tillis-and-coons-and-reps-collins-johnson-and-stivers-release-section-101-patent-reform-framework

On June 19, 2019, Sen. Tillis released a press release titled "Tillis & Coons Press Federal Agencies To Do More To Combat Intellectual Property Theft." Sen. Tillis and Coons sent letters to the DOJ, CBP, and the United States Copyright Office seeking additional information on their ongoing efforts to combat intellectual property infringement that harms American businesses and consumers, as well as our nation's larger innovation economy. You can find the full press release here:https://www.tillis.senate.gov/2019/6/tillis-coons-press-federal-agencies-to-do-more-to-combat-intellectual-property-theft

On July 26, 2019, Sen. Tillis released a press release titled "Tillis, Hirono, Velázquez & Stivers Introduce Bipartisan, Bicameral Bill to Help Close the Patent Gap Faced by Women, Minorities." The Inventor Diversity for Economic Advancement (IDEA) Act of 2019 would close gaps by directing the United States Patent and Trademark Office to collect demographic data – including gender, race, military or veteran status, and income level, among others – from patent applicants on a voluntary basis. You can find the full press release here: https://www.tillis.senate.gov/2019/7/tillis-hirono-vel-zquez-stivers-introduce-bipartisan-bicameral-bill-to-help-close-the-patent-gap-faced-by-women-minorities

On September 19, 2019, Sen. Tillis released a press release titled "Sens. Tillis and Hirono, Reps. Takano and Foster Introduce Bipartisan, Bicameral Legislation to Improve the Office of Technology Assessment." This bipartisan, bicameral legislation would improve and enhance the existing Office of Technology Assessment (OTA) by making it more accessible and responsive to Members' needs. You can find the full press release here:https://www.tillis.senate.gov/2019/9/sens-tillis-and-hirono-reps-takano-and-foster-introduce-bipartisan-bicameral-legislation-to-improve-the-office-of-technology-assessment

On November 7, 2019, Sen. Tillis released a press release titled "Sens. Tillis and Leahy and Reps. Roby and Jeffries Introduce Bipartisan, Bicameral Legislation Supporting Art Students." This legislation directs the Register of Copyrights to waive the copyright registration fee for winners of the Congressional Art Competition and the Congressional App Competition. You can find the full press release here: https://www.tillis.senate.gov/2019/11/sens-tillis-and-leahy-and-reps-roby-and-jeffries-introduce-bipartisan-bicameral-legislation-supporting-art-students

On December 5, 2019, Sen. Tillis released a press release titled "Tillis, Coons, Cassidy & Hirono Introduce Bipartisan Legislation to Seize Counterfeit Products and Protect American Consumers and Businesses." This bipartisan legislation authorizes U.S. Customs and Border Protection to seize imported merchandise that infringes a design patent and harms U.S. consumers and businesses. You can find the full press release here: https://www.tillis.senate.gov/2019/12/tillis-coons-cassidy-hirono-introduce-bipartisan-legislation-to-seize-counterfeit-products-and-protect-american-consumers-and-businesses

2020-Press Releases

On March 13, 2020, Sen. Tillis released a press release titled "Sens. Tillis and Coons, Reps. Johnson, Collins, Nadler and Roby Introduce Bipartisan, Bicameral Legislation Modernizing U.S. Trademark System." The bill modernizes the U.S. trademark system and provides new procedures that minimize barriers to entry and properly protects both consumers and brand owners. You can find the full press release here: https://www.tillis.senate.gov/2020/3/sens-tillis-and-coons-reps-johnson-collins-nadler-and-roby-introduce-bipartisan-bicameral-legislation-modernizing-u-s-trademark-system

On May 5, 2020, Sen. Tillis released a press release titled "Tillis, Cornyn and Blackburn Urge Administration to Prosecute Chinese Firms Selling Counterfeit PPE." Sen. Tillis joined his colleagues in sending a letter to the Department of Justice and Department of Homeland Security supporting the prosecution of counterfeit personal protective equipment by entities controlled by the Chinese government and Chinese-based entities.
You can find the full press release here: https://www.tillis.senate.gov/2020/5/tillis-cornyn-and-blackburn-urge-administration-to-prosecute-chinese-firms-selling-counterfeit-ppe

On May 14, 2020, Sen. Tillis released a press release titled "Tillis Releases Plan To Hold China Accountable For COVID-19 And Protect America's Economy, Public Health, And National Security." Sen Tillis unveiled a detailed 18-point plan to hold the Chinese government accountable for its lies, deception, and cover-ups that ultimately led to the global COVID-19 pandemic. You can find the full press release here: https://www.tillis.senate.gov/2020/5/tillis-releases-plan-to-hold-china-accountable-for-covid-19-and-protect-america-s-economy-public-health-and-national-security

On May 14, 2020, Sen. Tillis released a press release video titled "Tillis Discusses Plan to Hold China Accountable for COVID-19 and Protect America's Economy, Public Health, and National Security." Sen Tillis released a video discussing his plan to hold the Chinese government accountable for its lies, deception, and cover-ups that ultimately led to the global COVID-19 pandemic. You can find the full press release here: https://www.tillis.senate.gov/2020/5/tillis-discusses-plan-to-hold-china-accountable-for-covid-19-and-protect-america-s-economy-public-health-and-national-security

On May 20, 2020, Sen. Tillis released a press release titled "Tillis, Blumenthal, Cornyn and Sasse: Chinese Government Attempts to Steal COVID-19 Vaccine and Treatment Data A Threat to National Security." You can find the full press release here: https://www.tillis.senate.gov/2020/5/tillis-blumenthal-cornyn-and-sasse-chinese-government-attempts-to-steal-covid-19-vaccine-and-treatment-data-a-threat-to-national-security

On June 18, 2020, Sen. Tillis released a press release titled "Tillis, Colleagues Introduce Bipartisan Legislation to Stop Theft of U.S. Research & Intellectual Property by Global Competitors." The Safeguarding American Innovation Act would help stop foreign governments, particularly China, from stealing American taxpayer-funded research and I.P developed at U.S. colleges and universities. You can find the full press release here: https://www.tillis.senate.gov/2020/6/tillis-colleagues-introduce-bipartisan-legislation-to-stop-theft-of-u-s-research-intellectual-property-by-global-competitors

On July 20, 2020, Sen. Tillis released a press release titled "Tillis and Blumenthal Push for Cyber-Security Funding to Protect COVID-19 Research in Next Relief Package." The letter expresses support for the inclusion of funding in the next stimulus package for cyber-security grants for small American companies engaged in COVID-19 research. You can find the full press release here: https://www.tillis.senate.gov/2020/7/tillis-and-blumenthal-push-for-cyber-security-funding-to-protect-covid-19-research-in-next-relief-package

On July 21, 2020, Sen. Tillis released a press release titled "Tillis Co-Sponsors Bipartisan Legislation to Punish Foreign Companies and Individuals Who Steal U.S. Technology." The Protecting American Intellectual Property Act would require sanctions on foreign individuals and firms found to engage in, benefit from, or enable the significant and serial theft of U.S. intellectual property. You can find the full press release here: https://www.tillis.senate.gov/2020/7/tillis-co-sponsors-bipartisan-legislation-to-punish-foreign-companies-and-individuals-who-steal-u-s-technology

On July 21, 2020, Sen. Tillis released a press release titled "Tillis, Colleagues Introduce Legislation to Deny Visas to Individuals Who Attempt to Steal Intellectual Property from American Companies." This legislation would punish foreign adversaries and deter additional efforts to undermine American leadership through intellectual property theft. You can find the full press release here: https://www.tillis.senate.gov/2020/7/tillis-colleagues-introduce-legislation-to-deny-visas-to-individuals-who-attempt-to-steal-intellectual-property-from-american-companies

On July 30, 2020, Sen. Tillis released a press release titled "Tillis Pushes Colleagues to Hold the Chinese Government Accountable." The legislation co-introduced by Senator Tillis allows Americans to sue China in federal court for its role in causing the coronavirus pandemic. You can find the full press release here: https://www.tillis.senate.gov/2020/7/video-tillis-pushes-colleagues-to-hold-the-chinese-government-accountable

On August 8, 2020, Sen. Tillis released a press release titled "Tillis, Cornyn & Rubio Introduce Legislation to Protect Our Most Valuable Technology from China." The legislation seeks to expand the Committee on Foreign Investment in the United States jurisdiction to include reviews of foreign investments in emerging and foundational technology in the United States. You can find the full press release here: https://www.tillis.senate.gov/2020/8/tillis-cornyn-rubio-introduce-legislation-to-protect-our-most-valuable-technology-from-china

On October 6, 2020, Sen. Tillis released a press release titled “Tillis & Blackburn Introduce Legislation to Protect COVID-19 Vaccine Research from Foreign Hackers.” The legislation would give the President the authority to sanction foreign nations that threaten public health and national security by attempting to steal American research on COVID-19.
You can find the full press release here: https://www.tillis.senate.gov/2020/10/tillis-blackburn-introduce-legislation-to-protect-covid-19-vaccine-research-from-foreign-hackers

Via Electronic Transmission
April 9, 2019

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Director Iancu:

We write to raise an ongoing concern regarding our patent system. We continue to hear from patent stakeholders about abuse of the *inter partes* review process in the form of "serial" petitions. We have heard from both large companies with tremendous innovation pipelines as well as small companies and patent-intensive startups that they are facing extensive serial attacks on their patent portfolios. Rather than addressing "bad patents" as was Congress's intent during the development of the IPR process, these serial petitions appear to reflect coordinated efforts by certain organizations to undermine the strength of our patent system.

You previously committed to Congress and the public to "assess potential improvements to the AIA trial standards and processes" on issues including "the institution decision, claim construction, the amendment process, and the conduct of hearings."[1] As you evaluate and make improvements to the IPR process, we urge you to prioritize solutions to the problem of abusive serial petitions—multiple follow-on petitions attacking the same patent claims and asserting new or modified arguments—either by the same petitioner or different petitioners. These petitions impose an undue burden on patent owners and harm innovation.

The IPR process was envisioned as a second window to evaluate patents and an inexpensive alternative to district court litigation. Abusive serial petitions were not part of that vision. They rob the process of its efficiency and consume resources that inventive companies could otherwise devote to research and development. As we seek to catapult American innovation ahead in the future, we must ensure that abuses in the IPR process are addressed and that duplicative proceedings are avoided.

The USPTO already has authority to combat the problem, and we hope that you will use it. Making the factors in *General Plastic* precedential was a step in the right direction, but the *General Plastic* factors only 'are not sufficient.[2] We have continued to hear concerning reports of abusive serial petitions even after *General Plastic* became precedential, as well as overlapping

[1] *Oversight of the U.S. Patent and Trademark Office Before the S. Comm. On the Judiciary*, 115th Cong. (Apr. 18, 2018) (statement of Andrei Iancu at p. 4), *available at* https://www.judiciary.senate.gov/imo/media/doc/04-18-18%20Iancu%20Testimony.pdf.
[2] *See Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (PTAB Sept. 6, 2017).

instituted proceedings that have not been joined. This not only allows petitioners to have multiple bites of the apple, but also allows them to modify and refine their evidence and strategies after learning the initial arguments of the patent owner.

Given that the USPTO has the authority to address the issues presented by abusive serial petitions, we ask—by no later than May 9, 2019—that you answer the following questions:

1. Will you adopt a presumption that, when the PTAB has already issued a decision on institution with respect to a particular patent, further petitions, whether by the original petitioner or different petitioners, will not be entertained in the absence of compelling circumstances?
2. Will you modify the first *General Plastic* factor to also ask whether a *different* petitioner previously filed a petition directed to the same patent?
3. Will you consider affiliates of a prior petitioner to be the "same petitioner" for all intents and purposes?
4. Will you require an executive management member or owner of the petitioner entity to provide by sworn affidavit a list of all parties that any person in the petitioning entity has collaborated or coordinated with, directly or indirectly, regarding IPR petitions filed against the challenged patent?
5. Will you designate as precedential your recent decision in *Valve Corp. v. Electronic Scripting Products, Inc.*, IPR2019-00062 (PTAB Apr. 2, 2019), which held that "serial and repetitive attacks," even by different petitioners, weigh against institution?

We look forward to your answers to these questions. We believe they offer a roadmap to some possible solutions to this very important issue.

Regardless of your answers to these questions, we urge you to work with stakeholders to further develop and implement meaningful solutions. We look forward to continuing to work with you to improve the AIA trials and procedures, and we welcome your perspective on the specific issues we have cited and the potential remedies that we have suggested. As always, we stand ready to work with you and the entire team at the USPTO to improve the U.S. patent system and the environment for innovation and economic growth in the United States.

If you have any questions, please do not hesitate to contact either Brad Watts with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Sincerely,

Thom Tillis

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

The Honorable Thom Tillis
Chairman, Subcommittee on Intellectual Property
Senate Judiciary Committee
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Christopher A. Coons
Ranking Member, Subcommittee on Intellectual Property
Senate Judiciary Committee
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20510

May 31, 2019

Dear Chairman Tillis and Ranking Member Coons:

I am pleased to deliver this response to the recent congressional inquiries regarding registration and pendency times at the Copyright Office in light of the Supreme Court's decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*.[1] The Copyright Office takes very seriously its responsibility to ensure an efficient and effective registration system for the benefit of the global copyright community, including the general public, and we appreciate the opportunity to provide you with detailed information on our long-standing efforts to continuously improve our practices and processing times. Enclosed for your review are responses to your specific questions, an explanation of registration processes and challenges, and our plans to further reduce application processing times.

The Copyright Office is honored to administer the copyright registration functions for the United States, a responsibility we have held since 1870.[2] Since then, the Copyright Office has registered over 38 million claims to copyright, and has advised Congress and the courts on several

[1] *See* Letter from Hon. Thom Tillis, Chairman, and Sen. Christopher A. Coons, Ranking Member, S. Comm. on Judiciary, Subcomm. on Intellectual Prop., to Karyn A. Temple, Register of Copyrights, United States Copyright Office (Mar. 14, 2019), https://www.tillis.senate.gov/services/files/c633cc00-5326-4e2e-99e7-f5e544fb53f1; Letter from Hon. Jerrold Nadler, Chairman, and Rep. Doug Collins, Ranking Member, H. Comm. on Judiciary, to Karyn A. Temple, Register of Copyrights, United States Copyright Office (Apr. 3, 2019), https://judiciary.house.gov/sites/democrats.judiciary. house.gov/files/documents/0386_001.pdf.

