



# MOTION PICTURE ASSOCIATION

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TO THE

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET  
HEARING ON “DIGITAL COPYRIGHT PIRACY: PROTECTING AMERICAN CONSUMERS,  
WORKERS, AND CREATORS”

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## I. INTRODUCTION AND OVERVIEW

Thank you Chairman Issa, Ranking Member Johnson, and members of the subcommittee for the opportunity to testify on an issue of critical importance to our members: digital piracy of their valuable intellectual property.

The MPA serves as the global voice and advocate of the motion picture, television, and streaming industries. It works in every corner of the globe to advance the creative industry, protect its members’ content across all screens, defend the creative and artistic freedoms of storytellers, and support innovative distribution models that expand viewing choices for audiences around the world.<sup>1</sup> The MPA’s member studios are: Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

The American motion picture and television production industry is a global economic and cultural powerhouse, distributing films and TV shows in over 130 countries. In 2021, the enduring value and global appeal of U.S. entertainment translated to \$14.4 billion in audiovisual exports.<sup>2</sup> Today, there are more than 871 legitimate streaming services providing

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<sup>1</sup> MPA works in close partnership with the Alliance for Creativity and Entertainment (“ACE”), the world’s leading coalition dedicated to protecting the dynamic legal market and reducing digital piracy. Driven by a comprehensive approach to addressing piracy through criminal referrals, civil litigation, and cease-and-desist operations, ACE has achieved many successful global enforcement actions against illegal streaming services and other sources of unauthorized content and their operators. Drawing upon the collective expertise and resources of more than 50 media and entertainment companies around the world and reinforced by the content protection operations of the MPA, ACE protects the creativity and innovation that drive the global growth of core copyright and entertainment industries. For more information, please visit [www.alliance4creativity.com](http://www.alliance4creativity.com).

<sup>2</sup> Motion Picture Association, *The American Motion Picture and Television Industry | Creating Jobs, Trading Around the World* (2023), [https://www.motionpictures.org/wp-content/uploads/2023/01/MPA\\_US\\_Economic\\_Contribution\\_2021\\_Final.pdf](https://www.motionpictures.org/wp-content/uploads/2023/01/MPA_US_Economic_Contribution_2021_Final.pdf).

audiovisual content to consumers online, accommodating all manner of consumer viewing preference. Moreover, this industry is one of the few that consistently generates a positive balance of trade: in 2021, that services trade surplus was \$7 billion, or three percent of the total U.S. private-sector trade surplus in services.<sup>3</sup>

The American motion picture and television industry is also a major U.S. employer that supported 2.4 million jobs and \$186 billion in total wages in 2021.<sup>4</sup> This includes 336,000 jobs in the core business of producing, marketing, and manufacturing motion pictures, television shows, and video content, as well as 486,000 jobs in the distribution of such content to consumers.<sup>5</sup> Many of these jobs are skilled-labor positions that support middle-class workers and that do not require a four-year college degree. The industry also supports a nationwide network of thousands of mostly small businesses that support production and distribution, representing every state in the country, with 92 percent of these businesses employing fewer than 10 people.<sup>6</sup>

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When Congress a decade ago considered enacting express authority for no-fault injunctive relief—i.e., site blocking—to combat blatant forms of piracy, opponents responded with the (unfounded) prediction that doing so would “break the internet.”<sup>7</sup> This scare tactic resonated with many Americans who rely on internet access at home, at school, and everywhere in between. Congress, understandably wary of taking action that might risk such an unfortunate result, declined to move forward with legislation.

But much of the rest of the world moved forward with site blocking despite the overheated rhetoric that prevented the enactment of legislation in the U.S. in 2012. Indeed, over the past decade, more than 40 countries, including leading democracies such as the U.K., much of Western Europe, Canada, Australia, India, Brazil, South Korea, and Israel, have enacted no-fault injunctive relief regimes that expressly authorize courts or administrative agencies to issue orders directing internet service providers (“ISPs”) and other online intermediaries to disable access to websites dedicated to piracy. Pursuant to these laws, courts and administrative agencies have disabled access to more than 90,000 domains used by over 27,000 websites engaged in blatant piracy after affording full due process.

