Catherine R. Gellis, Esq.
[redacted]

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By Email to BRAD_WATTS@TILLIS.SENATE.GOV
By Email to BRAD_GREENBERG@TILLIS.SENATE.GOV

Re: DMCA Reform Questions

Dear Senator Tillis:

The Copia Institute submits this letter in response to the Q&A you circulated seeking input on your proposed reforms of the Digital Millennium Copyright Act ("DMCA"). In brief, we agree that certain reforms are welcome and even needed but caution that the guiding principle behind any reform effort must be to ensure that the DMCA, and copyright law in general, comport with both the letter of the First Amendment and its speech-encouraging spirit. Reform is warranted because, since its passage, too much of Title 17 has come to fall too far short of these benchmarks. But Congress must think carefully about the assumptions driving its reform effort and take care to not make any changes that would make the defects in the statute that time has revealed even worse.

I. About the Copia Institute

The Copia Institute is the think tank arm of Floor64, Inc., the privately-held small business behind Techdirt.com ("Techdirt"), an online publication that has chronicled technology law and policy for more than 20 years. In this time Techdirt has published more than 70,000 posts commenting on subjects such as freedom of expression, platform liability, copyright, trademark, patents, privacy, innovation policy and more. The site regularly receives more than a million page views per month, and its posts have also attracted more than a million reader comments, which is itself user-generated expression that advances discovery and discussion around these topics. Techdirt depends on the platform liability protection afforded by the DMCA to both enable the robust public discourse found on its website and for its own expression to reach its audiences throughout the Internet and beyond.

As a think tank the Copia Institute also produces evidence-driven white papers examining the evidence underpinning tech policy[1] and, armed with this insight, regularly files regulatory

[1] Incorporated by reference into this submission is the white paper, "Don't Shoot the Message Board," which documents how weak OSP protections deter investment in technology and online services. Michael Masnick, *Don't Shoot The Message Board*, June 2019, https://copia.is/library/dont-shoot-the-message-board/.

comments, amicus briefs, and other advocacy instruments on these subjects to help educate lawmakers, courts, and other regulators – as well as innovators, entrepreneurs, and the public – and influence good policy that promotes and sustains innovation and expression.[2]

II. Overarching-principles applicable to the entire inquiry

Congress in the 1990s may not have been able to predict the growth of the Internet, but it could see the direction it was taking and the value it had the potential to deliver. It passed the DMCA explicitly to help "foster the continued development of electronic commerce and the growth of the Internet."[3] As per an accompanying Senate Report, "The 'Digital Millennium Copyright Act of 1998' is designed to facilitate the robust development and world-wide expansion of electronic commerce, communications, research, development, and education in the digital age."[4] As the Report continued, Congress was going to achieve this end by protecting intermediaries, observing that, "[B]y limiting the liability of service providers, the DMCA ensures that the efficiency of the Internet will continue to improve and that the variety and quality of services on the Internet will continue to expand."[5]

In these nearly twenty years we have seen countless businesses and jobs be added to the economy, innumerable examples of pioneering technology be innovated, myriad new markets previously unimaginable be created (including many for those in the arts and sciences to economically exploit), and enormous value returned to the economy. By protecting online service providers we have changed the world and brought the democratic promise of information and knowledge sharing to bear.

Over time, however, the law has changed as courts have interpreted the DMCA's provisions. Sometimes those interpretations solidified the promise of the DMCA.[6] Other times, however, they undermined its effectiveness[7] or abandoned its needed constitutional balance to ensure that expression is protected from undue censorship.[8]

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[2] Of particular note, the Copia Institute filed multiple comments in the Copyright Office's recent Section 512 study. See https://www.techdirt.com/articles/20160401/11332234082/our-comment-dmca-takedowns-lets-return-to-first-principles-first-amendment.shtml and https://www.techdirt.com/articles/20170222/11214836767/why-dmcas-notice-takedown-already-has-first-amendment-problems-riaa-mpaa-want-to-make-that-worse.shtml. In addition, both Michael Masnick, founder of Floor64 and editor of Techdirt, and undersigned counsel Catherine Gellis testified in their individual capacity at several of the hearings held as part of the study. See https://www.copyright.gov/policy/section512/public-roundtable/transcript_05-12-2016.pdf, https://www.copyright.gov/policy/section512/public-roundtable/transcript_05-13-2016.pdf, https://www.copyright.gov/policy/section512/public-roundtable/transcript_04-08-2019.pdf.