[2] In 1870, Congress consolidated the nation's copyright registration system and placed it in the Copyright Office at the Library of Congress; Congress designated the Copyright Office as a specific department within the Library in 1897.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

Via Electronic Transmission
June 18, 2019

The Honorable William Barr
United States Attorney General
Department of Justice
950 Pennsylvania Ave. NW.
Washington, DC 20530

Dear Attorney General Barr:

On Tuesday, April 30, 2019, the Senate Judiciary Committee, Subcommittee on Intellectual Property held a hearing on the role of intellectual property in the sports business economy. We heard testimony from multiple witnesses about how ongoing intellectual property infringement harms American businesses and consumers, as well as our nation's larger innovation economy. Specifically, witnesses testified about the significant economic losses caused by rampant copyright infringement through illicit streaming.

As technology has advanced, so has the form of digital copyright infringement. Today, consumers can stream both live performances, such as sporting events, and pre-recorded performances, such as movies and television shows, over the Internet without any specialized technical knowledge. Modern streaming technology enables consumers to stream copyrighted content without authorization and without downloading the copyrighted content. Instead, websites and other services use streaming to distribute copyrighted content more quickly and more conveniently than providing downloads. Current copyright law, however, treats streaming as a public performance, which is a misdemeanor, instead of reproduction and distribution, which is a felony.

The significant increase in illicit streaming, often through devices and apps configured specifically to allow for the illicit streaming of copyrighted content, poses important risks to copyright owners. It has significant economic implications for creators and industries that rely on live performances or streaming of original content through advertising sales, licensing agreements with companies that stream the performances, or per-stream fees. The relative ease with which consumers can pirate a live stream undermines the ability of these companies to negotiate fair market rates for their content and ultimately limits their ability to expand production or invest in the creation of new content, which also translates to fewer jobs.

Based on the testimony we received at this hearing, we believe that the Department of Justice should prioritize enforcement actions against entities that provide copyrighted content to stream

without authorization. The Department should consider all tools currently available to effectively deter illicit streaming. Failing to prioritize enforcement could cost the American economy millions of dollars a year.

We also recognize the limitations of the current legal framework related to illicit streaming. Infringers have benefited from technological advances that have outpaced the law, including a "streaming loophole" resulting in only misdemeanor liability for illicit streaming compared to felony liability for reproducing and distributing unauthorized content through traditional download methods available when the federal criminal copyright laws were last revised in 2008. We are concerned that illicit streamers may assume that the DOJ will not take the time to prosecute them for a misdemeanor. Moreover, the penalties for misdemeanor copyright infringement are not sufficient to deter the underlying conduct. We believe that felony penalties would more effectively deter repeat infringers.

Given the significant economic implications related to these issues, we ask that you answer the following questions by July 18, 2019:

1. What enforcement options does the DOJ currently have to prosecute entities who provide copyrighted content without authorization for streaming? Are these enforcement options sufficient to address the growing problem of online piracy through illicit streaming? Please explain.
2. How many criminal investigations, charges, and successful prosecutions for illicit streaming has the DOJ conducted over the last three years?
3. How many criminal investigations, charges, and successful prosecutions for reproducing and distributing copyrighted material through illegal downloads has the DOJ conducted over the last three years?
4. Does the DOJ have adequate resources to prosecute copyright infringement through illicit streaming? If not, will you provide a detailed accounting of the resources needed to adequately prosecute this form of copyright infringement?
5. Do you believe that increasing the penalty for the unauthorized streaming of copyrighted material from a misdemeanor to a felony would better deter illicit streaming?
6. Do you believe the DOJ needs additional legal authority to adequately prosecute large scale criminal enterprises that engage in illicit streaming of copyrighted material?
7. The Internet Corporation for Assigned Names and Numbers (ICANN) recently shut down the "Whois" database in response to the European Union General Data Protection Regulation (GDPR). How has the loss of the "Whois" database affected DOJ or private enforcement of intellectual property rights? How has it affected the ability of rights holders to cooperate with DOJ to enforce intellectual property rights?

We look forward to your answers to these questions. We believe they are important to addressing the significant risks illicit streaming poses to the American sports economy. As always, we are committed to working with you to protect American athletes, sports leagues, fans, and all consumers.

If you have any questions, please do not hesitate to contact either Elliott Tomlinson with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Sincerely,

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

Via Electronic Transmission
June 18, 2019

The Honorable Kevin McAleenan
Acting Secretary, Department of Homeland Security and
Commissioner of U.S. Customs and Border Protection
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW.
Washington, DC 20229

Dear Commissioner McAleenan:

On Tuesday, April 30, 2019, the Senate Judiciary Committee, Subcommittee on Intellectual Property held a hearing on the role of intellectual property in sports and public safety. We heard testimony from multiple witnesses about how ongoing intellectual property infringement harms American businesses and consumers, as well as our nation's larger innovation economy. Specifically, witnesses testified about the significant public safety risks posed by counterfeit goods flowing into the United States from China and the need for increased cooperation between rights holders and the United States Customs and Border Protection (CBP) to address these ongoing public safety concerns.

Based on the testimony we received at this hearing and additional feedback from stakeholders, we are concerned that CBP may not be sharing as much information with industry partners as is allowed and therefore not maximizing the potential for cooperation to prevent counterfeit goods from entering the United States. CBP currently has the authority to stop and seize counterfeit goods that infringe United States trademarks or copyrights before they enter the country and before they reach American consumers. Sometimes, identifying these counterfeit goods requires industry cooperation.

When the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was passed, Congress intended to grant CBP the necessary authority to share key information related to suspected counterfeiting with relevant industry rights holders. To better facilitate trade enforcement, Section 302 of the TFTEA permits the exchange of information between CBP officials and the owners of copyrights and trademarks. Congress intended broad information sharing and specified that – where the Commissioner determines that it would be helpful – CBP "shall provide . . . information that appears on the merchandise and its packaging and labels, including unredacted images of the merchandise and its packaging and labels."[1] Sharing more information

[1] 19 U.S.C. § 1628a(a)(1).

Four years after the TFTEA was signed into law, however, we are concerned by reports that the trademark community is not receiving necessary information on packages and labels. We understand the burdens and challenges CBP faces when it comes to prioritizing and implementing policies to achieve its many responsibilities. Accordingly, we wish to understand how CBP currently implements its authority under Section 302 of the TFTEA.

We encourage CBP to maximize the partnership with industry rights holders by sharing as much information as possible. Important information for CBP to share with rights holders includes photographs of shipping labels, the carrier or postal service, any marking on the package that indicates the platform on which it was purchased (such as Amazon's *Fulfillment By Amazon* number), any description of the goods as listed on the shipping documents, information related to the route of the shipment, the weight of the package, and the declared value of the goods. It is essential for CBP to work with industry rights holders by consistently sharing as much information as possible, and this information will be most useful to CBP and rights holders when provided in a standardized format.

We are also concerned about the increasing number of counterfeit goods shipped into the United States that infringe a valid design patent but do not display the rights owner's trademark. To avoid seizure by CBP, infringers are importing counterfeit goods without trademarks applied to the product. Instead, counterfeiters ship the trademarked logos and labels separately from the product. Although counterfeit goods shipped this way do not infringe trademarks, they do infringe design patents. As was demonstrated during our hearing, a counterfeit Nike sneaker without the trademarked swoosh otherwise looked identical in design to an authentic Nike sneaker. The only apparent difference was that the counterfeit was shipped without a logo to avoid seizure by CBP. The counterfeit sneaker poses the same safety risks to American consumers as one with a trademark, and we are concerned that counterfeiters are able to take advantage of this loophole to import counterfeit goods.

Finally, we are disturbed by the quantity of counterfeit goods that are being shipped in small parcels. An increasing number of counterfeit goods are being sold online directly to consumers. Instead of counterfeit goods being shipped into the country in large containers, counterfeiters are selling their products online through major online sales platforms or their own websites and shipping the goods in small parcels directly to American consumers. You acknowledged this risk and stated that the "rise of e-commerce requires that CBP aggressively adapt operations in all areas" to respond to these developing supply chain challenges in the CBP 2018 E-Commerce Strategy Report.[2] Specifically, you acknowledged that the increased volume of small parcels was taxing CBP resources. These counterfeit goods pose very real risks to unsuspecting American consumers, and there remain challenges associated with stopping these goods from entering the country. We believe that ongoing cooperation with private rights holders can ease the burden on CBP and enable more effective enforcement.

Given the important public safety concerns related to these issues, we ask that you answer the following questions by July 18, 2019:

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[2] United States Customs and Border Protection, *E-Commerce Strategy 2018, available at*https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/CBP-E-Commerce-Strategic-Plan_0.pdf.

1. What information is CBP currently sharing with rights holders pursuant to Section 302 of the TFTEA? Is any information being withheld from rights holders? If so, why?
2. Do you believe Section 302 has been implemented as Congress expected? If so, please explain why. If not, why not?
3. Has a determination been made that exchanges of information pursuant to Section 302 would not assist in determining if suspected merchandise is, in fact, counterfeit? If so, please explain why.
4. Are there any circumstances under which CBP currently can seize counterfeit goods that infringe a design patent but not a registered trademark or copyright?
5. What legislative changes would allow CBP to seize counterfeit products that infringe design patents in the same manner as products that infringe registered trademarks or copyrights?
6. What is CBP currently doing to address the increasing number of counterfeit goods shipped in small parcels? Have these programs been successful?
7. What are the biggest challenges CBP faces with respect to the increased volume of counterfeit goods shipped via small parcels? In what ways can increased cooperation with industry rights holders help alleviate the burden created by this increase?
8. What is the current status of the CBP E-Commerce Strategy published in 2018? Please update us on the implementation of the strategic goals outlined in that report.

We look forward to your answers to these questions. We believe they are important to addressing the public safety risks associated with counterfeit products. As always, we are committed to working with you to protect American consumers and our nation's innovation economy.

If you have any questions, please do not hesitate to contact either Elliott Tomlinson with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Sincerely,

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

Via Electronic Transmission
June 18, 2019

The Honorable Karyn Temple
Register of Copyrights and Director of U.S. Copyright Office
United States Copyright Office
101 Independence Ave., S.E.
Washington, DC 20559

Dear Register Temple:

On Tuesday, April 30, 2019, the Senate Judiciary Committee, Subcommittee on Intellectual Property held a hearing on the role of intellectual property in the sports business economy. We heard testimony from multiple witnesses about how ongoing intellectual property infringement harms American businesses and consumers, as well as our nation's larger innovation economy. Specifically, witnesses testified about the significant economic losses caused by rampant copyright infringement through illicit streaming.

As technology has advanced, so has the form of digital copyright infringement. Today, consumers can stream both live performances, such as sporting events, and pre-recorded performances, such as movies and television shows, over the Internet without any specialized technical knowledge. Modern streaming technology enables consumers to stream copyrighted content without authorization and without downloading the copyrighted content. Instead, websites and other services use streaming to distribute copyrighted content more quickly and more conveniently than providing downloads. Current copyright law, however, treats streaming as a public performance, which is a misdemeanor, instead of reproduction and distribution, which is a felony.

The significant increase in illicit streaming, often through devices and apps configured specifically to allow for the illicit streaming of copyrighted content, poses important risks to copyright owners. It has significant economic implications for creators and industries that rely on live performances or streaming of original content through advertising sales, licensing agreements with companies that stream the performances, or per-stream fees. The relative ease with which consumers can pirate a live stream undermines the ability of these companies to negotiate fair market rates for their content and ultimately limits their ability to expand production or invest in the creation of new content, which also translates to fewer jobs.

The Copyright Act of 1976 grants rights holders the exclusive right to reproduce their work, distribute their work, and control the public performance of the work. The Act defines a public

performance as "to transmit or otherwise communicate a performance or display of the work . . . to the public by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."[1] The Act does not expressly define reproduction or distribution to include streaming. However, Congress intended to protect rights holders from anyone who unlawfully distributes copies of a protected work.

The most recent revision to federal criminal copyright statutes occurred in 2008, when today's streaming environment was well beyond the technological limitations and business models existing at that time.

In 2011 testimony to the House Subcommittee on Intellectual Property, then-Register Maria Pallante said that the unauthorized streaming of copyrighted content infringes the right of public performance. She also indicated that unauthorized streaming could implicate the distribution right, but not as a general matter. Ambiguity about when the unauthorized streaming of copyrighted content infringes the distribution right emboldens infringers and harms America's innovation economy.

Based on the testimony we received regarding the apparent "streaming loophole" enabling illicit streamers to avoid felony criminal liability, we would appreciate the U.S. Copyright Office providing clear guidance regarding if and when unauthorized streaming infringes the right to control distribution of a work. Allowing this to remain unanswered will only benefit infringers and harm America's economy.

Given the significant economic implications related to these issues, we ask that you answer the following questions by July 18, 2019:

1. Does unauthorized streaming violate the copyright holder's right to public performance? If so, why?
2. Does unauthorized streaming violate the copyright holder's right to control reproduction and distribution? If not, why not? If so, under what circumstances?
3. Do you believe that increasing the criminal penalty for the unauthorized streaming of copyrighted material from a misdemeanor to a felony would better deter illicit streaming? If yes, what specific statutory changes would you recommend?
4. Are there additional legislative solutions that you believe would address the growing issue of unauthorized streaming of copyrighted content?

We look forward to your answers to these questions. We believe they are important to addressing the significant risks illicit streaming poses to the American sports economy. As always, we are committed to working with you to protect American athletes, sports leagues, and fans.

[1] 17 U.S.C. § 101.

If you have any questions, please do not hesitate to contact either Elliott Tomlinson with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Sincerely,

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

June 25, 2019

Dear Colleagues,

We write to draw your attention to a recent study published by the U.S. Chamber of Commerce's Global Innovation Policy Center (GIPC) titled "Impacts of Digital Video Piracy on the U.S. Economy."

On April 30, 2019, we held a Senate Committee on the Judiciary, Subcommittee on Intellectual Property hearing on the effects of online piracy. We heard testimony from multiple witnesses about how ongoing intellectual property infringement harms American businesses and consumers, as well as our nation's larger economy. Specifically, witnesses testified about the significant economic losses caused by rampant copyright infringement through illicit streaming.

Today, consumers can stream both live performances, such as sporting events, and pre-recorded performances, such as movies and television shows, over the internet without any specialized technical knowledge. Modern streaming technology enables consumers to stream copyrighted content without authorization and without downloading the copyrighted content. Instead, websites and other services use streaming to distribute copyrighted content more quickly and more conveniently than ever before.

The GIPC reports that streaming accounts for 80 percent of all digital video piracy today. This staggering number is attributable to the proliferation of piracy devices and apps that deliver unauthorized live television shows and video-on-demand over the Internet – often directly to a television set. The GIPC report estimates that digital piracy causes lost domestic revenues of at least $29 billion and as much as $71 billion annually.

