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WHY IT MATTERS TO STARTUPS?

For startups that encounter user-generated content—e-commerce platforms, social media websites, photo sharing apps, and much more—existing balanced legal frameworks, including Section 512 of the Digital Millennium Copyright Act (DMCA) and the judicial decision in *Tiffany v. eBay*, ensure that startups aren't automatically held liable for alleged infringement by users. Startups also benefit from other existing balanced intellectual property frameworks, including the fair use doctrine of copyright law, which, for instance, protects copying of application programming interfaces (APIs) necessary to build software that is interoperable with other systems. These frameworks strike a valuable balance that is especially important to startups in these instances, because the law provides certainty and guards against mere threats or unaffordable legal exposure putting startups out of business.

WHAT POLICYMAKERS CAN DO?

Congress should avoid decreasing certainty or imposing unwarranted costs and risks on emerging Internet companies, especially considering that these startups and their users may unknowingly encounter copyrighted content on their platforms. Policymakers should also avoid requiring Internet companies to proactively monitor or filter all user posts to try to detect infringement. This would not catch much (if any) additional infringement but would impose a lot of new costs and risks and create substantial barriers to entry.

Generally, policymakers should promote balanced frameworks that prevent abuse from bad actors and give startups the certainty they need to innovate. For instance, ongoing litigation over whether AI companies need licenses to use copyrighted content in training data could create significant costs for startups building their own AI models or fine-tuning existing AI models.

KEY TAKEAWAYS

- Startups need balanced intellectual property frameworks that encourage innovation and interoperability and limit their exposure to costly litigation over intellectual property.
- Changing the framework for online copyright and trademark claims would have an outsized, negative impact on startups that encounter user-generated content.
- Mandating filtering technology—which is very expensive and inherently error-prone—would create high costs and risks for startups without catching much (if any) more infringement.



Startup Spotlight



Path

(New York, N.Y.)

Chandler Malone, CEO

Path AI uses AI to create scalable, personalized learning tools to bridge accessibility gaps and ensure equity in education.

“For smaller companies like us, what happens with the copyright litigation for the largest entities is going to trickle down and impact what we are doing. We are concerned about how it will affect us, but at the end of the day, we cannot spend large amounts of money on it because we don't have the same access to capital that these larger AI companies do.”