[3] H.R. Rep. No. 105-551, pt. 2, at 21 (1998).

[4] S. Rep. No. 105-190, at 1-2 (1998).

[5] Id. at 8.

[6] *UMG Recordings, Inc. v. Shelter Capital Partners*, 718 F. 3d 1006 (9th Cir. 2013).

[7] *BMG Rights Management v. Cox Communications*, 881 F. 3d 293 (4th Cir. 2018).

[8] *Lenz v. Universal Music Corp.*, 815 F. 3d 1145 (9th Cir. 2015), *cert denied*, 137 S. Ct. 2263 (2017).

Reform that could cure these defects is exciting to contemplate. But not every proposed change is necessarily an improvement. Furthermore, some of what is on the table, namely Section 512, even though increasingly imperfect, is still doing critical work enabling the exchange of information and expression on the Internet, as well as providing economic benefit, including for creators. Any effort to ameliorate its shortcomings must not jeopardize the crucial statutory protection it provides OSPs to make the Internet's expressive promise possible.

Nor should any other proposed reform of the DMCA, or the underlying understanding of copyright doctrine it is premised on, do anything to further burden the expression that both copyright law and the First Amendment exist to encourage. We should take this opportunity to reduce the costly friction that the more inapt portions of the existing law currently impose on it. But reform efforts will only lead to beneficial outcomes if Congress focuses on the following principles: (1) it must ensure that any resulting statutory language scrupulously complies with the First Amendment, and (2) it must predicate any statutory language on a clear empirical understanding of the policy challenge the DMCA is being called on to address – not on unchallenged assumptions. Otherwise, if this care is not taken, any changes will only exacerbate current problems already chilling expression and likely leave us with even more.

A. The DMCA, and copyright law in general, must comport with the First Amendment.

The guiding principle that needs to inform any effort to reform any aspect of copyright law—whether its core doctrine or complementary provisions added by the DMCA—is that each and every provision must comport with the First Amendment. The First Amendment's admonition is clear: Congress shall "make no law" abridging freedom of speech. Copyright law is law that inherently regulates expression, and the DMCA is a regulatory scheme that also directly acts on expression. Congress must therefore ensure that any copyright legislation it produces complies with the First Amendment, just as it would need to with any other legislation in any other area.[9]

As it stands, there is already plenty in the DMCA for Congress to fix, and some examples are set forth below. Some of the constitutional infirmities evident now were present in some degree at the time of the DMCA's passage. That we have lived with them for over twenty years does not mean we should continue to; they have come with a cost we should not continue to tolerate.[10]

But other constitutional infirmities have been revealed over time as courts have interpreted the DMCA's many provisions and in doing so shifted the internal balance necessary

[9] *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964) (describing how no law can claim "talismanic immunity" from constitutional limitations).
[10] *See, e.g,* discussion *infra* Section II.A.4

to ensure the DMCA could actually pass constitutional muster. It no longer reliably does, and reform is needed to rehabilitate the statute so that it can return to supporting copyright's foundational purpose of fostering expression, rather than chilling it, as it now so frequently does.

1. **Fair use is all too often treated as an incidental afterthought and not an inherent limitation on a copyright.**

Fair use is a core part of copyright law and not something introduced to it by the DMCA. But both provisions of the DMCA, Section 512 and Section 1201, interact with it, and all too often in a way that gives short shrift to the important First Amendment interest that fair use is supposed to embody in order to ensure that copyright law is itself constitutional.[11]

Any DMCA reform effort therefore needs to stop treating fair use as a begrudging concession or minor technicality that can be ignored. Instead, every aspect of copyright law must recognize it as a fundamental limitation on a copyright, and any power the law might grant a copyright holder must be tempered in a way that fully accommodates it—including any power that the DMCA might grant. Thus Section 1201 should no longer obstruct a fair use, and Section 512 should no longer enable the censoring of a fair use either. Protecting fair uses must be a central tenet of any DMCA revision in order to ensure that fair use can remain meaningful in the digital age. The digital revolution has not obviated its importance; on the contrary, digital technologies most help realize its expressive promise. Copyright law must not interfere with this advance.