We invite you to read the attached report. If you have any questions, please contact Elliott Tomlinson with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

THOM TILLIS
NORTH CAROLINA
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United States Senate

WASHINGTON, DC 20510

COMMITTEES
ARMED SERVICES
BANKING, HOUSING, AND URBAN DEVELOPMENT
JUDICIARY
VETERANS' AFFAIRS

VIA ELECTRONIC TRANSMISSION

August 27 2019

Dr. Carla Hayden
Librarian of Congress
The Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Ms. Karyn Temple
Register of Copyrights
United States Copyright Office
Washington, DC 20559-6000

Dear Dr. Hayden and Register Temple:

As Chairman of the Senate Judiciary Committee's Subcommittee on Intellectual Property I am very interested in the current status of IT modernization at the Copyright Office. Millions of Americans enjoy the benefits of a robust copyright system, and the development and use of copyrighted materials, including movies, music and books, fuel our economy. According to the International Intellectual Property Alliance's (IIPA) 2018 report, "*Copyright Industries in the U.S. Economy*," copyright intensive industries contribute $1.3 trillion to the U.S. gross domestic product, representing almost 7% of the entire American economy.

Unfortunately, America has fallen behind in one crucial aspect of the copyright system: ensuring that the American people have a nimble, state-of-the-art, and efficient Copyright Office at their service. I was very pleased to have Register Temple testify before the Subcommittee in late July - the first time in a decade that the Copyright Office leadership appeared before the Senate Judiciary Committee for an oversight hearing. I recognize that the Office has tried to adapt over time, but it has been limited by outdated statutory authorities, the lack of adequate appropriated funds, antiquated legacy IT systems, and other structural issues. As a result of these ongoing issues, I was pleased to announce at my oversight hearing a bipartisan, bicameral effort to legislatively modernize the Office.

While I intend to move quickly to legislatively modernize the Copyright Office, I am aware that such an effort will take time. In the interim, I know that your offices are working to modernize the Copyright Office through the Copyright Office's Strategic Plan. I am pleased that key aspects of the Strategic Plan include: (1) implementing a new enterprise copyright system (ECS), (2) updating the public recordation system, and (3) modernizing the registration system. The goals are laudable, but I am troubled by the purported time it may take to implement these goals.

For instance, the "*2018 Year in Review*" report on the Copyright Office Modernization provides a timeline for the recordation phase of the program that indicates that development will start in Q4 of 2019 and finish in 2023. This seems unnecessarily long in the current age of agile IT. Based on input from the IT field, I am concerned that the Library's current contracting process may be contributing to the delays – with longer review and implementation timelines than are necessary in the current IT landscape.

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WASHINGTON, DC 20510

COMMITTEES
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JUDICIARY
VETERANS' AFFAIRS

I believe it is in the public's interest to speed up the modernization process so that users of the copyright system can get the service they deserve without having to wait years. I am not suggesting re-working any of the existing modernization efforts of the Copyright Office. Rather, I urge you to ensure a more competitive process in the future for accelerated development of the new systems that will be necessary to achieve the dual goals of modernization and improved customer service. To that end, I ask that you answer the following questions by no later than September 30, 2019:

1. What steps are the Library of Congress and the Copyright Office taking to support a more advanced, agile and flexible approach to IT modernization?
2. What is the Library of Congress doing to ensure the new enterprise copyright system is continually updated to remain current and doesn't become outdated within a few years of implementation?
3. I understand there are now newer and faster approaches to IT system development. For example, "low-code platforms" can apparently accelerate development, improve existing IT capabilities, innovate products and services, and become more agile - leading to new systems being implemented ten times faster than traditional methods. To that end, what steps are the Library of Congress and the Copyright Office taking that could enable business users and IT developers to collaborate more effectively and produce updated systems in just weeks?
4. Will the Library of Congress and Copyright Office conduct a full and open competition for the future development of its strategic plan goals, rather than continue to work exclusively with existing LOC and CO staff and legacy Library of Congress contractors? I believe a more competitive process in the future for accelerated development of the new systems will be necessary to achieve the dual goals of modernization and improved customer service.
   a. If the answer is no, please explain why. If the answer is yes, please explain how your offices will go about implementing such a full and open competition.
5. Will any portions of modernization of enterprise systems be performed internally by the Library instead of by contactors? If so, why?
6. What role will the Copyright Office have in selecting contractors to implement modernization? Will the Library of Congress give the Copyright Office autonomy to select and hire contractors that it believes will best serve the copyright community? If not, why not?
7. I understand from conversations that I have had with IT specialists that the Copyright Office could likely implement a pilot program in 8-12 weeks to modernize the registration system. Under this more advanced approach to modernization, the Copyright Office would have real-time data about what was working and what needs to be tweaked within weeks, not months or years. Will your offices explore the feasibility of implementing a registration pilot program?

I look forward to continuing to work with you, your staff, and other interested parties, throughout the ongoing Copyright Office modernization effort. If you have any questions, please do not hesitate to contact me. Thank you again for your attention to this matter, and I look forward to your responses on September 30, 2019.

Sincerely,

Thom Tillis

Thom Tillis
United States Senator

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Congress of the United States
Washington, DC 20515

VIA ELECTRONIC TRANSMISSION

September 3, 2019

Mr. Sundar Pichai
Chief Executive Officer
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
USA

Dear Mr. Pichai:

We write today regarding Google's efforts related to platform responsibility in the digital environment. Over the last year, Google has appeared before multiple House and Senate committees to discuss this issue. In response to questions from our congressional colleagues regarding efforts Google is taking to stem widespread distribution of infringing content, you have routinely pointed to YouTube's "Content ID" system as an example.

YouTube Content ID is described as a "strong set of tools to prevent copyright infringing material from appearing."[1] We understand that Content ID is a technology developed by Google and voluntarily made available to creators. We appreciate Google's efforts to combat the illegal distribution of content on YouTube.

It has also come to our attention that access to the Content ID system is only granted to companies that "own exclusive rights to a *substantial body* of original material that is *frequently uploaded* by the YouTube user community."[2] We are concerned that copyright holders with smaller catalogs of works cannot utilize Content ID, making it more difficult or impossible for them to effectively protect their copyrighted works from infringement and, ultimately, impacting their livelihoods. We have heard from copyright holders who have been denied access to Content ID tools, and as a result, are at a significant disadvantage to prevent the repeated uploading of content that they have previously identified as infringing. They are left with the choice of spending hours each week seeking out and sending notices about the same copyrighted works, or allowing their intellectual property to be misappropriated.

The core copyright industries in the United States provide over 5.7 million jobs and generate $1.3 trillion toward the country's gross domestic product, accounting for 6.85% of the U.S. economy.[3]

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[1] *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial & Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019), https://judiciary.house.gov/legislation/hearings/online-platforms-and-market-power-part-2-innovation-and-entrepreneurship.
[2] *Using Content ID*, YOUTUBE HELP, https://support.google.com/youtube/answer/3244015 (last visited Aug. 15, 2019).
[3] Stephen E. Siwek, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT 3, 6 (2018), https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf.

Preserving these industries is of great importance to our economy and to our nation's ability to compete internationally. Given the significant impact this technology could have on these industries and the creators that are at their heart, we respectfully request your participation in a roundtable with Congressional offices and members of the creative community to discuss the following questions and issues.

1. In general, how does the Content ID technology work? Compared to other available mechanisms for rights holders to identify potentially infringing works on Google's platforms, how much day-to-day involvement of rights holders is needed?
2. How do the user and Google work together to identify and block illegal material? To what extent is Content ID dependent upon user engagement and interaction?
3. Please describe generally which types of rights holders currently are permitted to use Content ID, including how Google assesses whether a rights holder owns a "substantial body of original material" and whether such material is "frequently uploaded."
   a. How often does a piece of content need to appear on YouTube in order to be considered a "frequently uploaded" work?
   b. Is "frequently uploaded" an absolute or relative measure?
4. Please describe any terms and conditions related to the use of Content ID.
5. Other than YouTube, on what Google platforms is Content ID used to identify and block infringing material? For example, do you use it to block the distribution of infringing material on Blogger, Google Photos, and Google Drive, among others? If not, do you plan to implement Content ID or similar safeguards on these platforms?
6. Does Google plan to provide access to Content ID to a larger number of rights holders? If so, when? If not, what challenges prevent you from doing so?

We ask that you reply by October 30, 2019 with a date for this roundtable, which will be no later than the end of the 2019 calendar year. Again, we appreciate the efforts that you have made to combat distribution of infringing content on YouTube. Given its apparent benefits to rights holders, we hope that you will consider making Content ID and the benefits it provides available to a larger category of content creators. If you have any questions, please do not hesitate to contact us.

Sincerely,

Thom Tillis
United States Senator

Marsha Blackburn
United States Senator

Christopher A. Coons
United States Senator

Dianne Feinstein
United States Senator

Congress of the United States
Washington, DC 20515

Jerrold Nadler
United States Representative

Doug Collins
United States Representative

Adam B. Schiff
United States Representative

Martha Roby
United States Representative

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

October 21, 2019

The Honorable William Pelham Barr
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Barr and Assistant Attorney General Delrahim:

We write to encourage the Department of Justice to work with the United States Patent and Trademark Office (USPTO) to provide guidance on remedies for infringement of standard-essential patents (SEPs) subject to fair, reasonable, and nondiscriminatory (FRAND) licencing commitments.

We applaud the Antitrust Division's decision to withdraw its assent to the 2013 joint statement by the Department and the USPTO, entitled "Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments." We share the concerns articulated by Assistant Attorney General Delrahim in his "Telegraph Road" remarks last December, as well as his stated goal of doing everything possible to preserve the fundamentals that encourage innovation. The 2013 Policy Statement created unnecessary confusion, emboldened strategic infringers, and had the potential to discourage investment by American companies, innovators, and entrepreneurs in critical technologies. These technologies will be key to U.S. leadership in strategic areas like 5G, the Internet of Things, and artificial intelligence. We were also encouraged by Assistant Attorney General Delrahim's stated desire to work with the USPTO to draft a new joint statement that better provides clarity and predictability regarding the balance of interests at stake.

Since your decision last December, however, stakeholders have expressed concerns regarding a growing divide between the Department, the Federal Trade Commission, and the USPTO about the role antitrust law should play in addressing SEPs and FRAND commitments.

Given these concerns, we ask that you work with the USPTO to develop a revised policy statement concerning the licensing and enforcement of patented innovations that have been committed to technological standards. Any revised policy statement should ensure a proper balance between protecting all innovators and consumers. As Under Secretary of Commerce for Intellectual Property and

Director of the USPTO Andrei Iancu recently noted, any new policy "must ensure balance between patent owners and potential licensees, so that patented innovations can continue to contribute to voluntary consensus standards organizations thereby continuing to maximize benefits to consumers." We are confident in your ability to work with the USPTO to develop a revised policy statement that strikes the appropriate balance, and we stand ready and willing to support you in that effort.

We thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact our offices.

Sincerely,

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

Via Electronic Transmission

December 10, 2019

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons:

We write to you today because we are increasingly concerned about the overall harm to the economy caused by illicit streaming and the risk to unsuspecting American consumers who don't realize that by clicking a link for an illicit streaming service they are putting their personal information at risk. Hackers are enticing American consumers with the promise of "free" or cheap content, but at the cost of illicit access to consumer devices and networks. Illicit streaming also has a substantial negative impact on the creative industries in America. We are very concerned about this problem and welcome your input on ways to ensure Americans are better informed about these risks and how to avoid them.

On May 2, 2019, the Federal Trade Commission (FTC) published a blog post titled "Malware from illegal video streaming apps: What to know."[1] This post alerted American consumers about the dangers of illicit streaming and malware including theft of credit card information and log in credentials for banks and e-commerce sites, the sale of these credentials to hackers, and the use of infected computers to commit crimes. We are encouraged by your attention to this issue. However, this seems to be the only public notice on the serious consumer safety risks posed by illicit streaming websites. We believe this issue calls for more than a blog post.

Content creation and digital streaming services are a cornerstone of the American creative economy. There are approximately 250 million global subscribers currently using streaming services.[2] As the legal market for streaming services continues to expand, an emerging threat is developing from the illegal market for streaming services. Digital pirates offer free content as bait to consumers, and then go on to hack into consumers' computers and networks. Once hackers have gained access to consumer computers and networks, they have the ability to engage in fraud schemes of varying impact.

[1] FTC Blog Post - https://www.consumer.ftc.gov/blog/2019/05/malware-illegal-video-streaming-apps-what-know
[2] "Fishing in the Piracy Stream: How the Dark Web of Entertainment is Exposing Consumers to Harm", Digital Citizens Alliance, April 2019, p. 6

According to a report by the White House Council of Economic Advisers, the FBI's Internet Crime Complaint Center "received nearly 300,000 individual complaints of cybercrimes, with an estimated total cost in excess of $1.3 billion."[3] Recently, the Department of Justice (DOJ) arrested eight individuals who allegedly operated illicit streaming sites that claimed to have more content than Netflix, Hulu, Vudu, and Amazon Prime Video.[4] At least one of the sites operated by these individuals obtained the infringing television episodes from pirate websites such as The Pirate Bay, and Torrentz.[5]

Through these illicit sites, hackers are able to gain access either through hardware or through online websites and apps. Hardware generally comes in two forms: Kodi boxes or "jail-broken" devices which can be purchased online. While consumers may unintentionally find an illicit streaming site just by searching a specific movie or book in their preferred search engine.

Kodi boxes are devices which been pre-loaded with the open-source software Kodi and associated apps. Alternately, consumers can purchase mainstream devices such as the Apple TV, Amazon Fire Stick, or Google Chromecast which have been jail-broken. These devices have had their internal software altered to give consumers access to apps which offer "free" illegal streaming services.

Hackers will frequently use this "free" content as a way to install malware on the consumer's computer or network. When the consumer plugs one of these devices into their home network, they risk that any malware spread to the full network and potentially gain access to other connected devices. The Digital Citizens Alliance reports that almost 10% of homes in North America use a Kodi device, and that almost 70% of Kodi boxes are loaded with apps offering access to unlicensed content and exposing the consumer to significant risk.[6]

Illicit websites make it possible for consumers to illegally pirate many different forms of copyrighted content. For example, the book industry suffers from mass ebook piracy. As with audiovisual content, malicious actors lure consumers to malicious websites with promises of free or subscription-based unlimited "ebooks." Despite the book industry expending extensive resources to stop pirating each year it is still pervasive. According to Digimarc, the leading provider of anti-piracy services to publishers, approximately 70% of all malicious links it tracked in 2018 were phishing sites. Often as a pre-requisite to access, these phishing sites ask consumers to input personal information such as credit card numbers, names, addresses, and e-mail accounts.

