



March 25, 2021

Hon. Frank Pallone, Chair

Hon. Cathy McMorris Rodgers, Ranking Member

Hon. Michael Doyle, Chair, Subcommittee on Communications & Technology

Hon. Robert Latta, Ranking Member, Subcommittee on Communications & Technology

Hon. Jan Schakowsky, Chair, Subcommittee on Consumer Protection & Commerce

Hon. Gus Bilirakis, Ranking Member, Subcommittee on Consumer Protection & Commerce

Committee on Energy and Commerce

U.S. House of Representatives

Dear Chairs Pallone, Doyle and Schakowsky and Ranking Members McMorris Rodgers, Latta, and Bilirakis:

We write as artist, songwriter, and creative community organizations committed to a healthy internet and a robust exchange of information, ideas, and digital creative works. Thank you for convening this important hearing on the responsibility of large technology platforms regarding misinformation and disinformation online.

Given the appearance of Twitter and Square CEO Jack Dorsey, we want to call your attention to Twitter's related failure to meet the most basic standards of responsible moderation with respect to other illegal activity – specifically, the rampant theft of creative works on its platform. We ask you to engage Twitter on this issue as part of this hearing and include it in the Committee's ongoing platform accountability oversight.

While Twitter publicly claims to support artists and creativity, in the real world, it erects almost insurmountable obstacles to artists and creators trying to protect their work online. As the Committee explores broader questions regarding the platforms' response to online mis- and dis-information, we believe there is much to be learned from the gaping disconnect between Twitter's lofty promises to artists and its heavy-handed and inadequate actions.

Twitter has become a major player in the distribution and consumption of commercial music, much of it without authorization or any kind of license. As a result, the music industry sent over 2 million infringement notices to Twitter last year. Critically, over 200,000 of those deal with pre-release leaks – an especially damaging form of online piracy that steals an artist or labels' irreplaceable first chance to tell their story and meet fans on their own terms.

This attack on the legitimate music marketplace hurts music creators and fans and undermines all legitimate licensed services – from full-service music platforms like Apple Music or Spotify to emerging services like TikTok. It also undermines music's powerful contribution to America's

economic strength and security – including \$170 billion in GDP, \$9 billion in export sales, and 2.47 million jobs each year in both core music businesses and supporting industries nationwide. Today, there are over 236,000 music-related businesses across the country – many of which operate exclusively online.¹

Yet even with this success, online piracy remains a major threat to artists, songwriters, and digital creators. Indeed, during the pandemic when working artists and musicians lost so many income streams, [music piracy exploded on the internet](#), and working to protect digital creative works online became all the more important.

Over the past few years, artists, songwriters, and their label and publishers partners have routinely sought Twitter’s cooperation to address this hugely damaging activity, with only nominal success. While the company claims it “takes copyright issues seriously,”² and that its users aren’t focused on “find[ing] and watch[ing] protected content online,”³ in reality, Twitter knows people want to engage with music on its platform and markets music information and connections to its users.

Twitter’s music-focused marketing is pervasive. Its “[how to](#)” section directly targets artists and record labels, titled “How to promote an album release.” And the company recently touted how popular #kpop is on its platform and noted the ten most popular K-pop artists on Twitter.⁴ What they don’t tell fans is that, in the last two years, music creators and their partners have been forced to send over 18,000 infringement notices to Twitter for *just three* of those top 10 K-pop artists.

Twitter’s head in the sand approach is perhaps most jarring in the case of dedicated pre-release leak accounts, which are often recommended by the auto-complete feature of the service’s search function. When a user types the name of a popular artist, it is common for the auto-complete to suggest adding “leak” to the search.

In the last two years, music creators have identified over 100 obvious pre-release leak accounts with names like LeakQueen, ArianaLeaks, KanyeLeaks, LeakCarti, DrakeLeak, MilleyLeaks, HipHopLeaks, etc. It’s often not easy to discover infringing behavior, but sometimes it is. Yet even in these simplest cases, Twitter does nothing to proactively find and address these accounts, leaving it to artists, songwriters and their label and publishers partners to do all the work. And while commercially established artists and their representatives can sometimes fill in the gaps, smaller acts, new bands, and non-commercial creators are left with no meaningful recourse at all.