2. **In its current form Section 512 of the DMCA creates an unconstitutional system of prior restraint.**

One conspicuous way the DMCA has grown to offend the First Amendment is in how Section 512 has come to function as an unconstitutional system of prior restraint. The issue arises from the needlessly coercive nature of the Section 512 safe harbor system. Instead of simply giving OSPs the statutory protection they depend on to facilitate expression, Section 512 conditions that critical protection on OSPs acting against speakers and their speech.

But the real problem that has emerged is that Section 512 forces OSPs to act against speakers and their speech based on the mere allegation of infringement, regardless of whether the allegation is meritorious. As a result, potentially lawful speech that has never been adjudicated otherwise can end up being censored thanks to the government pressure the DMCA invites. And, worse, it means that lawful speakers can end up silenced.

None of this is tenable under the First Amendment. Extrajudicial censorship of speech, without it ever having been adjudicated to be wrongful, is prior restraint and anathema to the

[11] *Golan v. Holder*, 132 S. Ct. 873, 890 (2012).

First Amendment.[12] In a world without the DMCA, if someone wanted to enjoin expression—even infringing expression—they would first need to demonstrate to a court that they indeed owned a valid copyright and that the expression in question infringed an exclusive right of the copyright holder before a court would ever compel its removal. With the DMCA, however, alleged copyright holders are spared both their procedural burdens and also their pleading burdens.[13] In order to cause someone else's online expression to be disappeared from the Internet all anyone needs to do is send a takedown notice that merely alleges that expression infringes, regardless of whether it does or not.

The DMCA's notice and takedown system always skirted the bounds of constitutionality given the shortcut to censorship the system set up. But while it may not have required judicial review before expression was removed, it anticipated for it to be available soon after.[14] The counter-notice provision of Section 512(g) appears to presume that in the event lawful content was undeservedly removed, it could be either soon replaced or soon litigated to determine its lawfulness. Furthermore, Section 512(f) suggested that courts could sanction people who abused the takedown system, which would presumably deter notice senders from causing lawful speech to be removed undeservedly.

However, Section 512(g) has not proven to be particularly useful to Internet users whose online speech has been removed, and Section 512(f) has become so toothless that takedown abuse is rampant.[15] Worse, speech removal is not even the worst consequence that can flow from an illegitimate allegation of infringement. Courts are now finding that mere allegation counts as the sort of indicia of potentially repeat infringement that can lead OSPs to be forced to terminate users under Section 512(i), lest they risk their safe harbor protection if they do not.[16] Even if the notice had been invalid, even if the sender had no legitimate copyright interest to vindicate, even if the use had been fair or licensed, the courts are nevertheless finding that an OSP now needs to credit each and every allegation of infringement in a takedown notice as if it

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[12] *See, e.g.*, *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 562 (1976) ("[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."). *See also Google v. Garcia*, 786 F.3d 727 (9th Cir. 2015) (Reinhart, J. dissenting from the en banc decision not to grant rehearing on an emergency basis in a DMCA-related case alleging copyright infringement once the preliminary injunction had been issued, thus causing protected speech to remain censored for 15 months until the *en banc* decision on the merits finally set the injunction aside.).

[13] If takedown notice senders were to sue for an injunction, they would ordinarily need to plead enough "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Something more than a subjective belief in the validity of the claim would necessarily be required. *Id.*

[14] *See also Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) ("Any system of prior restraints . . . bear[s] a heavy presumption against its constitutional validity. We have tolerated such a system only where it operated under judicial superintendence and assured an almost immediate judicial determination of the validity of the restraint.").

[15] *See, e.g.*, https://www.eff.org/takedowns/.

[16] *See, e.g.*, *BMG Rights Management*, 881 F. 3d at 303 ("[W]e reject Cox's argument that the term "repeat infringers" in § 512(i) is limited to adjudicated infringers.").

were valid and act against the speaker and speech in order to keep their critical safe harbor protection.