Other illicit websites bait consumers into clicking on an "infected" link or downloading an infected app or program. These infected links expose unsuspecting consumers to the same risks as streaming

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[3] "The Cost of Malicious Cyber Activity to the U.S. Economy," The White House Council of Economic Advisers, February 2018, p. 36; https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf

[4] Lauren Berg, *Illegal Streaming Services Dwarfed Netflix and Hulu, Feds Say*, Law360, August 27, 2019, https://www.law360.com/articles/1193192/illegal-streaming-services-dwarfed-netflix-and-hulu-feds-say.

[5] *Id.*

[6] "The Cost of Malicious Cyber Activity to the U.S. Economy" at 5.

devices. Once consumers have offered access to hackers, there are several types of malware, which hackers employ to achieve their illegal ends. These include Trojans, Remote Access Trojans (RATs), Adware, Botnet, and Exploit. Illicit websites are search-engine-optimized to appear higher in search engine results, and use sophisticated algorithms to cull book covers, blurbs, and other book identifiers from legitimate websites to give the appearance of legitimacy.

These illicit schemes targeting American consumers put unsuspecting consumers at substantial risk at a time when data privacy is a growing concern. According to the White House Council of Economic Advisers, "malicious cyber activity cost the U.S. economy between $57 billion and $109 billion in 2016."[7] It is critically important that we find ways to crack down on this growing form of crime so that we can protect the public from this criminal activity. Given the significant economic and security implications related to these issues, we ask that—by no later than January 20, 2020—you answer the following questions:

1. What risks does illicit streaming pose to American consumers?
2. What is the FTC currently doing to make consumers aware of the serious risks to consumer privacy and safety posed by illicit streaming? Does the FTC anticipate doing more blog posts or other advocacy to better inform consumers of the risks posed by illicit streaming?
3. Are there any administrative, regulatory, or enforcement actions the FTC can take to address this issue? If not, why not?
4. Does the FTC need additional tools, resources, or legal authorities to combat this issue?
5. What opportunities are there for the FTC to form partnerships with content creators to address this risk?
6. What could Congress do to raise awareness or mitigate the risks posed to American consumers by illicit streaming?

We look forward to your answers to these questions. We believe they are important to addressing the significant economic risks content theft and malware poses to the American economy. As always, we are committed to working with you to protect American consumers and our nation's innovation economy. If you have any questions, please do not hesitate to contact either Brad Watts with Senator Tillis at brad_watts@tillis.senate.gov , Jeff Hantson with Senator Hirono at Jeff_Hantson@hirono.senate.gov, or Ellen McLaren with Representative Deutch at Ellen.McLaren@mail.house.gov.

Sincerely,

Thom Tillis
United States Senator

Mazie K. Hirono
United States Senator

[7] "The Cost of Malicious Cyber Activity to the U.S. Economy," p. 1.

Congress of the United States
Washington, DC 20515

VIA ELECTRONIC TRANSMISSION

January 15, 2020

Richard L. Revesz
Director
The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104

Dear Director Revesz:

Thank you for your response to our December 3, 2019 letter concerning the American Law Institute's (ALI) efforts to develop a Restatement of Copyright Law. While you have provided insight into your position with regard to the Restatement's process and purpose, we would appreciate more specific details that directly address the questions and concerns set forth in our letter.

Fundamentally, your assertion that ALI has for more than a century "prided itself on producing impartial, non-partisan, and independent scholarly works that clarify, modernize, and otherwise improve the law" addresses – but does not resolve – many of the concerns that we still have regarding the ALI's Restatement of Copyright Law. To be clear, we welcome the efforts of private entities to provide clarity regarding the legal landscape, as well as opinions on how the law may be improved and better effect desired outcomes. The risk we associate with this project, however, is its semblance of authoritativeness where the law is governed by a federal statute.

We understand that Restatements are not legally binding and that courts may decline to follow them. That said, as you are well aware, ALI's publications "are enormously influential in the courts and legislatures, as well as in legal scholarship and education."[1] Widespread judicial reliance on the accuracy and impartiality of Restatements – which stems from the credibility ALI has earned over the course of decades – renders them an important tool, the corruption of which would risk harmful consequences. We are concerned that this Restatement, by its very nature, may not provide the degree of reliability and integrity that makes these resources so valuable. As a result, judges may be misled by such a Restatement, rather than aided in their application of the copyright laws that Congress promulgated. Separately, your "Director's Letter" in the winter 2019 edition of the ALI's newsletter, explains how Restatements influence legislative text.[2] This is highly problematic given your assurance that the ALI does not seek to supersede or replace the importance of statutory law.

[1] https://www.ali.org/publications/#publication-type-restatements
[2] https://www.ali.org/media/filer_public/d7/63/d763c4d0-2eba-4265-9ffb-3c2ad62e4818/ali_winter_reporter-3152-web.pdf

As mentioned in both your letter and ours, the ALI's work on Restatements of *common law* are understandably necessary. However, our view is that Restatements for topics rooted in *statutory law*, such as copyright, pose significant risks, because such laws already have been articulated by Congress in both the statute and ample legislative history. In your letter, you state that the "ALI has for decades undertaken significant efforts in areas in which there are important federal statutes," but that does not alleviate our concerns in this instance. There are also significant differences between prior efforts and this one. Copyright law is encompassed almost exclusively within federal statute. On the other hand, in the three prior efforts you reference in your response, the federal statute is a mere component of a larger body of law that is being analyzed. The risk of politicization of a Restatement where statutory law governs the subject matter almost exclusively, as in the case of copyright law, seems greater than in the common law context.

This project, it seems to us, is especially vulnerable to that risk. It is our understanding that a Restatement of Copyright Law was first proposed because of the "long and contentious process" of Congressional lawmaking, and that "comprehensive reform of [copyright] . . . is unlikely to happen any time soon." In addition, the Lead Reporter on the Restatement of Copyright has said that "Congress is unlikely to proceed any time soon with copyright reform" and that the Restatement would have the objective of "shaping the law that we have, and perhaps, the reformed law that in the long term we will almost certainly need." This express intent to "shape" and "reform" existing and future copyright law runs counter to the assertion in your letter that "an ALI Restatement is not a legislative endeavor."

We fear that this project was built on an unstable foundation, with the aim of moving judicial interpretations of copyright law away from the existing statute and toward changes in the law. Indeed, the Copyright Office itself expressed such concerns in its 2015 letter stating, "Although presented as a 'Restatement' of copyright law, the project would appear to be more accurately characterized as a rewriting of the law." A Restatement drafted with this aim would obscure, rather than clarify, the law, and thus would be counterproductive to ALI's stated mission, and harmful to our legislative prerogative.

The concerns we expressed in our original letter to you, reflecting many of the Copyright Office's own concerns from its 2015 letter, remain largely unaddressed. Accordingly, please answer the following questions by no later than March 1, 2020:

1. What course of events triggered the ALI's interest in a Restatement of Copyright project? Was there a specific case which prompted this project?
2. The Restatement's own Table of Contents currently conveys that the ALI will focus on the entirety of copyright law, in apparent conflict with your statement to the contrary. Further, while you assert that the ALI will only restate those parts of the statute that are the source of significant judicial commentary and disagreement, your own Advisors to the Restatement project have criticized the Reporters for citing to fringe cases on a topic, which do not seem sufficient to represent "significant … disagreement." Please reconcile

these inconsistencies and clarify how decisions are made regarding what constitutes significant judicial commentary and disagreement so as to merit inclusion in the Restatement.

3. Historically, the courts have given deference to the views of the U.S. Copyright Office, while the ALI only says that they will give them "careful consideration." This comment suggests that the ALI is unaware that the Copyright Office is specifically charged by law with interpreting and applying this statute. Please explain the level of deference the ALI will give the Copyright Office's interpretation of copyright law.
4. Please explain the specific methodology behind determining when and how gaps in the case law or statute are addressed, and how it is determined if they will be included in the Restatement at all?

Thank you in advance for your consideration of this letter and your Reponses to our questions. If you have any questions, please do not hesitate to contact us.

Sincerely,

Thom Tillis
United States Senator

Ben Cline
United States Representative

Theodore E. Deutch
United States Representative

Martha Roby
United States Representative

Harley Rouda
United States Representative

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 18, 2020

The Honorable Dr. Carla Hayden
Librarian of Congress
United States Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Dear Dr. Hayden:

I write to you as the Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property to address the knowledge, skills, and abilities that are critical for the next Register of Copyrights. Beyond the knowledge, skills, and abilities, I also want to highlight conditions that will help ensure that the next Register continues the modernization efforts that Congress has already deemed necessary. I encourage you to strongly consider the factors that will provide stability and longevity for an agency within the Library of Congress that is critical to the United States economy and the United States' role as a global leader in entertainment and technology.

Chief among the knowledge, skills, and abilities required of the next Register is a deep understanding of, appreciation for, and experience with, the services and responsibilities of the United States Copyright Office. In leading the Copyright Office, the next Register must be a copyright expert who values the full body of U.S. copyright law and has experience representing the interests of copyright owners, authors, users, and understands the value of the Copyright Office to the general public. The Register also must be intimately familiar with the administrative and ministerial duties of the office—of registering copyrighted works, processing deposits, and recording ownership interests, as well as promulgating regulations that implement copyright law and shape practices at the Copyright Office. Finally, the Register must have experience with the legislative process and with promoting and supporting domestic and foreign copyright law.

I recognize that the Library of Congress, like all American businesses, is adjusting operations in response to the Coronavirus-2019 outbreak, however, I encourage you to expedite to the extent possible the selection of the next Register. As I expressed in the December 10, 2019 letter, promptly naming a new permanent Register will ensure continuity and confidence in the Copyright Office at a critical time. As you know, the Copyright Office is in the process of modernizing its legacy information technology systems and working to implement the *Music Modernization Act*; the Copyright Office also will soon begin another triennial rulemaking proceeding under section 1201. Additionally, the Copyright Office performs crucial day-to-day functions of administering the U.S. copyright system, serving copyright owners, authors, users, and the public generally, and advising Congress, courts, and the Administration on domestic and foreign copyright law and policy. Continuing—and, where applicable, completing—these duties should be the top priorities of the next Register.

For these reasons, I believe it is important that a permanent Register with the knowledge, skills, and abilities identified above be named without unnecessary delay. I also think it is important that the next Register be given the time and autonomy necessary to settle into this demanding role and ensure a smooth continuation of the Copyright Office's crucial ongoing projects—as well as to plan for the future. Additionally, I believe that continuity of leadership at the Copyright Office is essential to future success. In the interest of the Copyright Office's short- and long-term projects and planning, I encourage you to give significant consideration to candidates who understand the need for stability.

I appreciate your extensive engagement on this important issue and remain ready and willing to work with you to ensure that the Library and Copyright Office have the resources and support needed at this important time. If you have any questions or would like to discuss this further, please do not hesitate to contact my office. Thank you for your careful consideration of this matter.

Sincerely,

Senator Thom Tillis

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

April 7 2020

The Honorable Robert E. Lighthizer
United States Trade Representative
The Executive Office of the President
600 17th St NW
Washington, DC 20006

Dear Ambassador Lighthizer:

I write you today regarding the 2020 Special 301 review process and steps you can take to address the counterfeiting of electronic nicotine devices (ENDs). In my capacity as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property, I am concerned that counterfeit ENDs from China are currently being marketed to young individuals and are replacing e-cigarette and vaping related products that are no longer offered for sale in the United States.

As you know, the issue of counterfeit ENDs was first raised with your office by the International AntiCounterfeiting Coalition.[1] Their submission noted that counterfeit ENDs from China are becoming readily accessible to young Americans through an illegal market and that further enforcement actions are necessary to ensure the health and safety of American consumers. The 2020 Special 301 review presents an opportunity for the Trump Administration to bring attention to the flood of black market, counterfeit ENDs being manufactured in China.

These products appear to circumvent recent regulatory changes made by the Administration to make it harder for young people to purchase certain types of flavored tobacco. By making these products, criminal enterprises in China appear to be working to undermine the Administration's efforts to combat youth smoking. Worse still, these products contain untested, adulterated materials of unknown quality and origin, posing major public health and safety risks to millions of Americans.

It is my hope that your office will highlight the serious issue of counterfeit ENDs in the 2020 Special 301 Report. Doing so will ensure that this matter is taken more seriously by your Chinese counterparts, and it will empower our entire federal government to work on stopping this growing problem. If you have any questions, please do not hesitate to contact me.

Sincerely, your friend,

Thom Tillis

Thom Tillis

[1] *See Submission of the International AntiCounterfeiting Coalition to the United States Trade Representative*, Feb. 6, 2020.

VIA ELECTRONIC TRANSMISSION

February 21, 2020

The Honorable Robert Lighthizer
United States Trade Representative
Executive Office of the President
600 17th St. NW
Washington, DC 20006

Dear Ambassador Lighthizer,

We write today to express our strong support for robust intellectual property protections in a trade agreement with India. Although India is an important partner, the 2019 United States Trade Representative's Special 301 Report detailed multiple areas where India needs to improve intellectual property protections. The 2019 Report listed India on the Priority Watch List—a designation given to trading partners that do not adequately or effectively protect and enforce intellectual property rights. The United States Chamber of Commerce's Global Innovation Policy Center ranked India 36 worst out of 50 for intellectual property protections in 2019. A trade agreement with India is an important opportunity to address intellectual property procreation issues.

Robust IP protections and diligent enforcement are essential to the America's innovation and creative economies. These industries support millions of high-paying jobs across the country. More than $45 million American jobs and $6.6 trillion in GDP depend on IP based industries. For example, this includes a $5 million American biopharmaceutical industry and $5 million American creative industry. These IP based industries are the foundation that makes the United States a world leader and must be vigorously protected.

Although India has taken steps in recent years to improve intellectual property protections, there are still significant issues that it would be appropriate to address in a potential agreement. As noted in the 2019 Report, patent applications are extremely costly and time consuming to complete the application. There are also excessive reporting requirement for patents that inhibit the ability to obtain a patent. Additionally, compulsory licensing and overly narrow patentability criteria remain issues that are harmful to American companies. The 2019 Report also noted that India particularly lacked an effective system for protecting infringement of pharmaceutical and agricultural patents.