So I am here today with some very good news for the subcommittee. These laws work. They result in fewer visits to piracy sites. Even more important, they result in more visits to legal sites.<sup>8</sup> And **none** of the predictions about the purported ill effects of site blocking have come true. Examples of over-blocking—blocking of non-infringing content—have been rare to the point of nonexistence. Site blocking has not stifled free expression (and we would not support it if it did).

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See e.g., Corynne McSherry, *SOPA: Hollywood Finally Gets A Chance to Break the Internet*, Electronic Frontier Foundation (Oct. 28, 2011), <https://www.eff.org/deeplinks/2011/10/sopa-hollywood-finally-gets-chance-break-internet>.

<sup>8</sup> See generally, Brett Danaher et al., *The Effect of Piracy Website Blocking on Consumer Behavior* (2019) (“Danaher”), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2612063](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612063).

It has not denied anyone due process. And the internet continues to function. In short, the doomsaying of site-blocking's opponents in 2012 has been conclusively debunked by more than a decade of real-world experience around the globe.

Effective tools to combat piracy exist. Below we set forth in detail the scope and nature of the piracy problem and offer solutions—including proactive support and collaboration of online intermediaries, government prioritization of criminal enforcement, our own enforcement initiatives, and no-fault injunctive relief—that we believe provide valuable background to the subcommittee as it considers future legislative action in this area.

## **II. OVERALL PIRACY LANDSCAPE**

While the internet has revolutionized the way people consume creative content and brought about innovative new ways to create and disseminate copyrighted works, it has also facilitated an exponential increase in piracy. Although piracy existed well before the internet became a common staple in homes and businesses, the problem as it exists today is significantly more pervasive, sophisticated, and difficult to address. The websites and services engaged in piracy consist of organized, illicit operations, not teens on a lark. And the problem only continues to worsen. In 2019, U.S.-produced movies were illegally downloaded or streamed 26.6 billion times, and U.S.-produced television episodes were illegally downloaded or streamed 126.7 billion times.<sup>9</sup> And in 2022, there were an estimated 191.8 billion visits to movie and TV piracy sites globally.<sup>10</sup> Piracy is not a victimless crime, and this data represents more than just lost revenue. It represents the real-world impacts on the U.S. economy, jobs, and every-day consumers. Piracy of filmed entertainment costs the U.S. economy \$29.2 billion and over 230,000 jobs annually.<sup>11</sup> In addition, piracy services can directly threaten consumers' personal and financial security, including making consumers more susceptible to credit card and identity theft, as well as malware including viruses, malicious ads and pop-ups, and ransomware. Indeed, these illegal services present themselves as legitimate and often look and feel that way, inducing well-meaning consumers to expose themselves to such dangers.

To keep up with the continued increase in piracy, the motion picture industry expends tremendous time and resources addressing online piracy on a global basis. Through our affiliated organization the Alliance for Creativity and Entertainment (“ACE”), MPA deploys nearly 100- full time professionals around the world who investigate and act against established and emerging online threats. Our enforcement efforts include both takedowns of infringements that occur on legitimate websites and platforms as well as more aggressive action against websites engaged in open, defiant piracy of U.S. companies' intellectual property. It's within this latter context that site-blocking measures are not only appropriate but a critical part of addressing this pernicious and persistent problem.

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<sup>9</sup> See David Blackburn, et al., *Impacts of Digital Video Piracy on the U.S. Economy* (2019), at ii, <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>.

<sup>10</sup><https://www.alliance4creativity.com/wp-content/uploads/2023/12/WDWK-2022-worldwide-071223.pdf>.

<sup>11</sup> Blackburn, *supra* note 9, at ii.