This current read of the DMCA puts it in direct conflict with the First Amendment. Not only does this system leave lawful speech without its First Amendment protection by making it subject to arbitrary censorship, but it also strips First Amendment protection from speakers themselves by exposing them to the sanction of losing their access to the OSP, potentially even undeservedly.[17]

But even if these speakers were truly repeat infringers, being cut off from their OSP is still a grotesquely harsh consequence for infringement. And while it would be bad enough to simply be driven from a single Internet platform, like a social media service, recent litigation has made clear that they can be cut off from all Internet service entirely if the OSP in question happens to be their broadband provider. Such a severe penalty is unlikely to be able to pass constitutional scrutiny. If a registered sex offender cannot constitutionally be driven from the Internet it is unlikely that an alleged infringer could be either.[18] Any DMCA reform must therefore eliminate this provision as well as any element enabling prior restraint.

3. Provisions of Section 512 conflict with the constitutional right to anonymous speech.

It is part and parcel of First Amendment doctrine that people have the right not only to speak but to speak anonymously.[19] Although that anonymity can be stripped in certain circumstances, there is nothing about the allegation of copyright infringement that should cause it to be stripped automatically. Anonymity cannot be more fragile in the copyright context than it would be in any other circumstance where speech were subject to legal challenge.

And yet, with the DMCA, not only is speech itself more vulnerable to censorship via a copyright infringement claim than it would be for other types of allegations, but so are the speakers more vulnerable to being undeservedly unmasked.[20] Between the self-identification requirements of Section 512(g), if a speaker attempts to have their expression be un-censored,

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[17] It also compromises OSP's own First Amendment interests in developing the forums and communities they would so choose. The very design of the DMCA puts OSPs at odds with their users, forcing them to be antagonistic to their own customers and their own business interests as a condition for protecting those interests. Attempts to protect their forums or their users can lose the safe harbor and expose them to tremendous costs and potentially incalculable risk, even though all of this harm can flow from mere allegation that never need be tested in a court.

[18] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1733 (2017).

[19] *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 341-42 (1995) ("[A]n author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.").

[20] As a result, they may even be chilled from speaking entirely. *See id.* ("The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.").

and the ease of demanding user information with subsection 512(h) subpoenas that do not even need to be predicated on actual lawsuits with actual pleading burdens,[21] so long as these provisions remain in force as they are, online speakers must fear the loss of their privacy, regardless of whether their online expression is infringing or not. Given how easy it is to concoct an invalid infringement claim, and the lack of any incentive not to, the DMCA gives all-too-ready access to the identities of Internet users to the people least deserving of it and at the expense of those most in need of that First Amendment protection.[22] Congress should reform the DMCA to ensure the situation instead becomes the reverse.

4. Section 1201 impermissibly chills security research and innovation and unconstitutionally forecloses fair uses.

Section 1201 is defective by design, adding civil and criminal liability as an unconstitutional cudgel to prevent First Amendment-protected activity and expression. Even when a use may be fair, and thus constitutionally (and statutorily) protected, liability can attach if making that use involves circumventing a technological measure blocking that access and thus effectively prohibit what otherwise would be lawful, and potentially beneficial, activity and expression.

That burden is not trivial. Even at the time of its passage Section 1201 chilled substantial lawful uses, locking away, via the threat of severe sanction, creative works that people may have legitimately been entitled to access. But the situation has only gotten worse as embedded software has become even more ubiquitous, affecting myriad other *things*, such as vehicles, medical devices, and even ordinary household objects. So long as the DMCA makes it plausible to construe interacting with that embedded software as being the sort of "bypassing" Section 1201 prohibits, the DMCA will continue to do harm to socially beneficial discovery, innovation, and expression.

Merely reforming the DMCA to alleviate some of the administrative hassle of seeking an exception from the Copyright Office in order to get the permission needed to engage in

[21] Compare Fed. R. Civ. P. 45(a)(1)(A)(ii) ("Every subpoena must … state the title of the action and its civil-action number."), with 17 U.S.C. § 512(h) (lacking any similar requirement or other mention that the subpoena be predicated on a commenced civil action). Note that many jurisdictions explicitly forbid prelitigation discovery. *See, e.g.*, Cal. Code of Civ. Proc. 2035.010(b) ("One shall not employ the procedures of this chapter for the purpose … of identifying those who might be made parties to an action not yet filed."). Many jurisdictions further require careful testing of a plaintiff's claims before stripping Internet speakers of their anonymity. *See, e.g., Krinsky v. Doe*, 72 Cal.Rptr.3d 231, 241-246 (discussing standards for determining whether a plaintiff can be allowed to unmask an anonymous speaker).