Counterfeit goods remain a significant risk to American consumers and companies and India is one of the top five countries for counterfeit goods. Specifically, India is a significant exporter of counterfeit foodstuffs, pharmaceuticals, perfumes, cosmetics, textiles, footwear, electronics, electrical equipment, toys, games, and sporting equipment. Roughly 55 percent of counterfeit pharmaceuticals seized by value globally originate in India. Overall United States brand owners continue to report significant issues with trademark infringement in India. And, although India has taken steps to address copyright right infringement, it remains a serious problem.

The United States has worked diligently to establish and maintain strong intellectual property protections. Despite these efforts, American intellectual property is consistently infringed by foreign actors who operate beyond the reach on American laws. We encourage you to continue to pursue strong IP protections in any trade agreement with India.

We appreciate your efforts to expand intellectual property protections around the world. If you have any questions, please do not hesitate to contact us.

Sincerely,

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 18, 2020

The Honorable Dr. Carla Hayden
Librarian of Congress
United States Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Dear Dr. Hayden:

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Chief among the knowledge, skills, and abilities required of the next Register is a deep understanding of, appreciation for, and experience with, the services and responsibilities of the United States Copyright Office. In leading the Copyright Office, the next Register must be a copyright expert who values the full body of U.S. copyright law and has experience representing the interests of copyright owners, authors, users, and understands the value of the Copyright Office to the general public. The Register also must be intimately familiar with the administrative and ministerial duties of the office—of registering copyrighted works, processing deposits, and recording ownership interests, as well as promulgating regulations that implement copyright law and shape practices at the Copyright Office. Finally, the Register must have experience with the legislative process and with promoting and supporting domestic and foreign copyright law.

I recognize that the Library of Congress, like all American businesses, is adjusting operations in response to the Coronavirus-2019 outbreak, however, I encourage you to expedite to the extent possible the selection of the next Register. As I expressed in the December 10, 2019 letter, promptly naming a new permanent Register will ensure continuity and confidence in the Copyright Office at a critical time. As you know, the Copyright Office is in the process of modernizing its legacy information technology systems and working to implement the *Music Modernization Act*; the Copyright Office also will soon begin another triennial rulemaking proceeding under section 1201. Additionally, the Copyright Office performs crucial day-to-day functions of administering the U.S. copyright system, serving copyright owners, authors, users, and the public generally, and advising Congress, courts, and the Administration on domestic and foreign copyright law and policy. Continuing—and, where applicable, completing—these duties should be the top priorities of the next Register.

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I appreciate your extensive engagement on this important issue and remain ready and willing to work with you to ensure that the Library and Copyright Office have the resources and support needed at this important time. If you have any questions or would like to discuss this further, please do not hesitate to contact my office. Thank you for your careful consideration of this matter.

Sincerely,

Senator Thom Tillis

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

April 7 2020

The Honorable Robert E. Lighthizer
United States Trade Representative
The Executive Office of the President
600 17th St NW
Washington, DC 20006

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Sincerely, your friend,

Thom Tillis

Thom Tillis

[1] *See Submission of the International AntiCounterfeiting Coalition to the United States Trade Representative*, Feb. 6, 2020.

THOM TILLIS
NORTH CAROLINA
KSEN SENATE OFFICE BLDG
SHINGTON, DC 20510
PH: (202) 224-6342
tps://tillis.senate.gov

United States Senate
WASHINGTON, DC 20510

COMMITTEES
ARMED SERVICES
BANKING, HOUSING, AND URBAN DEVELOPMENT
JUDICIARY
VETERANS' AFFAIRS

VIA ELECTRONIC TRANSMISSION

April 8, 2020

Mr. Brewster Kahle
Founder and Digital Librarian
Internet Archive
300 Funston Avenue
San Francisco, CA 94118

Dear Mr. Kahle:

I write to you as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property, following the Internet Archive's recent announcement of its National Emergency "Library" initiative amid the coronavirus pandemic. The Subcommittee has jurisdiction over our nation's intellectual property laws, including copyright law. As you may know, in February my Subcommittee began a year-long review of the Digital Millennium Copyright Act with an eye toward reforming it for the twenty-first century.

I recognize the essential nature of books and publishing efforts during these challenging times. As schools, libraries, and bookstores have closed their physical locations across the nation, continued access to books is important to ensure that students and teachers have the materials they need for remote learning. It is also important that the general public has access to various types of books and written materials. I have been encouraged to see authors, publishers and other copyright owners ease these struggles of students, parents, educators, and the general public. Among other efforts, they are providing valuable content and online courses for free, providing flexible licenses for distance learning and enjoyment, and extending access to audiobooks and e-books. These voluntary efforts should be commended, not only because they are expanding access to copyrighted works, but also because they do not violate copyright law or harm creators. On the contrary, these times have shown the critical value of copyrighted works to the public interest.

As you can see, I deeply value access to copyrighted works, but that access must be provided within the bounds of the law—even during a national emergency. I understand that your "Library" will last until June 30, 2020 or the end of the coronavirus emergency in the United States, whichever is later, and that during this time, the Internet Archive will make 1.4 million books it has scanned available to an unlimited number of users. I am not aware of any measure under copyright law that permits a user of copyrighted works to unilaterally create an emergency

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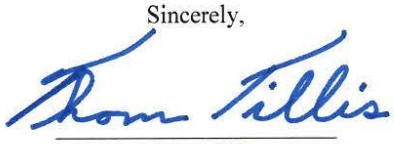
GREENVILLE OFFICE:
1694 E ARLINGTON BLVD
SUITE B
GREENVILLE, NC 27858
PH: (252) 329-0371

HENDERSONVILLE OFFICE:
1 HISTORIC COURTHOUSE SQ
SUITE 112
HENDERSONVILLE, NC 28792
PH: (828) 693-8750

copyright act. Indeed, I am deeply concerned that your "Library" is operating outside the boundaries of the copyright law that Congress has enacted and alone has jurisdiction to amend.

As I am sure you are aware, many authors and publishers are struggling during this pandemic. Just this past Monday, the president of the Authors Guild noted in the *New York Times* that: "Authors have been hit hard by the pandemic. . . . It could be a career-destroying time for some authors, many of whom are struggling to make a living." At some point when the global pandemic is behind us, I would be happy to discuss ways to promote access to books in a manner that respects copyright law and the property interests of American authors and publishers.

Sincerely,



Thom Tillis
Chairman
Subcommittee on Intellectual Property

Via Email
April 10, 2020
Senator Thom Tillis
Chairman, Subcommittee on Intellectual Property
United States Senate Committee on the Judiciary
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Tillis,
Thank you for your letter of April 8th and your interest in the National Emergency Library. I would like to take this opportunity to explain more about this effort and address some of the concerns raised in your letter.

The Internet Archive is a 501(c)(3) nonprofit and a library recognized by the State of California. Our doors have been open for nearly twenty-five years, and we have been making digitized versions of books available to those with print disabilities and lending them out in a "one reader at a time" manner for almost a decade. Our digital books are protected using the same technical protections that publishers use to ensure that readers only have access to a book for the two-week period of their loan, and further copies cannot be made.

The National Emergency Library was developed to address a temporary and significant need in our communities — for the first time in our nation's history, the entire physical library system is offline and unavailable. Your constituents have paid for millions of books they currently cannot access. According to National Public Library survey data from 2018-2019, North Carolina's public libraries house more than fifteen million print book volumes in three-hundred twenty-three branches across the State. Because those branches are now closed and 1 their books are unavailable, the massive public investment paid for by tax-paying citizens is unavailable to the very people who funded it. This also goes for public school libraries and academic libraries at community colleges, public colleges and universities as well. The National Emergency Library was envisioned to meet this challenge of providing digital access to print materials, helping teachers, students and communities gain access to books while their schools and libraries are closed.

We acknowledged from the outset that we would not be able to meet everyone's needs; our collection, at 1.4 million modern books, is a fraction of the size of a large metropolitan library system or great academic library. The books we have digitized were acquired with a focus on materials published during the twentieth century, the vast majority of which are not commercially available in electronic form ("e-book"). No books published in the last five years are in the National Emergency Library; for access to those books, readers and students can continue to turn to services like OverDrive and Hoopla. However, OverDrive and Hoopla only have access to e-books. They do not have access to the paper books sitting inaccessible on library shelvesand schools. That is where the National Emergency Library fills the gap.

In an early analysis of the use we are seeing what we expected: 90% of 2 the books borrowed were published more than ten years ago, two-thirds were published during the twentieth century. The number of books being checked out and read is comparable to that of a town of about 30,000 people. Further, about 90% of people borrowing the book only looked at it for 30 minutes. These usage patterns suggest that perhaps that patrons may be using the checked-out

book for fact checking or research, but we suspect a large number of people are browsing the book in a way similar to browsing library shelves.

Our focus is on helping students and teachers, and from the feedback we've received within just two weeks, the National Emergency Library is meeting a very real need in our educational community, as evidenced by this message from a middle-school teacher in New Mexico:
I teach all of the 6th, 7th and 8th grade students in my district, and Quarter Four (the time we are in right now) is set aside for a novel study. I cannot pass out our classroom sets of novels and was looking for a way for students to read the books digitally. Your site is a Godsend. Thank you for your help.

We also understand that authors are being impacted by this global pandemic, and we have been engaging in a dialog with authors around the National Emergency Library. Some have expressed concern about recently published books or books that are being released this year. As noted above, such books are not part of the National Emergency Library. Moreover, when we launched the National Emergency Library we urged people in a position to buy books to do so. We were also clear that any author who did not want a book in the Library need only to send us an email3 and we have responded to them quickly. This is contrary to the process claimed by the Authors Guild, which asserts that authors must send us a formal DMCA notice.4 We have also had authors contact us directly to have their book included in the National Emergency Library because they want their work to be part of this equitable approach to lending while libraries are closed.

You raise the question of how this comports with copyright law. Fortunately, we do not need an "emergency copyright act" because the fair use doctrine, codified in the Copyright Act, provides flexibility to libraries and others to adjust to changing circumstances. As a result, 5 libraries can and are meeting the needs of their patrons during this crisis in a variety of ways.6 The Authors Guild, the leading critic of the National Emergency Library, has been incorrect in their assessment of the scope and flexibility of the fair use doctrine in the past7 and this is another instance where we respectfully disagree.

We would like to thank you and your staff for your diligence and are available for a further conversation on this subject. We welcome further discussion on these topics including what new legislation may be needed to preserve and extend the role of libraries in the digital age. We recognize that in our haste to respond to the urgent needs of teachers, students, and librarians, we did not do enough to engage with the broader information ecosystem, like authors, publishers and policymakers. We are engaging in those conversations now and we would welcome your participation in discussions about how to meet the urgent access needs of our country during this crisis and beyond.

Respectfully,
Brewster Kahle
Founder and Digital Librarian
cc: Brad Watts, Chief Counsel
Senator Thom Tillis
Elliot Tomlinson, Counsel
Senate Judiciary Committee, Intellectual Property Subcommittee

Congress of the United States
Washington, DC 20515

April 14, 2020

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22313

Dear Director Iancu:

We write regarding the coronavirus public health crisis and its effect on the operations of the U.S. Patent and Trademark Office ("USPTO"). The intellectual property system plays an important role in the strength and vitality of the U.S. economy, and the USPTO provides critical services as a part of that system. The coronavirus pandemic has altered how businesses and governments operate around the globe, and the USPTO is no exception.

We applaud the measures the USPTO already has implemented to adapt to these unprecedented circumstances that provide relief to and ensure the safety of its employees and those who appear before the USPTO. For example, in accordance with the emergency authorities granted to the Director by the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act, the USPTO acted quickly to provide 30-day extensions of deadlines for certain patent- and trademark-related filings for those impacted by the coronavirus outbreak.1 We also understand that the USPTO has waived certain fees and requirements and moved to a primarily virtual working environment by closing its offices to the public, ending face-to-face meetings and hearings, and limiting the employees allowed to report to the USPTO's campus for duty to those deemed "mission critical," while all others must telework.2 These are all commendable actions by the agency to mitigate the impact of this crisis and help to ensure that everyone affected can focus on health and safety first at this time.

There are also aspects of the current crisis that are beyond the USPTO's control. As fully fee-funded agency, the USPTO is more likely than other agencies to feel the residual effects of any crisis's impact on the private sector. To that end, reports already indicate that the pandemic has resulted in a decline in trademark application filings at the USPTO.3 Whether this decline continues and for how long will undoubtedly have some effect on the USPTO's operations.

To help us better understand the scope of the pandemic's impact on the USPTO and its ability to fulfill its duties, we ask that you provide a status update on the USPTO's transition to its primarily virtual working environment, including whether the USPTO has sufficient technological resources to maintain remote operations for the foreseeable future and whether the initial stages of adopting these measures have revealed any lapses or gaps (for employees or those who appear before the USPTO) in moving to such an environment. We also request additional details on the scope of the declining trademark filings, the impact that declining filings may have on the agency in the long-term, and what financial contingencies might be required should the decline continue or expand beyond trademark operations. To that end, we request that

you quantify the reported decline in trademark application filings, including by comparing the number of trademark application filings in the second quarter of fiscal year 2019 to the number of filings in the second quarter of fiscal year 2020; indicate and quantify whether the agency has also started to see a decrease in patent application filings, or if it anticipates such a decrease in the near future; and provide an accounting of what cost-savings measures the USPTO has taken so far.

We appreciate your leadership during these rapidly evolving circumstances and look forward to your response. Please do not hesitate to contact us or our staff should you have any questions.

Sincerely,

Henry C. "Hank" Johnson, Jr.
United States Representative

Lindsey O. Graham
United States Senator

Dianne Feinstein
United States Senator

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

Jerrold Nadler
United States Representative

Jim Jordan
United States Representative

Martha Roby
United States Representative

VIA ELECTRONIC TRANSMISSION

April 14, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Barr,

We write to you today to express our strong support for your effort to prosecute the pervasive intellectual property theft by the Chinese government and Chinese based entities. We fully support this effort and stand ready to provide any support you require. China has made their intentions clear: if America can create it, they will try to steal it. This overt effort to misappropriate American innovation has gone on for too long. We commend you and President Trump for identifying domestic enforcement of intellectual property rights as a top priority for this Administration.

Chinese intellectual property theft affects nearly every innovative and creative business in America. Counterfeit goods originating in China are shipped into the United States and sold or posted for sale on line and shipped directly to someone's home. This not only hurts the American economy but also poses a significant public-safety risk to Americans who are almost exclusively shopping on line while obeying stay-at-home orders. The counterfeit threat is not limited to one industry. American intellectual property owners have reported Chinese counterfeiting of medicines, fertilizers, pesticides, and under regulated pharmaceutical ingredients according to the United States Trade Representative's 2019 Special 301 Report.

