August 17, 2018

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments of the Content Creators Coalition on Competition and Consumer Protection in the 21st Century

I. Introduction

The Content Creators Coalition (c3) appreciates the opportunity to submit the following comments regarding Competition and Consumer Protection in the 21st Century. We are heartened that FTC has invited comment on this subject and are hopeful that after considering the anti-competitive and unfair practices of dominant digital platforms in its upcoming road show, it will develop a plan to restore competition and foster healthy digital markets before it's too late.

c3 is a non-profit, artist-run, national advocacy organization representing musicians and everyone who cares about a strong American creative culture. We advocate for policies that will strengthen the creative economy, ensure creators receive fair pay and have appropriate control over how their work is used, and produce a healthy, competitive, and diverse digital media world that benefits audiences, platforms, and creators alike.

The meteoric rise of digital platforms over the last twenty years has had a profound impact - not just on how we in the music and broader creative communities connect with our audiences and express ourselves, but also on how we make a living. Not long ago, we sold our albums at record stores and out of the trunks of our cars. Today, the songs we write and record are available on-demand to billions of consumers around the globe, sometimes authorized and sometimes not. Music is more accessible than ever before, making it nearly impossible for artists to ensure their copyrights are being respected.

While we appreciate the tremendous achievements of digital platforms in revolutionizing access to content and facilitating interaction among users online, their lack of responsible governance

has created an environment in which the creators of digital content are perpetually shortchanged, while the platforms profit handsomely from their works. Platforms are designed to profit from *all* content, regardless of its legality or copyright protections. Meanwhile, artists struggle to receive any payment at all for online material.

We are in this position because a small number of seemingly unassailable dominant digital platforms like Google, YouTube, and Facebook have come to decide how we see the world. They choose to prioritize certain search results over others and are under no obligation to promote the most relevant as opposed to the most profitable results. They determine which ads a person sees based on massive datasets that they have culled and analyzed, sometimes without user knowledge or consent. They frame our digital experience, shape our discourse, and influence our preferences systematically in ways that are largely undetectable by users. In many respects, these dominant digital platforms have come to abuse their control, embracing policies that devalue creators and consumers alike in the name of increasing profits. These platforms aren't truly spaces designed for the free exchange of ideas – they are highly strategic money-making machines.

The failure of "self-regulation" and lack of accountability of these dominant digital platforms has recently drawn international attention. As we learn more about platforms' facilitation of harmful practices like piracy, promotion of tribal tendencies that increase polarization, and manipulation of users to increase profits, it becomes clearer and clearer that these companies need oversight. If we don't do something now to rein in these companies, after countless scandals and broken promises of change, when will we?

The staggering imbalance of power in the digital realm and the dominant platforms' perverse incentives surrounding the promotion of content have exacerbated problems for users and creators alike, and we can't afford continue down this path. As such, c3, on behalf of the creative community, raises below several examples of anti-competitive and unfair conduct by dominant platforms that we consider ripe for regulation.

II. Profiting from Piracy

Piracy has run rampant under the supervision (or lack thereof) of digital platforms. When you type the word "download" into the Google search bar, it proposes via autofill several searches that upon selection direct users to sites that enable a form of piracy commonly referred to as "stream-ripping," which involves the downloading of content directly from YouTube. If you search for a given song on YouTube, you will doubtlessly find many more copies than those that the copyright owner had a hand in making, demonstrating our abject lack of control over our own work. It frequently is as easy to find "free" illegal copies of works as it is to access those works through appropriate channels that compensate the creators. These are but a few illustrations of how piracy has flourished in our deeply broken system.

The time, money, and effort involved in creating content is often overlooked in discussions of online piracy. Recording music is expensive and the costs are often shouldered by artists themselves. Piracy doesn't simply cut slightly into profits, it forces content creators to work for free, or worse, lose money in the quest to make a living.

In identifying potential solutions to the pervasiveness of piracy on digital platforms, it is useful to examine the root cause, and to do so one need look no further than the platforms' singular quest for profits. The mission of these entities is to line their pockets and maximize value for their shareholders, and unless piracy hurts their bottom line, or the government imposes regulations curtailing it, the platforms will not combat it effectively and will never foster a culture of real accountability.

YouTube is a prime example. It brings in unlimited advertising revenue from pirated content, so long as that content generates clicks. It is insulated from liability for the unlawful works it hosts (and from which it profits) by a safe harbor that absolves it of virtually any responsibility for its users' actions. It's unrealistic to expect fans to exclusively view content posted from verified artist accounts, especially when YouTube's algorithms don't always prioritize original content. Creators thus are faced with the choice of accepting sub-market licensing rates from YouTube or competing with its pirated and infringing content and relying entirely on a fundamentally flawed notice-and-takedown system.

YouTube's dominance in the market for video streaming, aided by this ability to host pirated and infringing content with virtual impunity, has created an environment in which it can profit handsomely from the content posted to its site, while copyright owners see a fraction of their due compensation. YouTube is wildly popular and profitable because of the piracy on its site, not despite it.

YouTube illustrates perfectly the current digital ecosystem, in which the interests of both the users and the content creators are subverted to the profit-driven interests of the dominant digital platforms, which have shown tremendous tolerance for piracy. Government regulation and oversight are required to correct the existing power imbalances that facilitate this conduct, and to overcome the inability or unwillingness of the platforms to protect their users and content providers by effectively combatting piracy.

III. Dominating Data and Advertising

Platforms like Google and Facebook amass data on their users that they monetize through targeted advertising, and they have no real competitors to speak of with comparable data and access. As such, if creators want to advertise to our fan bases, we are subject to whatever pricing and terms the platforms see fit. A recent study reported that "9 out of 10 regular social media users partake in some music- or artist-related activity on the most popular social applications," and concluded, "[w]ithout a doubt, music underpins the conversation on social platforms."[1] Yet in our distorted data and advertising market, the musicians who draw the crowds to these sites are then charged premium prices for advertising to the users we attract.

Utilization of the most popular internet platforms has become a requirement of artistry. It's the best way to reach our fans and publicize our content, so we are faced with what is effectively a false choice—do business their way or give up altogether.

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[1] Russ Crupnick, "Music Scores A Gold Record on The Social Media Charts," Music Watch, August, 6, 2018 (available at http://www.musicwatchinc.com/blog/music-scores-a-gold-record-on-the-social-media-charts/).

This is not a sustainable market structure. The lack of competition harms consumers and creators - fans see only the ads that dominant platforms want them to see and creators are hindered in their negotiation of terms by the market control of the only buyers around. Since platforms have demonstrated time and time again that they are incapable of holding themselves accountable through their own practices and policies, government regulation is necessary to protect users and restore market fairness.

IV. Conclusion

We in the creative community are in desperate need of help to rein in digital platforms, which dominate our nation's economy and dictate our personal livelihoods. We are not another large, faceless corporation that can afford daily battles with YouTube, Google and Facebook to remove pirated and unauthorized content; we are a group of independent creators who have virtually no chance of protecting our work and getting due compensation without government intervention.

Sharing music and interacting with artists is a huge part of what makes these dominant internet platforms so popular. Their unfair and anti-competitive practices have facilitated their growth into the richest companies in the world in just two decades, while artists struggle for fair compensation and are left to fight the piracy of our work alone. Left to their own devices, these platforms will continue to exercise market control to the detriment of users, business partners, and would-be competitors. We are hopeful that the government finally will help to restore competition and fairness in markets that have for too long been subject to these profit-obsessed platforms' control – the future of music may very well depend on it.

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