[22] The abusive practices of many extortionate copyright plaintiffs illustrate why judicial oversight is required before Internet users are forced to be stripped of their privacy protection. *See, e.g., AF Holdings, LLC v. Does 1-1058*, 752 F. 3d 990, 992 (D.C. Cir. 2014) (describing the affairs of copyright plaintiffs who built a business on demanding money from people they discovered via subpoenas to pay settlements to avoid litigation, despite the putative plaintiffs not having a valid copyright to sue upon).

otherwise lawful activity, as the questions suggest, is not nearly enough to redeem the statute. Section 1201 imposes an unconstitutional burden on First Amendment-protected activity, which the Constitution cannot tolerate. If there were to be any restrictions on lawful activity, the burden should be on Congress—or the private actors it chooses to favor with the statute—to show how the restriction they wish to impose can survive strict scrutiny. In other words, it should not be for lawful users to have to jump through hoops to be able to vindicate their First Amendment rights; it should be for those who wish to impinge on those rights to first clear the steep hurdle needed to do it.

B. Before undertaking any reform effort, Congress must challenge the assumptions driving its legislative efforts in order to ensure resulting reform will encourage, rather than chill, creative expression.

The purpose of copyright law is to promote the creation and spread of knowledge and learning.[23] But not every provision that Congress might imagine inserting into copyright law will have that effect. Particularly when it comes to DMCA reform, and particularly with respect to Section 512, it is important to carefully consider whether and how any modification ultimately advances that ultimate goal because not every change can or will. In fact, many of the proposed changes will do the exact opposite.

It is therefore important to challenge the assumptions driving the reform effort. For instance, who are these changes intended to help? Do they need the help? Why do they need the help? And if they are helped, is there anyone who will be hurt? Congress needs to get these answers right lest inapt assumptions be baked into statutory reform and lead to counter-productive results. Unfortunately, however, the questions asked in this inquiry tend to presuppose these answers, and not necessarily correctly.

The problem with this reform effort is that it seems to be predicated on the overall assumption that creators are being economically injured by digital technologies, and that they therefore need more power to control digital technologies in order to not be economically harmed and consequently presumably produce more creative works. But it is a questionable assumption built upon other questionable assumptions and thus an inadequate foundation upon which to begin any reform effort.

1. It presumes that digital technologies are causing economic harm to copyright holders.

Congress needs to closely scrutinize, with reviewable data and auditable methodology, any economic argument pressing for DMCA reform predicated on the notion that every digital copy of every copyrighted work transmitted online without the explicit permission of a copyright holder represents a financial loss. It is quite a leap to assume that every time someone somehow

[23] *See, e.g.*, *Golan*, 132 S. Ct. at 888 (interpreting the Progress Clause broadly).

accesses a "pirated" work that this access inherently replaces a paid transaction. This belief not only presumes that people have enough of money to spend on as many copyrighted works as they could consume, but it also ignores the fact that people have long consumed copyrighted works for free (see, e.g., through libraries and over-the-air radio), and some works may only be consumable at a price point of $0. Furthermore, even in instances when people would be willing to pay for access to a work, copyright owners may not be offering access to that work at any price. In other words, while there may be market failure, that market failure may be entirely due to the copyright holder's own choices.

2. It presumes that the DMCA economically benefits creators, when in fact it may not.

Even when a copyrighted work is available for paid access, it does not necessarily follow that any remuneration is being shared with the actual creator equitably, or at all. It is a mistake to presume that the economic interests of copyright holders fairly map to the economic interests of creators in general. They are frequently not the same entity, and as a result, their respective economic interests are frequently completely different and even in conflict. For one thing, the creator may have not have, or no longer have, the opportunity to profit from their work, equitably or otherwise.[24] Furthermore, while a copyright holder may wish to maximize profit from a specific work, for creators themselves it may be more profitable overall to develop general markets for their works that can pay off in more ways. As discussed further below, developing a law that most advantages copyright holders and optimizes for their economic needs may actually undermine the economic interests of actual creators, whose further creativity is what we are trying to incentivize.

3. Hobbling digital technologies imposes its own economic harm.

The Progress Clause is a general mandate to promote the "sciences and useful arts." In other words, it calls for encouraging innovation as much as it calls for the forms of creative expression copyright protects. In any case, it certainly doesn't call for copyright to *disrupt* innovation. Yet that is what the DMCA has already done and many of these proposed changes threaten to do cause it to do even more.