China is also the leading source of video piracy devices that provide purchasers access to unlimited copyrighted material without paying for it. The piracy devices ship preloaded with the necessary software and work just like any other legitimate smart tv box—except the purchaser has access to unlimited pirated content such as new release movies or just released documentaries. These devices are also a significant cyber security risk to purchasers. These boxes are often plugged directly into an individual's home network giving hackers a backdoor to steal information from that person.

China's cyber intrusion efforts to acquire American businesses' trade secrets have been well documented by the United States Trade Representative (USTR). China's People Liberation Army General Staff Department hackers have stolen data from at least 115 American companies across 20 major business sectors. China's brazen intellectual property theft isn't just limited to private companies. China also actively attempts to steal intellectual property necessary for our national security. For example, in 2016 the Department of Justice (DOJ) secured a guilty plea by a Chinese national who attempted to steal military technical information related to certain U.S. military fighter jets.

We appreciate you placing this focus on Chinese theft of American intellectual property. Chinese misappropriation of our intellectual property is one of the most significant threats to the American economy. Making prosecution of intellectual property infringement domestically will significantly deter infringement.

When practical, we'd like to invite you to brief members and staff on current Chinese infringement in a classified setting. We would like to better understand the current DOJ efforts to prosecute infringement and what we, as Congress, can do to give the DOJ additional resources to prosecute these crimes. We stand ready to work with you to ensure you have the tools and resources necessary to effectively combat intellectual property theft.

_____

Thom Tillis
United States Senator

United States Senate
WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

April 28, 2020

Maria Strong
Acting Register of Copyrights and Director
United States Copyright Office
101 Independence Avenue, SE
Washington, D.C. 20559

Dear Acting Register Strong:

The Supreme Court's ruling last month in *Allen v. Cooper* created a situation in which copyright owners are without remedy if a State infringes their copyright and claims State sovereign immunity under the Eleventh Amendment of the U.S. Constitution.[1] We are concerned about the impact this may have on American creators and innovators, and we would like for the Copyright Office to research this issue to determine whether there is sufficient basis for federal legislation abrogating State sovereign immunity when States infringe copyrights. We likewise are asking the Patent and Trademark Office to advise on the pervasiveness and patterns of States' infringements of patents and trademarks.

As you know, *Allen v. Cooper* involved a challenge to the constitutionality of the Copyright Remedy Clarification Act (CRCA),[2] which Congress enacted in 1990 to abrogate State sovereign immunity for copyright infringement and establish that a State would be liable "in the same manner and to the same extent" as a private party under copyright law. The Supreme Court found the CRCA was unconstitutional because it applied to all infringements of copyright by States, not just unconstitutional infringements.

But *Allen v. Cooper* provided Congress a blueprint for how to validly abrogate State sovereign immunity from certain copyright infringement claims. One element the court pointed to was the importance of Congress identifying a pattern of unconstitutional infringement before enactment. Though the Supreme Court found that the legislative record for the CRCA was insufficient despite a 1990 report from the Register of Copyrights titled *Copyright Liability of States and the Eleventh Amendment*, that report turned up only a handful of cases that alleged State infringements of copyright. It is on this point that we request the Copyright Office's expertise and advice.

[1] *See Allen v. Cooper*, No. 18–877 (Mar. 23, 2020).

[2] Pub. L. No. 101-553, 104 Stat. 2749 (1990).

We have heard from affected copyright owners that in recent years State infringements of copyright have become much more common. We ask that the Copyright Office study the extent to which copyright owners are experiencing infringements by state entities without adequate remedies under state law. As part of this analysis, the Office should consider the extent to which such infringements appear to be based on intentional or reckless conduct.

So that Congress can evaluate whether legislative action needs to be taken, please provide a public report summarizing the findings of your study, as well as the facts and analyses upon which those findings are based, no later than April 30, 2021. Thank you for your careful attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Thom Tillis
United States Senator

Patrick Leahy
United States Senator

United States Senate
WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

April 28, 2020

The Honorable Andrei Iancu
Director
United States Patent and Trademark Office
600 Dulany Street, Madison East
Alexandria, VA 22314

Dear Director Iancu:

The Supreme Court's ruling last month in *Allen v. Cooper* created a situation in which copyright owners are without remedy if a State infringes their copyright and claims State sovereign immunity under the Eleventh Amendment of the U.S. Constitution.[1] As we understand, this was already the case in patent law and some aspects of federal trademark law following two Supreme Court decisions in 1999. We are concerned about the impact this may have on American creators and innovators, and we would like for the Patent and Trademark Office to research this issue to determine whether there is sufficient basis for federal legislation abrogating State sovereign immunity when States infringe patents or trademarks. We also are asking the Copyright Office to advise on the pervasiveness and prevalence of States' infringements of copyrights.

As you know, *Allen v. Cooper* involved a challenge to the constitutionality of the Copyright Remedy Clarification Act (CRCA),[2] which Congress enacted in 1990 to abrogate State sovereign immunity for copyright infringement and establish that a State would be liable "in the same manner and to the same extent" as a private party under copyright law. The Supreme Court found the CRCA was unconstitutional because it applied to all infringements of copyright by States, not just unconstitutional infringements. The Supreme Court said its decision was largely predetermined by the precedent set in its 1999 opinion in *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, in which the court held that Congress can abrogate State sovereign immunity from patent infringement claims under Section 5 of the Fourteenth Amendment, but not Article I, only if abrogation is limited in scope and remedies a pervasive and unredressed constitutional violation.[3] The Court did not discuss the related 1999

[1] *See Allen v. Cooper*, No. 18–877 (Mar. 23, 2020).

[2] Pub. L. No. 101-553, 104 Stat. 2749 (1990).

[3] 527 U.S. 627 (1999).

decision in *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, which involved the Lanham Act.[4]

But *Allen v. Cooper* provided Congress a blueprint for how to validly abrogate State sovereign immunity from certain patent and trademark infringement claims. One element that the Court pointed to was the importance of Congress identifying a pattern of unconstitutional infringement before enactment. It is on this point that we request the Patent and Trademark Office's expertise and advice.

We ask that the Patent and Trademark Office study the extent to which patent or trademark owners are experiencing infringements by state entities without adequate remedies under state law. As part of this analysis, the Patent and Trademark Office should consider the extent to which such infringements appear to be based on intentional or reckless conduct.

So that Congress can evaluate whether legislative action needs to be taken, please provide a public report summarizing the findings of your study, as well as the facts and analyses upon which those findings are based, no later than April 30, 2021. Thank you for your careful attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Thom Tillis
United States Senator

Patrick Leahy
United States Senator

[4] 527 U.S. 666 (1999).

United States Senate
WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

May 4, 2020

The Honorable William P. Barr
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
2707 Martin Luther King Jr. Ave, SE
Washington, DC 20528

Dear Attorney General Barr and Secretary Wolf:

We write you today to express our strong support for your efforts to prosecute the pervasive intellectual property theft by entities controlled by the Chinese government and Chinese-based entities. China has made their intentions clear: if America can create it, they will steal it. This overt effort to misappropriate American innovation has gone on for too long. Domestic and international enforcement of intellectual property rights must continue to be a top priority for your agencies.

As Americans come together to stop the spread of the 2019 novel coronavirus, we are alarmed by reports that counterfeit personal protective equipment (PPE) has been identified and seized by federal authorities. PPE is essential to protect the healthcare workers who are on the front-lines of this fight risking their own personal safety to help others. By now most Americans have heard of the "N95" respirators, which is one of the lifesaving devices used by healthcare professionals. These respirators are so essential that the Center for Disease Control and Prevention (CDC) does not recommend the N95 respirator for public use. This is because they are "critical supplies that must continue to be reserved for health care workers and other medical first responders."

Alarmingly, counterfeits of these masks are making their way into the hands of dedicated first responders. On March 27, the Federal Bureau of Investigation (FBI) issued a press release warning individuals to be vigilant for counterfeit PPE. The CDC published guidance on their website with depictions of counterfeit products that misrepresent National Institute of Occupational Safety and Health (NIOSH) approval. One example the CDC lists is a company producing counterfeit N95 respirators with falsely marked valid NIOSH approval numbers. Just last month, DHS reported seizing a shipment of counterfeit 3M respirators shipped from China, and several states have reported receiving substandard respirators from the Chinese. Counterfeit devices originating in China pose a serious and immediate threat to American healthcare workers who are going to work every day to protect others.

The intellectual property developed by American researchers and innovators will be critical to our nation's recovery and ability to prevent another outbreak of this virus in the future. While PPE is essential to the current effort to slow the spread of COVID-19, the next step in America's recovery is dependent on so many products of American innovation: testing kits to identify those infected with the virus, medicines and therapeutics to treat those infected with the virus, and vaccines to prevent more individuals from contracting the virus. Given the potential profit, we anticipate a surge in counterfeits attempting to take advantage of the urgent need.

We must do everything we can to promote and protect these lifesaving American innovations and prevent a flood of incoming counterfeit products, which can be done without decreasing the flow of legitimate medical products. As your agencies, in coordination with the White House, work to bolster and secure the domestic supply chain of essential medicines, medical devices, and active pharmaceutical ingredients, it is equally essential that we simultaneously strengthen the coordinated efforts of U.S. law enforcement to seize counterfeit goods at our borders, investigate their origins, and prosecute the criminal enterprises behind them. This will require close coordination between private sector companies with sophisticated knowledge of their supply chains and federal law enforcement agencies that can move swiftly to respond to actionable intelligence of intellectual property theft.

A coordinated multi-agency response is essential. We want to commend your prioritizing this issue and encourage you to continue to leverage the existing resources and capabilities of the Computer Crimes and Intellectual Property Section, the National Intellectual Property Rights Coordination Center, and other relevant functions to maximize the U.S. government's enforcement power to keep our citizens safe from counterfeits at this very critical time. As you pursue this critical work, we want to ensure that your Departments have all of the necessary tools, resources, and legal authorities they need to effectively prosecute these cases.

Accordingly, and when practical, we ask that you or someone whom you designate to lead this fight against intellectual property infringement within your agencies brief our offices on current Chinese intellectual property theft as it relates to COVID-19 and steps you are taking to combat that. We also ask to be briefed on any additional resources, tools, or authorities you will need to pursue these efforts. Finally, and in order to have the most productive conversation, we ask that this briefing be conducted in a classified setting.

Thank you for your prompt attention to this matter. We look forward to your reply, and to working with you to protect America's innovation economy.

Sincerely,

Thom Tillis
United States Senator

John Cornyn
United States Senator

Marsha Blackburn
United States Senator

Senator Thom Tillis
North Carolina

U.S. Senate
Washington D.C. 20510

VIA ELECTRONIC TRANSMISSION

May 12, 2020

The Honorable Dr. Carla Hayden
Librarian of Congress
Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Dear Dr. Hayden,

I hope you are well and staying safe and healthy during this troubling time. I want to thank you for sharing your plans to establish a Copyright Information Technology Modernization Public Stakeholder Working Group. This new working group will create a valuable forum for the Library and Copyright Office to engage directly with stakeholders who rely on its services each day. Your desire to provide additional engagement and outreach during the modernization process is greatly appreciated.

I am confident that—with your continued leadership—this working group will result in open and constructive dialogue throughout the modernization effort. I also want to thank you for making your staff, especially Mr. Barton and Ms. Strong, available to discuss the progress and future plans to modernize Copyright Office information technology systems. I look forward to the kickoff event this summer, whether it be in person or virtual.

As always, I appreciate your friendship and thoughtful advice. Please let me know if I can ever be of assistance to you or your team in any way. I look forward to continuing to work with you to ensure a successful modernization effort.

Sincerely,

Thom Tillis

Thom Tillis
U.S. Senator

United States Senate
WASHINGTON, DC 20510

May 21, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dear Leader McConnell and Leader Schumer:

We write to bring your attention to challenges facing the live entertainment industry and to ask for targeted legislative action as Congress works on additional economic relief legislation in response to the COVID-19 pandemic.

Live event venues were among the first to close as COVID-19 spread across the country, and they are likely to be among the last to reopen. Concerts and live events may not be possible until a vaccine is readily available to the public, which could be many months away, if not longer. Until that time, live event venues will remain shuttered, leaving employees without jobs and businesses without revenue. The continued closures will also impact the numerous contractors, suppliers, and business partners that support the live entertainment industry in our states.

Each year, thousands of independent venues host millions of events, staffed by hundreds of thousands of employees, and attended by hundreds of millions of concertgoers across all walks of life. These entertainment hubs are important economic multipliers for our local economies, generating millions in tax revenue and providing jobs in our communities. The business generated by this industry also supports countless neighboring businesses such as restaurants, hotels, and retail.

Unfortunately, even once venues are permitted to reopen, it will take months for the industry to return to usual schedules. Tour artists have an intricate and complicated process of planning, scheduling, and tour routing, making a quick restart near impossible. While necessary to prevent the spread of COVID 19, new capacity limitations and other restrictions could inhibit the live entertainment industry's ability to recover fully for some time. We are concerned that even if these entertainment venues are able to withstand the shutdowns, they will not be economically viable operating at 25 or 50 percent occupancy.

Congress has taken swift action to support the economy, but the programs we have enacted provide little relief to independent venues. Short-term disruption assistance has provided a lifeline for millions of Americans, but businesses that face prolonged closure also need help. Without assistance targeted to their unique situation, venues, artists, and our local communities face an unprecedented crisis. We support providing government funding, tax relief measures, and assistance to manage mortgage, rent, and other debt burdens for mom and pop venues across the country.

These venues support the economies of communities across the country, are a crucial component of the music industry's ecosystem, and serve as incubators and launch pads for the most popular

talent in the world. We can provide a vital lifeline for these iconic venues that are so central to the social, cultural, and economic fabric of so many of our communities. This industry is not going to make it without our help.

Thank you for your consideration of this request, and we look forward to working with you to provide necessary relief to live venue operators across the country.