Over the course of any given year, our industry collectively sends millions of takedown notices to online intermediaries to have infringing copies of its creative content removed.<sup>12</sup> However, several factors—including the rapid pace at which infringing content is posted and re-posted online, modern internet speeds that dwarf those of the nascent internet of the 1990s, and case law that has read out or misinterpreted vital provisions of the Digital Millennium Copyright Act (“DMCA”)—have drastically diminished the effectiveness of the DMCA as an enforcement mechanism. As a result, those millions of takedown notices by themselves ultimately have little lasting effect on the widespread availability of infringing content that persists online. Without a notice-and-staydown regime, content that is removed in response to takedown notices is instantly replaced—a phenomenon commonly known as the “Whac-A-Mole” problem. While the user-posted content at issue with DMCA takedown notices is a different sort of problem than acts of commercial piracy, understanding the amount of time and resources we devote to infringing content on otherwise legitimate websites helps paint a fuller picture about our efforts to protect our members’ content in the online ecosystem.

With regard to full-fledged piracy operations—whose nefarious and intentional behavior typically make them unsusceptible to enforcement through the DMCA’s notice-and-takedown regime—our tactics also include cease-and-desist letters, civil litigation, site blocking, and criminal referrals to law enforcement. However, piracy remains a persistent and evolving problem despite the extensive resources the creative industry devotes to combatting it.

#### **A. Types of Online Piracy**

As business models for distributing legitimate content have advanced and expanded over the years, so too have methods for distributing pirated content. Content thieves provide or administer easy-to-use online piracy websites, apps, and services to distribute infringing content, usually for monetary gain. These sites and services often have the look and feel of legitimate content distributors, luring unsuspecting consumers into piracy. Some of the most popular types of illegal piracy services include the following:

**Linking and Streaming Websites:** These sites aggregate, organize, and index links to content stored on other sites, largely deriving revenue from advertising and referrals. Visually similar to legitimate services, linking sites that offer unauthorized movies and TV shows typically organize posts by title, genre, season, and episode and often use the official, copyright-protected cover art to advertise the content. Users are commonly presented with the options of streaming or downloading the content.<sup>13</sup>

**Direct-Download Cyberlockers and Streaming-Video Hosting Services:** These sites and services provide centralized hosting for infringing content, allowing users to upload

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<sup>12</sup> In calendar year 2015, MPA members sent notices pertaining to more than 104.2 million links to websites devoted to search and content-hosting. *See* Comments of the Motion Picture Association in response to U.S. Copyright Office Section 512 Study: Notice and Request for Public Comment (April 1, 2016), at 2, [https://www.motionpictures.org/wp-content/uploads/2018/03/LF\\_Motion\\_Picture\\_Association\\_of\\_America\\_Inc\\_-\\_First\\_Round\\_Comments.pdf](https://www.motionpictures.org/wp-content/uploads/2018/03/LF_Motion_Picture_Association_of_America_Inc_-_First_Round_Comments.pdf).

<sup>13</sup> Examples include notorious piracy sites like Fmovies, which averages 98 million users a month, with 33% of the traffic coming from the United States.

infringing files, who can then disseminate the corresponding links—which enable either downloads (from cyberlockers), streams, or both—across the internet.<sup>14</sup>

**Illegal IPTV Services:** Illegal internet-protocol TV (“IPTV”) services typically offer hundreds of channels illegally sourced from providers worldwide, alongside video-on-demand (“VOD”) content that includes unauthorized copies of movies and television series. Many of these services offer monthly or yearly subscriptions. IPTV services have been a driving force in the emergence of several related illegal businesses, including those engaged in (i) the resale of IPTV services and (ii) the theft, distribution, and sale of channel feeds.<sup>15</sup>

