

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2015-7]

#### Section 512 Study: Announcement of Public Roundtable

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of public roundtable.

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**SUMMARY:** The U.S. Copyright Office is conducting a study to evaluate the impact and effectiveness of the Copyright Act's safe harbor provisions for online service providers. At this time, the Office is announcing that it will hold a one-day public roundtable to allow interested members of the public to address relevant domestic and international developments that have occurred since the close of the written comment period on February 6, 2017. The roundtable is not intended to allow participants to supplement the record with respect to events occurring before that date, and discussion will be limited to the specific topics set forth in this notice.

**DATES:** The public roundtable will be held on April 8, 2019 from 9:00 a.m. to approximately 5:00 p.m.

**ADDRESSES:** Library of Congress Madison Building, 101 Independence Avenue SE, Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:** Cindy Abramson, Assistant General Counsel, at [ciab@copyright.gov](mailto:ciab@copyright.gov); Kevin Amer, Senior Counsel for Policy and International Affairs, at [kamer@copyright.gov](mailto:kamer@copyright.gov); or Kimberley Isbell, Senior Counsel for Policy and International Affairs, at [kisb@copyright.gov](mailto:kisb@copyright.gov). Each may be reached by telephone at 202-707-8350.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Enacted in 1998 as part of the Digital Millennium Copyright Act (“DMCA”), section 512 of Title 17 provides a system for copyright owners and internet service providers to address online infringement outside the context of litigation. This system includes a series of “safe harbors” through which an eligible service provider can limit its liability for copyright infringement by complying with certain requirements, generally consisting of implementing measures to expeditiously address online infringement.

At Congress’s request, the U.S. Copyright Office is conducting a study to assess the impact and effectiveness of section 512. The Office published an initial Notice of Inquiry on December 31, 2015, seeking written comments to thirty questions covering eight categories of topics.<sup>1</sup> The Office received over 92,000 written submissions in response. Subsequently, in May 2016, the Office held two-day public roundtables in New York and San Francisco. The Office published a second Notice of Inquiry on November 8, 2016, seeking written comments to sixteen questions covering four topics, in addition to inviting the submission of empirical research studies assessing the operation of the safe harbor provisions on a quantitative or qualitative basis.<sup>2</sup> The Office received seventy-nine written comments and nine empirical studies in response. Information about the study, including the Notices of Inquiry, public comments, and transcripts of the public roundtables, may be accessed on the Copyright Office website at <https://www.copyright.gov/policy/section512/>.

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<sup>1</sup> See Section 512 Study: Notice and Request for Public Comment, 80 FR 81862 (Dec. 31, 2015).

<sup>2</sup> See Section 512 Study: Request for Additional Comments, 81 FR 78636 (Nov. 8, 2016).

The Office is now announcing that it will convene an additional roundtable to enable interested members of the public to address relevant domestic and foreign developments that have occurred since the close of the written comment period on February 6, 2017. Specifically, the roundtable will consider the following topics: (1) recent domestic case law interpreting provisions of the DMCA safe harbor framework and (2) recent international legal and policy developments related to addressing liability for infringing content online.

Recent domestic case law has addressed various aspects of section 512. For example, in *BMG Rights Management (US) LLC v. Cox Communications, Inc.*, the U.S. Court of Appeals for the Fourth Circuit considered whether Cox reasonably implemented its repeat infringer policy for purposes of section 512(a). The court held that Cox failed to implement its policy in “any consistent or meaningful way—leaving it essentially with no policy”—and thus could not qualify for the section 512(a) safe harbor.<sup>3</sup> Additionally, the U.S. Court of Appeals for the Ninth Circuit in *Mavrix Photographs LLC v. LiveJournal Inc.* held that there were genuine issues of material fact as to whether volunteer moderators who reviewed user-submitted content were agents of the service provider—an issue relevant to the provider’s eligibility for the safe harbor protection under section 512(c).<sup>4</sup> Participants may discuss these cases as well as other recent domestic case law developments during the roundtable. The Office previously identified case law as a key issue in this study and is interested in stakeholder views as to whether recent cases indicate any emerging trends.

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<sup>3</sup> *BMG Rights Mgmt. (US) LLC v. Cox Commc’ns, Inc.*, 881 F.3d 293, 303–05 (4th Cir. 2018).

<sup>4</sup> *Mavrix Photographs LLC v. LiveJournal Inc.*, 873 F.3d 1045, 1054–57 (9th Cir. 2017).

Since 2017, several other countries also have addressed issues of copyright infringement and online service provider liability. For example, in Europe, work towards a possible new Directive on Copyright in the Digital Single Market has been underway since 2016.<sup>5</sup> In September 2018, the European Parliament voted to approve a proposed Directive on Copyright in the Digital Single Market that, among other changes, would establish new obligations for online service providers that store and give public access to copyrighted works uploaded by users and that optimize and promote such works for profit-making purposes.<sup>6</sup> Further negotiations on the text via a “trilogue” process of negotiations between the European Commission, the European Parliament, and the Council of the European Union, are underway.<sup>7</sup> In addition, the Australian Parliament recently passed an amendment to its copyright law that provides copyright owners with additional tools to enforce their rights regarding infringing content online, including injunctions to block domain names.<sup>8</sup> The Office is aware that such proposals have generated widespread debate, with stakeholders expressing a variety of views concerning the potential implications for copyright owners, online service providers, and members of the public. At the roundtable, participants are invited to identify and discuss recent law and policy developments in other countries that bear on issues related to the effectiveness, ineffectiveness, and/or other impacts on online service provider liability.

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<sup>5</sup> *Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market*, COM(2016) 593 final (Sept. 14, 2016).

<sup>6</sup> Amendments Adopted by the European Parliament on 12 September 2018 on the Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, P8\_TA-PROV(2018)0337, art. 2, ¶ 1, pt. 4b; art. 13 (Sept. 12, 2018).

<sup>7</sup> A trilogue meeting scheduled for January 21, 2019 was postponed as proposed compromise text was rejected by several countries. *See, e.g.,* Samuel Stolton, *Copyright directive faces further setback as final trilogue postponed*, EURACTIV (Jan. 21, 2019) <https://www.euractiv.com/section/digital/news/copyright-directive-faces-further-setback-as-final-trilogue-cancelled/>.

<sup>8</sup> Explanatory Memorandum, Copyright Amendment (Online Infringement) Bill 2018. (Austl.), [https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r6209\\_ems\\_b5e338b6-e85c-4cf7-8037-35f13166ebd4%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r6209_ems_b5e338b6-e85c-4cf7-8037-35f13166ebd4%22).

## **II. Roundtable Subjects of Inquiry**

The public roundtable will consist of two sessions: (1) domestic case law developments since 2017 interpreting the section 512 safe harbors and (2) international legal and policy developments since 2017 relating to online service provider liability. The roundtable is not intended as an opportunity to supplement the written record with respect to matters outside these categories, and discussion will be limited to developments that have occurred after the close of the written comment period on February 6, 2017. The Copyright Office will not accept any written materials prior to or on the day of the roundtable. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Copyright Office website.

Members of the public who seek to participate in the roundtable should complete and submit the form available on the Copyright Office website at <https://www.copyright.gov/policy/section512/> no later than March 15, 2019. If you are unable to access a computer or the internet, please contact the Office using the contact information above for special instructions. Individuals selected for participation will be notified directly by the Office not later than March 29, 2019. In order to accommodate the expected level of interest, the Office expects to assign no more than one representative per organization to each session.

The roundtable hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the roundtable.

Dated: January 28, 2019.

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**Regan A. Smith**  
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*Associate Register of Copyrights*

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