Sincerely,

John Cornyn
United States Senator

Thomas R. Carper
United States Senator

Thom Tillis
United States Senator

Jon Tester
United States Senator

Kevin Cramer
United States Senator

Kyrsten Sinema
United States Senator

Jerry Moran
United States Senator

Ron Wyden
United States Senator

Cory Gardner
United States Senator

Dianne Feinstein
United States Senator

Marsha Blackburn
United States Senator

Jeffrey A. Merkley
United States Senator

Steven Daines
United States Senator

/s/
Robert P. Casey, Jr.
United States Senator

Susan Collins
United States Senator

Gary C. Peters
United States Senator

Lindsey Graham
United States Senator

Catherine Cortez Masto
United States Senator

Bill Cassidy
United States Senator

/s/
Martin Heinrich
United States Senator

Pat Roberts
United States Senator

/s/
Sherrod Brown
United States Senator

Jeanne Shaheen
United States Senator

Christopher A. Coons
United States Senator

Robert Menendez
United States Senator

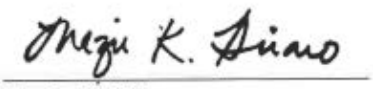
Debbie Stabenow
United States Senator

Tammy Duckworth
United States Senator

Jacky Rosen
United States Senator

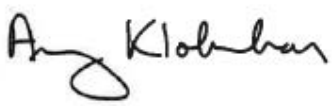
/s/
Jack Reed
United States Senator

Michael Bennet
United States Senator



Mazie K. Hirono
United States Senator

/s/
Chris Van Hollen
United States Senator



Amy Klobuchar
United States Senator

Doug Jones
United States Senator

Kamala D. Harris
United States Senator

Kirsten Gillibrand
United States Senator

Richard Blumenthal
United States Senator

/s/
Sheldon Whitehouse
United States Senator

Tammy Baldwin
United States Senator

Cory A. Booker
United States Senator

/s/
Angus S. King, Jr.
United States Senator

/s/
Tom Udall
United States Senator

Cc: Chairman Richard Shelby
Cc: Ranking Member Patrick Leahy

United States Senate
WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

May 29, 2020

Maria Strong
Acting Register of Copyrights and Director
United States Copyright Office
101 Independence Avenue, SE
Washington, D.C. 20559

Dear Acting Register Strong:

We write to congratulate you and your office for the *Section 512 of Title 17* report you published last week. This report culminated an extensive study of how copyright law's safe harbors for online service providers are working 22 years after Congress enacted the Digital Millennium Copyright Act (DMCA) with the dual goals of providing certainty for online service providers and adequately protecting the rights of copyright owners. In addition to the Copyright Office's internal expertise, we understand that this report is based on substantial public inputs in the form of about 93,000 written comments received and statements made across public roundtables in New York, San Francisco, and Washington, D.C.

The *Section 512* report is exhaustive in its evaluation of section 512 and is invaluable in the insights it provides Congress, particularly as the Senate Judiciary Committee Subcommittee on Intellectual Property holds a series of hearings this year on DMCA reform, of which section 512 is a significant component. It confirms what we have been hearing from stakeholders: that online service providers feel that section 512 has worked well and was critical to the growth of the internet, and that copyright owners and creators think that section 512 has put an overwhelming—and unmanageable—burden on them to police the internet for infringement. We took particular note of the Copyright Office's conclusion that the balance Congress originally intended with section 512 has been skewed by numerous changes that have occurred since 1998. And we are interested in further exploring the report's recommendations in the twelve categories you identified, including eligible types of service providers, repeat infringer policies, knowledge requirements, misrepresentation, and notice forms.

To further assist the Subcommittee, we ask that you supplement the substantial technical assistance and advice found in your *Section 512* report by answering, by no later than June 29, 2020, the following questions:

1. The report identifies numerous provisions within section 512 that would benefit from clarification, possibly because courts have misapplied them, or revision, because they have not worked in practice as anticipated. Congress may not be able to address all of these provisions in DMCA reform. Based on the Copyright Office's expert analysis and understanding of the issues, which clarifications or revisions would be the most beneficial for improving section 512?

2. The report identifies several guiding principles; one is that twenty-first century internet policy cannot be one-size-fits-all, and that revisions to section 512 should take into account differences within and among stakeholder classes. With respect to which specific provisions of section 512 is it most important that Congress recognize these differences? Does the Copyright Office have examples of how Congress has handled this in other areas of copyright law with legislative text? Is it something that the Copyright Office think should be handled by regulations?

3. The report discusses non-statutory approaches that could improve the effectiveness and operation of section 512 without legislative amendment. Some of these would involve the Copyright Office facilitating additional voluntary initiatives between copyright owners and online service providers, as well as helping to identify standard technical measures that can be adopted in certain sectors. As we look toward introducing legislation, we are particularly interested in whether the Copyright Office can help stakeholders identify and adopt standard technical measures without congressional action. What is the Copyright Office's timeframe for engaging on these matters, and would the Copyright Office's effort benefit from designated funding or additional regulatory authority?

4. The Copyright Office was clear in its report that its primary charge was to evaluate the operation and effectiveness of section 512 in light of Congress's goals with the DMCA. The Copyright Office also made clear that its recommendations assumed maintaining section 512's notice-and-takedown framework. But if Congress were starting from scratch, is this the approach that the Copyright Office would recommend? What type of system does the Copyright Office think best balances the interests of curbing online infringement while also providing certainty to service providers? In particular, what does the Copyright Office think of "notice and staydown"? And, significantly, if Congress were redesigning section 512 today, should the interests being balanced be the same ones as those in 1998 when the internet was in its infancy?

Sincerely,

Thom Tillis
United States Senator

Patrick Leahy
United States Senator

THOM TILLIS
NORTH CAROLINA
113 DIRKSEN SENATE OFFICE BLDG
WASHINGTON, DC 20510
PH: (202) 224-6342
https://tillis.senate.gov

United States Senate
WASHINGTON, DC 20510

COMMITTEES
ARMED SERVICES
BANKING, HOUSING, AND URBAN DEVELOPMENT
JUDICIARY
VETERANS' AFFAIRS

VIA ELECTRONIC TRANSMISSION

June 10, 2020

Mr. Brewster Kahle
Founder and Digital Librarian
Internet Archive
300 Funston Avenue
San Francisco, CA 94118

Dear Mr. Kahle:

I write to you again as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property. In my April 8, 2020 letter, I expressed my concern that the Internet Archive's announcement of a National Emergency "Library" filled with 1.4 million books that had been digitized and made available to the public without restrictions and without the permission of copyright owners appeared to be a blatant infringement of thousands—if not more—of copyrights.[1] Indeed, the U.S. Copyright Office analyzed publicly available facts and concluded that though some works included in the National Emergency "Library" might be permitted under fair use, many would not be. The Copyright Office went on to say that "while the Internet Archive's goal of making research and educational materials publicly available may be laudable, so is respect for copyright."[2] I write now after learning that the Internet Archive is engaged in other initiatives that involve the unauthorized digitization and dissemination of copyright-protected creative works—in this case sound recordings.

According to a May 15, 2020 article in the *Seattle Times*, the Internet Archive has purchased Bop Street Records' full collection of 500,000 sound recordings with the "inten[t] to digitize the recordings and put them online, where they can be streamed for free."[3] It is not clear from the

[1] Since then, I understand that major American book publishers—Hachette Book Group, HarperCollins Publishers, John Wiley & Sons and Penguin Random House—filed a lawsuit alleging copyright infringement and seeking to enjoin uses of their copyrighted books in the National Emergency Library or the Internet Archive's "Open Library," which had offered the same catalog of books but with some limitations, such as checkout waitlists. *See Hachette Book Grp. v. Internet Archive*, No. 1:20–cv–04160 (S.D.N.Y. filed June 1, 2020).

[2] Letter from Maria Strong, Acting Register of Copyrights, U.S. Copyright Office, to Sen. Tom Udall, at 21 (May 15, 2020).

[3] Paul de Barros, *A Happy Ending for Seattle's Bop Street Records: A Nonprofit Buys Up the Entire Collection*, SEATTLE TIMES (May 15, 2020), https://www.seattletimes.com/entertainment/music/a-happy-ending-for-seattles-bop-street-records-a-nonprofit-buys-up-the-entire-collection/.

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article, or others, if you intend to digitize all of the sound recordings acquired from Bop Street. But it is clear that these sound recordings were very recently for sale in a commercial record shop and likely contain many sound recordings that retain significant commercial value. This raises serious alarms about copyright infringement.

As I understand, Bop Street Records, which the *Wall Street Journal* once deemed a top-five record shop in the country, focuses on collectible-quality vinyl records across a diverse range of musical genres. According to its website, there sound recordings includes "Rock, Soul/R&B, Jazz, Blues, Classical, Country, World and many other genres from the 1920's to 1990's." The overwhelming majority—if not all—of these sound recordings are protected by U.S. copyright law, and thus may not be digitized and streamed or downloaded without authorization.

In a similar vein, I am aware of the Internet Archive's "Great 78 Project," which has already digitized—and continues to digitize daily—a vast trove of 78 rpm recordings, many of which are also commercially valuable recordings already in the marketplace, and has made those recordings available to the public for free through unlimited streaming and download. I understand that the Internet Archive is framing this and its other sound recording projects—which include both obscure gems for music fans and hits from the likes of Elvis Presley, Chuck Berry, and Johnny Cash—as preservation, but your current practices raise numerous potential issues of copyright infringement. The Bop Street collection is likely to add to that. Among other things, your sound recording projects do not appear to comply with the relevant provisions of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (MMA), which deals only with pre-1972 sound recordings and would not allow for streaming or downloading. Moreover, there are additional copyrights, such as the musical composition and the album artwork, that are displayed on the Internet Archive website and would not be covered by an exception for preservation.

I recognize the value in preserving culture and ensuring that it is accessible by future generations, such as the Library of Congress's Recorded Sound Collection and National Recording Registry projects. But I am concerned that the Internet Archive thinks that it—not Congress—gets to determine the scope of copyright law. With its sound recording projects, the Internet Archive does not even pretend that a national emergency like the Covid-19 pandemic creates a special need for these sound recordings to be freely streamed or downloaded. Rather, the Internet Archive seems to be daring copyright owners to sue to enforce their rights, or else effectively forfeit them—something many copyright owners, particularly individuals and smaller enterprises, cannot afford to do.

Our copyright system is designed with important limitations and exceptions that ensure that the public can make appropriate uses of copyrighted works even when the copyright owner seeks to prevent such uses—but those are the exception, and free use for those who disagree with the concept of exclusive rights is not one of them. Accordingly, I once again invite you to share with me the legal support, in copyright law or elsewhere, for reproducing and distributing copyrighted works that are owned by others. In particular, how do the Internet Archive's sound recording digitization and streaming projects—in particular the Great 78 Project—fit within case law interpreting the fair use doctrine and within the relevant provisions of section 108 and the MMA?

Please respond by July 10, 2020. If you have any questions, please do not hesitate to contact me.

Sincerely,

Thom Tillis
Chairman
Subcommittee on Intellectual Property

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

July 20, 2020

The Honorable Mitch McConnell
Senate Majority Leader
Washington, D.C.

The Honorable Chuck Schumer
Senate Minority Leader
Washington, D.C.

Dear Senators McConnell and Schumer:

We write you today to express our support for the inclusion of funding in any fourth stimulus package for cyber-security hardening grants for small American companies engaged in COVID-19 research.

In the CARES Act, Congress allocated $9.1 million to the Cybersecurity Infrastructure Security Agency (CISA). This money was to support operations and to help guarantee that CISA has the resources it needs. However, since Congress passed CARES earlier this year, we have become aware of attempts by hackers affiliated with China, Russia and Iran to steal American intellectual property related to COVID-19. The Federal Bureau of Investigation (FBI) and CISA issued a joint notice alerting American companies to attempted intrusions by hackers affiliated with the Chinese government. These hackers attempted to illegally gain access to the networks of American companies and research institutions with the intent to steal intellectual property. This includes research into diagnostics, potential treatments, and vaccines. These attempts to steal intellectual property related to COVID-19 is a threat to our national security.

Research into diagnostics, treatments, and cures is some of the most important research being conducted today and will continue to be essential for the foreseeable future. Given that hackers affiliated with foreign adversarial governments have already tried to hack American companies to steal this valuable research, it is likely they will try again.

Innovative American companies of all sizes, in partnership with federal agencies, are working tirelessly to produce the essential treatments, vaccines, and ancillary supplies that we need to stop the spread of this virus. Smaller American companies are doing some of the most innovative research and development related to COVID-19. However, most of the resources they do have must be used for research. These smaller companies do not have the resources or technical expertise to prepare for attempted hacks. That is why this funding is essential.

China has been clear: if America can invent it, they will try to steal it. And they are not the only foreign adversary willing use cyber-attacks to try to steal American intellectual property. Cyber-attacks that are successful or disrupt essential research are a threat to our economic recovery and national security. One successful disruption or stolen IP from hackers affiliated with China or any other county will negatively impact our road to recovery.

As discussions continue for a possible fourth stimulus bill, we ask that you consider including funding for cyber-security grants for American companies conducting COVID-19 related research. The grant funding should prioritize smaller companies. It should also ensure that these companies coordinate their cyber-security improvements with the FBI and CISA. This funding will help ensure that our intellectual property is kept safe from foreign adversaries and protect national security.

We want to commend the FBI and CISA for the work they are doing already. We are confident that the FBI, CISA and other federal agencies will continue to work collaboratively to protect American interests.

We appreciate your prompt attention and consideration of this request.

Sincerely,

Thom Tillis
United States Senator

Richard Blumenthal
United States Senator

VIA ELECTRONIC TRANSMISSION

July 30, 2020

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, DC 20535

The Honorable Christopher Krebs
Director
Cybersecurity and Infrastructure Security Agency
Department of Homeland Security
245 Murray Lane
Washington, DC 20528

Dear Directors Wray and Krebs:

We write you today regarding recent cyberattacks by Russian actors, specifically NetWalker and its ransomware cyberattacks. NetWalker uses a sophisticated ransomware that usurps an individual's private or sensitive software data through their e-mail or ransomware-as-a-service (RaaS). NetWalker threatens users with the publication of their data and adds an encryption that makes it impossible for users to recover their data without paying the ransom. As you both know, normal ransomware attacks would only steal data and request a ransom payment, but would not encrypt the data.

According to public reports, NetWalker has been traced back to Russian government-affiliated hackers. The RaaS attack is one that has long been used by Russian actors. There has also been an increase of Russian-language Dark Web forum posts recruiting individuals to the NetWalker group that recommend experience in RaaS cyberattacks and previous access to company networks.

In recent months there have been multiple NetWalker attacks on education systems, medical facilities, businesses, and government agencies. In March 2020, Champaign-Urbana Public Health District (CUPHD) was attacked by NetWalker. This attack caused a disruption in the

CUPHD's ability to access patient records for patients with COVID-19.[1] Similarly, on June 1, 2020, the University of California, San Francisco (UCSF), reported paying a $1.14 million dollar ransom. According to UCSF officials, the NetWalker group stole and encrypted medical and academic research from UCSF.[2]

The Philadelphia-area Crozer-Keystone Health System also reported a NetWalker attack in June during ongoing treatment of COVID-19 patients. The Philadelphia health system stated that NetWalker stole financial information data that was later posted on the NetWalker blog.[3] We are also aware of at least one North Carolina company that has been targeted – and we suspect there may be many more.