¹ <https://www.riaa.com/wp-content/uploads/2021/02/The-U.S.-Music-Industries-Jobs-Benefits-2020-Report.pdf>

² See February 15, 2021 letter from Twitter to Senators Coons, Hirono, and Tillis (“Twitter letter”).

³ Twitter letter, p. 1.

⁴ https://blog.twitter.com/en_us/topics/insights/2021/kpoptwitter-achieves-new-record-of-6-billion-tweets-globally-in-2020.html.

Twitter recently tried to defend this shoddy record to your colleagues in the Senate, arguing that “[C]opyright takedowns worldwide are a tiny fraction of overall Tweets uploaded to the service.”⁵

But obviously, with [hundreds of billions of tweets posted each year](#), a “tiny fraction” of online piracy can do a great deal of damage to artists, creators, and fans. The fact that Twitter failed to take any action regarding 4.5 million instances of infringement on its platform until it received a formal notice makes clear just how big the problem is – and how little the company appears to care about it.

In light of this high volume of piracy on the service, creators’ representatives have repeatedly asked Twitter for high-volume “API” access to the underlying data stream in order to search for and notice infringement of their work at scale. But instead of acting like a responsible partner and providing ready access to this vital tool, Twitter demands creators pay handsomely just for the ability to do necessary monitoring the company itself refuses to undertake. This is a particularly harmful double-edged sword for small creators and independent labels that don’t have the resources either to pay for API access or to endure lengthy litigation after their intellectual property is infringed.

Twitter does offer a free API option, but it is not nearly robust enough for these purposes, with unreasonable limits on the number and quality of searches that can be run, the number of results the system will report, and the time frame that is covered. Twitter already offers free API access at scale to other users, like academic researchers, showing it is feasible to do, but the company refuses to offer the same to artists, songwriters, labels, and publishers, cynically hoping to cash in on our need to stop the theft of our work Twitter itself enables or to simply continue to status quo: making money off the theft of our work.

Twitter’s attack on creators takes other forms as well. It uses an obsolete web form that allows reporting of only 20 infringing tweets at one time, offering only the fallback of email-based reporting to larger users while slow-walking any requests submitted in that way, with erratic response times that often take days and can linger a week or more. And once notice and supposedly removed, the same works routinely reappear, sometimes instantaneously, in a never-ending whack-a-mole challenge. This past year, one infringing track was taken down and reappeared nearly 9,000 times.

Twitter claims the “overwhelming” number of cases of infringement are resolved in minutes, but that’s not our experience. Even when un-released material has been leaked onto the service and the economic and creative damage is piling up by the second, Twitter insists creators follow its slow and cumbersome multistep process.

Twitter must do better.

⁵ Twitter letter, p. 1.

That means providing free access to an API at scale.

It means developing its own content protection technologies or licensing technologies such as PEX, Audible Magic, YouTube's Content ID, or Facebook's Rights Manager that identify and protect copyrighted works to automatically prevent the reappearance of infringing content on sites.

And above all, it means licensing and paying for the music that it uses. Twitter claims it has licensed music "in certain circumstances that warrant it"⁶ But it has yet to explain why the current circumstance in which it intentionally markets music, uses it to build an audience, and hosts millions of infringing performances every year doesn't "warrant" getting fully licensed and paying creators for the value of their work.

Thank you again for your work to make the internet stronger, safer, more secure, and more accountable.

Hopefully, this hearing and your ongoing oversight of technology platforms like Twitter will provide an opportunity for Jack Dorsey to explain why anyone should believe the company's claims about online mis- and dis-information in light of its long track record of broken promises, indifference, and outright extortion when it comes to artists and music creators.

Sincerely,

American Association of Independent Music (A2IM)
Artist Rights Alliance
Music Artists Coalition (MAC)
Nashville Songwriters Association International (NSAI)
National Music Publishers' Association (NMPA)
Recording Academy
Recording Industry Association of America (RIAA)
Songwriters of North America (SONA)

⁶ Twitter letter, p. 3.