



**BEFORE THE  
U.S. COPYRIGHT OFFICE**

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**Exemptions To Permit Circumvention  
of Access Controls on Copyrighted  
Works**  
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**Docket No. 2020-11  
Submitted March 10, 2021**

We write to you in response to NPRM published in the Federal Register, titled “Exemptions To Permit Circumvention of Access Controls on Copyrighted Works,” on October 15, 2020. While we do not support nor oppose any of the proposals on the NPRM, we wish to provide general commentary on the importance of unfettered access to the content on platforms to the success of efficient copyright protection.

As a bit of background, Pex is the market leader in content identification and recognition technology. We work with rightsholders of all sizes, from major music labels and film studios to independent companies and individual rightsholders, to facilitate the identification of the usage of their copyrighted works across user-generated content (UGC) platforms. These platforms include many you know, like Facebook, Twitter, YouTube, Instagram, Snapchat, TikTok, and others that are wildly popular across the globe but less familiar to American users. Our offering allows rightsholders to find content on platforms that they either cannot find themselves, or the technology provided to them by the relevant platforms falls drastically short of acceptable.

The large amount of content present on UGC platforms has been covered extensively, and it presents a sizable hurdle for rightsholders to overcome if they are to efficiently protect their copyrighted works. In fact, companies that assist rights holders in identifying their content on UGC platforms, including Pex, are often faced with significant issues as platforms do their best to keep them out. Crawlers that collect data and content present on UGC platforms and allow rights holders to know where and when their works are being used illegally, a practice colloquially referred to as “web scraping,” are regularly blocked by platforms. This action results in rightsholders being largely unable to identify their works and send DMCA takedown notices as appropriate.

The DMCA has long upheld a system requiring notice and action – with rightsholders often required to identify a needle in a haystack before sending notice in hopes of the platform’s action. However, because platforms are incentivized to keep content accessible, there has been a tangential incentive to make the identification of infringing content difficult. A single song, for example, can have hundreds of thousands of copies on each platform, and potentially no associated metadata to facilitate its identification. Obviously, this presents a huge hurdle for rightsholders trying to first identify where their copyrights are being infringed so that they can

follow up with a takedown request. In order for the DMCA's notice and takedown system to be effective, the Copyright Office should consider an exception to monitor content. Secondly, platforms should pledge to provide an application programming interface (API) to rightsholders and third-parties chosen by those rightsholders to help protect their content.

Given these tools, rightsholders would be better equipped to handle the widespread, illegal use of their works, beginning with the ability to identify it and provide notice to platforms alerting them of the existence of said material on their network. There is a troubling and overlooked disconnect between what the law asks rightsholders to do and the incentives created by that same law for platforms. Ultimately, tools exist for rightsholders to more efficiently protect their works, but those tools are being limited by failures to adequately provide access.

A handwritten signature in black ink, appearing to read 'Cesar Fishman', written in a cursive style.

Cesar Fishman  
Head of Business and Government Affairs  
Pex