On July 16, 2020, a joint advisory was released by the United States, Canada, and the United Kingdom alerting the public to the latest COVID-19 cyberattacks. According to the advisory, these hackers attempted to steal COVID-19 related intellectual property (IP). The attack, which was intended to disrupt, create mistrust, and steal IP, is one that has been used by Russian Intelligence groups Fancy Bear and Cozy Bear before. According to reports, these Russian Intelligence groups continue to launch attacks intended to undermine and disrupt the critical COVID-19 research that is needed to save lives. These attacks are a risk to public safety and to our national security.

We believe that these latest cyberattacks by Russian government affiliated hackers makes awareness and increased cybersecurity and guidance on how the public and private sector should protect their data essential. We appreciate the steps your agencies have taken to combat these attacks by Russian-affiliated hackers and similar attacks by hackers affiliated with the Chinese government. To better understand the types of attacks being launched by these hackers and the efforts by your agencies to raise awareness about the threat of these attacks, please provide answers to the following questions by no later than August 30, 2020.

1. Has the number of NetWalker attacks generally increased during the COVID-19 pandemic? What sorts of businesses and institutions does NetWalker target? Please provide specific data where possible.
2. What additional steps are CISA and the FBI taking to counter or prevent the NetWalker attacks?
3. Which other foreign actors, besides Russia, are conducting attacks using RaaS similar to NetWalker attacks?

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[1] Jessica Davis, *Illinois Public Health Website Hit With Ransomware Amid Coronavirus*, HealthITSecurity, (July 20, 2020), https://healthitsecurity.com/news/illinois-public-health-website-hit-with-ransomware-amid-coronavirus.

[2] University of California San Francisco: Campus News, *Update on IT Security Incident at UCSF*, University of California San Francisco (July 21, 2020), https://www.ucsf.edu/news/2020/06/417911/update-it-security-incident-ucsf.

[3] DataBreaches, Pennsylvania health system hit by NetWalker ransomware, DataBreaches.Net (July 20, 2020), https://www.databreaches.net/pennsylvania-health-system-hit-by-netwalker-ransomware/.

4. Has there been a rise in NetWalker recruitment posts during COVID-19? What steps are being taken to shut down these posts?
5. What has the DOJ and CISA done to increase awareness about the risk of NetWalker for research facilities, health departments, universities, and businesses during the COVID-19 pandemic?
6. What additional funding or legislative authority would you recommend Congress enact to increase your ability to effectively combat sophisticated actors such as NetWalker?

Thank you for your prompt attention to this matter. Please know that as you continue to combat state-sponsored hacking and the theft of American intellectual property we stand ready and willing to assist you. If you have any questions, please do not hesitate to contact us.

Sincerely,

Thom Tillis
United States Senator

John Cornyn
United States Senator

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VIA ELECTRONIC TRANSMISSION

August 10, 2020

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property
Director
United States Patent and Trademark Office
600 Dulany Street, Madison East
Alexandria, VA 22314

Dear Director Iancu:

I write to you as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property. As you know, I have been heavily committed to improving our patent system. Last year, my Subcommittee held a series of hearings on patent eligibility reform with an eye toward improving the efficiency and effectiveness of U.S. patent law and its administration. While stakeholders were unable to reach any consensus on legislative reforms during that process, I remain interested in finding ways to improve our patent system. And so, I was very encouraged when I read a paper on patent reform from Stanford University professors Lisa Larrimore Ouellette and Heidi Williams.[1] That paper outlining their proposals is enclosed. I write you today to urge that the U.S. Patent and Trademark Office (USPTO) adopt two of their recommendations.

Their first reform would require patent applicants to more clearly distinguish hypothetical experimental data from results that have already been achieved and recorded. Currently, patent rules require applicants to put hypothetical data in the present or future tense. But the tense is not always clear and the rule is not well known to many of those who read patents, including researchers and the general public. In fact, a recent study found that 99 percent of patents that included solely hypothetical data and that were cited in a scientific publication were cited as if they had reported real data. The result is often confusing data that can be used to mislead investors and pump up profits for a company that has little to offer the economy or the public. As Ouellette and Williams noted, clearer labeling would reduce those confusion costs while

[1] Oullette is Associate Professor of Law and Justin M. Roach, Jr. Faculty Scholar at Stanford Law School. Williams is the Charles R. Schwab Professor of Economics at Stanford University, a Professor of Law (courtesy) at the law school, and was a 2015 recipient of a MacArthur "Genius Grant." For further details on their proposals, see Lisa Larrimore Ouellette & Heidi Williams, *Reforming the Patent System* (June 2020).

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"enhancing the patent system's goals of inducing researchers to disclose accurate information about new inventions and reducing duplication of inventor effort."

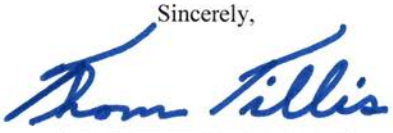
The second reform would improve ownership information by requiring patent owners to disclose it in a manner that is both more transparent and more standardized. As someone who spent many years working in the technology fields, I am well aware of how obscured patent ownership increases transaction costs for other innovators and inventors. Ouellette and Williams noted that USPTO could improve ownership transparency and searchability by increasing incentives for recording changes in patent assignments, by promoting disclosure of hidden owners, and by standardizing company and inventor names across patent records. As I understand that last point, researchers spend a lot of time trying to figure out all the different name variations used by a single company, even one with a short and straightforward name.

These proposals would promote policy goals that you and I share: enhancing our patent system so that it provides optimal incentives for innovators and inventors while also minimizing transactional costs that may discourage the development of new products. My understanding is that these proposals could be implemented by your office under its current regulatory authority.[2] And, significantly, they would impose no costs on taxpayers and only minimal administrative costs; at the same time they would lower transactions costs for inventors looking to create something new.

Though the U.S. patent system remains a global leader, it is our job as legislators and agency leaders to continually work to identify means for improvement. Patents are a key part of our economy and a big reason that the United States is a global leader in entrepreneurial, technological, and pharmaceutical innovation. Without a well-functioning patent system, many innovators and inventors would not have the incentives to invest heavily in life-changing technologies and life-saving drugs. Improvements to the patent system will result in more innovation, which is good for the U.S. economy and great for the American people. As we deal with the global coronavirus pandemic, the importance of investing in innovation is all the more apparent.

Thank you for your careful attention to this matter, and for your excellent leadership at USPTO. I look forward to continuing to see your efforts to improve our patent system through efficient and effective administration. If you have any questions, please do not hesitate to contact me.

Sincerely,



Thom Tillis
United States Senator

[2] I recognize that USPTO efforts to improve ownership information stalled in 2014, but the time has come to revisit this and Oullette and Williams' narrower approach should minimize stakeholder concerns over regulatory costs.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

September 8, 2020

The Honorable Robert Lighthizer
United States Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20006

Dear Ambassador Lighthizer:

As the Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property, I write you today to urge that you prioritize strong intellectual property protections in any free trade agreement with the Republic of India.

Securing a free trade agreement with the Republic of India has been a top priority for President Trump, and I applaud his efforts to open market access for America's innovative companies in all sectors. While I fully support his efforts to open foreign markets, it is critical that any free trade agreement promotes innovation and high global standards for intellectual property. As you well know, India has an unusually restrictive market when it comes to biopharmaceutical innovations, and has long been featured on the Special 301 Report due to its failure to provide adequate intellectual property protections.

The United States has spent decades building and maintaining the world's strongest legal standards and policies to encourage innovation and protect IP. Our nation has consistently led the world in biopharmaceutical innovation. For example, bioscience industries employed 1.74 million people in 85,000 U.S. business establishments in 2016 alone. The broader employment impact of bioscience jobs is an additional 8 million jobs throughout the rest of the economy. Taken together these direct, indirect, and induced bioscience jobs account for a total employment of 9.7 million jobs.

Our domestic intellectual property system also helps healthcare solutions across diverse economic sectors. Because of our strong IP protections, businesses of all sizes can mobilize talent and diverted funding and human resources to quickly accelerate the research, development, and manufacture of protective equipment, advanced diagnostics, medical devices, and potential treatments and vaccines. American companies have made peer-reviewed research and data widely available and provided informational, educational, and other creative content to people and their families in times of heightened need.

Now more than ever, at this time of unprecedented global crisis due to COVID-19, the world is rightly looking to the United States to find a cure. We are the global leader and we can only remain so if we continue to be committed to strong intellectual property protections. We simply cannot relinquish our leadership in biopharmaceutical innovation by failing to uphold our own robust standards in any free trade agreement with the Republic of India.

Our innovation economy ensures that American citizens have not only early access to revolutionary cures and treatments, but also that we have good sound jobs and economic growth in these industries. Any free trade agreement that does not enhance our nation's strong intellectual property protections would threaten our ability to remain the world leader in these sectors.

Thank you for your attention to this matter and for your work to protect American intellectual property abroad. Please know that I stand ready and willing to work with you to secure strong intellectual property protections in this and any future free trade agreement. If you have any questions, please do not hesitate to contact me.

Thom Tillis

Thom Tillis
Chairman
Subcommittee on Intellectual Property

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VIA ELECTRONIC TRANSMISSION

September 23, 2020

Shira Perlmutter
Chief Policy Officer and Director for International Affairs
U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Ms. Perlmutter:

I write you today as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property to congratulate you on your appointment as the fourteenth Register of Copyrights in the history of the United States Copyright Office. The Copyright Office is a critical resource for our country, and you will be taking over its leadership at a crucial time in its 150-year history, as the Copyright Office continues much-needed technological and administrative modernization efforts to ensure that it serves the needs of the entire copyright community.

As I shared with the Librarian during the search process, the next Register should have a deep understanding of, appreciation for, and experience with the services and responsibilities of the Copyright Office; be a copyright expert who values the full body of U.S. copyright law, understand the value of the Copyright Office to the public, and be intimately familiar with its duties; and have experience representing the interests of copyright owners, authors, and users, as well as promoting and supporting domestic and foreign copyright law and policy.

You of course bring all those qualities to the job. And I marvel at your extensive experience in the copyright space—from being the first Copyright Office's first Associate Register for Policy and International Affairs some 25 years ago to working as a copyright lawyer in the private sector to your current role leading U.S. delegations to the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights as the U.S. Patent and Trademark Office's Chief Policy Officer and Director for International Affairs.

As you know, the Copyright Office provides valuable services to copyright creators, users, and the public. It also provides invaluable technical advice and support to Congress, and I am grateful to the tireless work of Copyright Office staff that have delivered counsel on draft copyright bills and the series of hearings my Subcommittee has held this year on reforming the Digital Millennium Copyright Act. Acting Register Maria Strong did an incredible job not only steadying the Copyright Office but moving it forward while facing unprecedented challenges brought on by a global pandemic.

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Legislation

2019- Bills

Bill Number: Drafted Legislation
Name: Patent Reform 101
Date: 04/2019
Introduced: Senator Thom Tillis (R-NC) and Senator Chris Coons (D-DE)
Link: https://www.tillis.senate.gov/services/files/3491a23f-09c3-4f4a-9a93-71292704c5b1
https://www.tillis.senate.gov/services/files/E8ED2188-DC15-4876-8F51-A03CF4A63E26

Bill Number: S. 963
Name: FLAG ACT
Date: April 2, 2019
Introduced: Senator Thom Tillis (R-NC), Senator Klobuchar (D-MN)
Link: https://www.tillis.senate.gov/2019/4/tillis-klobuchar-schumer-introduce-bipartisan-ip-legislation-to-allow-federal-trademark-protection-for-state-and-local-flags-and-symbols

Bill Number S. 1273
Name: CASE Act of 2019
Date: 05/01/2019
Introduced: Senator John Kennedy (R-LA)
Linkhttps://www.congress.gov/bill/116th-congress/senate-bill/1273?q=%7B%22search%22%3A%22tillis%22%7D&s=4&r=358

Bill Number: S. 2509
Name: Office of Technology Assessment Improvement and Enhancement Act
Date: 09/19/2019
Introduced: Senator Thom Tillis (R-NC)
Link: https://www.congress.gov/bill/116th-congress/senate-bill/2509?q=%7B%22search%22%3A%22tillis%22%7D&s=1&r=265

Bill Number S. 2987
Name: Counterfeit Goods Seizure Act of 2019
Date: 12/05/2019
Introduced: Senator Thom Tillis (R-NC)
Link: https://www.congress.gov/bill/116th-congress/senate-bill/2987?q=%7B%22search%22%3A%22tillis%22%7D&s=1&r=215

Bill Number: S. 3073
Name: SANTA Act
Date: 12/17/2019
Introduced: Senator Bill Cassidy (R-LA)
Link https://www.congress.gov/bill/116th-congress/senate-bill/3073?q=%7B%22search%22%3A%22tillis%22%7D&s=1&r=207

2020- Bills

Bill Number: S. 3574
Name: Ending Price-Gouging During Emergencies Act
Date: 03/24/2020
Introduced: Senator Thom Tillis (R-NC)
Linkhttps://www.congress.gov/bill/116th-congress/senate-bill/3574?q=%7B%22search%22%3A%22tillis%22%7D&s=9&r=156

Bill Number: S. 3952
Name: Protecting American Intellectual Property Act of 2020
Date: 06/11/2020
Introduced: Senator Chris Van Hollen (D-MD)- co-sponsored
Linkhttps://www.congress.gov/bill/116th-congress/senate-bill/3952?q=%7B%22search%22%3A%22tillis%22%7D&s=9&r=122

Bill Number: S. 3997
Name: Safeguarding American Innovation Act
Date: 07/22/2020
Introduced by: Rob Portman (R-OH) – co-sponsored
Link:https://www.congress.gov/bill/116th-congress/senate-bill/3997/text?q=%7B%22search%22%3A%22tillis%22%7D&r=114&s=9

Bill Number: S. 4345
Name: Protecting America From Spies Act
Date: 07/28/2020
Introduced by: Senator Ted Cruz (R-TX) - co-sponsored
Link:https://www.congress.gov/bill/116th-congress/senate-bill/4345?q=%7B%22search%22%3A%22tillis%22%7D&s=2&r=63

Bill Number: S. 4793
Name: Defend COVID Research from Hackers Act
Date: 10/1/2020
Introduced by: Senator Thom Tillis (R-NC)
Link: https://www.congress.gov/bill/116th-congress/senate-bill/4793/text?q=%7B%22search%22%3A%5B%22tillis%22%5D%7D&r=1&s=7