Consider the case of Veoh Networks, a video hosting service and fledgling competitor to YouTube that was ultimately found to be eligible for the DMCA safe harbor.[25] Unfortunately this finding was reached after years of litigation had already driven the company into bankruptcy and forced it to layoff its staff.[26] Meanwhile SeeqPod was a search engine that helped people

[24] If Congress is interested in ensuring creators can fairly profit from their works there are other areas where it could act. It could, for instance, reform Title 17 to make it easier for creators to recover the copyrights that had long been assigned away. At the moment it is often practically, if not also legally, impossible.
[25] *Shelter Capital*, 718 F.3d at 1014-15.
[26] Peter Kafka, *Veoh finally calls it quits: layoffs yesterday, bankruptcy filing soon,* C|NET (Feb. 11, 2010), http://www.cnet.com/news/veoh-finally-calls-it-quits-layoffs-yesterday-bankruptcy-filing-soon/.

(including potential purchasers) find multimedia content out on the Internet. Unfortunately it, too, was driven into bankruptcy by litigation, taking with it an important tool to help people discover creative works – and for creators to have their works be found.[27]

History is littered with examples like the ones above, of innovative new businesses being driven out of existence, their innovation and investment chilled, by litigation completely untethered from the principles underpinning copyright law. And it represents its own form of serious economic harm. DMCA reform is needed to ensure that the safe harbors can function as robustly and reliably as they need to be in order to make sure this economic and innovative destruction does not keep occurring.

4. Hobbling digital technologies forecloses the development of other market opportunities for creators by restricting the technologies able to foster them.

A problematic undercurrent in the questions posed is the idea that OSPs are somehow a separate species inherently in conflict with the creators whose interests copyright law is intended to vindicate. This view is incorrect; in reality OSPs and creators exist in a symbiotic relationship. As a result, creators' interests are advanced when OSPs are protected. OSPs give creators the chance to develop their market opportunities, both indirectly by raising awareness of their work, and directly through OSP-facilitated monetization. Hobbling OSPs and treating them like some interloper in the creative economy, instead of as the driving force of the creative economy that they are,[28] only hurts everyone, OSPs and creators alike. The DMCA should be better protecting OSPs, with certainty and durability, because it is only by doing so that the DMCA truly protects creators as well.

5. The specific methods of hobbling digital technologies in the DMCA itself restricts creative expression.

Another concerning undercurrent informing this inquiry is the idea that OSP users are somehow also separate from creators, when, in fact, they are creators themselves. Many users of OSPs are using them to create the exact sort of user expression that copyright law is supposed to encourage. When, however, the DMCA forces their OSPs to censor their expression, it forces that creative output to be stifled. That the DMCA would do this creates a bizarre paradox for copyright law: harming expression as part of an attempt to foster it. In order to succeed at the latter, which presumably is Congress's goal, DMCA reform needs to ensure that OSPs are adequately protected so that they can remain available to facilitate creative expression and not be

[27] Jacqui Cheng, *SeeqPod bullied into bankruptcy by record industry,* Ars Technica (Apr. 1, 2009), http://arstechnica.com/tech-policy/2009/04/seeqpod-bullied-into-bankruptcy-by-record-industry/.
[28] See, e.g., Patreon, Bandcamp, Substack, YouTube, Vimeo, IndieGogo, Kickstarter, Wattpad, Soundcloud, to just name a few.

forced, in an effort to protect themselves, to injure the very expression we are all in agreement copyright law should be protecting.

III. Conclusion

We welcome DMCA reform. But we advise starting the reform effort afresh and dispensing with the language the issued questions contemplate. In sum, Section 1201 should be considerably revised, if not completely removed, from the statute. For Section 512, the safe harbors should remain. But the last thing Congress should do is add any additional complexity to the safe harbor system to make them even less usable for OSPs; if anything Congress should be streamlining the ones already in existence so that they actually can provide the intended benefit to the OSPs and the creative, expressive public that uses their services.

Very truly yours,

/s/ Catherine R. Gellis

Catherine R. Gellis, Esq.
California Bar #251927

Counsel for Floor64, Inc.
d/b/a The Copia Institute