**Piracy Devices and Apps:** Piracy devices—also known as illicit streaming devices (“ISDs”)—and piracy apps provide illegal access to movie and television content through a variety of means, including downloading and streaming content and unauthorized streaming of live television and sporting events on a user’s choice of devices, including televisions. ISDs that are preloaded with infringing apps and TV/VOD subscription services can be found online and in physical marketplaces, particularly in the Asia-Pacific region.<sup>16</sup>

**Peer-to-Peer Networks & BitTorrent Portals:** Peer-to-peer (“P2P”) networks use software that allows users to illicitly make their libraries of content available to any other user of the same network, enabling other users to download the content. The most popular P2P software is BitTorrent. BitTorrent websites facilitate file sharing by organizing and indexing torrent files, which allows trackers to initiate and manage the file-transfer process. BitTorrent remains popular, serving millions of torrents to tens of millions of users at any given time.<sup>17</sup>

**Piracy as a Service (“PaaS”):** PaaS is a subset of the larger threat of “Cybercrime-as-a-Service,” which was identified by Europol as a growing threat enabling a variety of

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<sup>14</sup> Examples include notorious piracy services like Mixdrop, which attracted 17.9 million visits in August 2023, even though access to Mixdrop has been disabled in the UK, Australia, and India, and Doodstream, which, along with known associate domains had 43.5 million visits in July 2023.

<sup>15</sup> Examples of such services include Apollo Group TV (operated and hosted out of the Netherlands, attracted approximately 502,475 visits in August 2023), BestbuyIPTV (operated out of Vietnam, providing more than 10,000 channels from 38 countries, and 19,000 VOD titles in multiple languages to over 900,000 users), GenIPTV (operated/hosted from both the United Kingdom and Switzerland, together they saw 237,473 global visits in August 2023 to access over 10,000 channels and 52,000 VOD titles), and MagisTV (believed to be operated out of China, receiving 2.2 million visits in August 2023 and servicing the Latin America market).

<sup>16</sup> Examples of piracy devices and apps include notorious pirates like LokLok (operated out of China, attracted 2.2 million monthly visits from almost 1 million unique visitors in July 2023, servicing piracy to users in Southeast Asia) and Movie Box (operated out of Iran, with a user base of 1.3 million accessing illegal TV shows).

<sup>17</sup> Examples include 1337x (currently hosted in Bulgaria, and while access has been disabled in several territories, the main domain still boasts had 69.9 million visits from 10.32 million unique visitors in August 2023, with the highest traffic, almost 16%, coming from the United States), Yts.mx (hosted in Bulgaria and Belize, boasting 75.8 million total monthly visits from 8.1 million unique visitors in August 2023, making available illegally 32,000 movies in HD and 4K quality, and finding many of its users in the United States, which is responsible for 11.2 percent of its traffic), and finally, but not least, The Pirate Bay, which to this day boasts 22.52 million visits from 6.2 million unique visitors in August 2023, and again, finds most of its users right here in the United States.

cybercrimes. PaaS encompasses a suite of often off-the-shelf services that make it easy for would-be pirates without any technical knowledge to create, operate, and monetize a fully functioning pirate operation, such as website templates, databases of infringing content, and hosting providers specialized in servicing infringers.<sup>18</sup>

### **III. EFFECT OF PIRACY ON THE ECONOMY AND CONSUMERS**

The effects of piracy reach far beyond the MPA’s member companies; the many individuals who depend for their livelihoods on the creation and distribution of motion pictures and television programs are harmed in direct and tangible ways by the lost revenue that results from this illicit activity. Indeed, digital video piracy has been estimated to result in losses to the U.S. economy of between 230,000 and 560,000 jobs.<sup>19</sup>

Piracy also negatively impacts employees’ income and benefits, those received during employment, as well as in retirement.<sup>20</sup> “[C]reative professionals rely on copyright protections and royalty or residual payments to make a living, provide healthcare for their families, and retire with security.”<sup>21</sup> Piracy “reduces the real earnings of professionals already working in creative industries,” including “compensation if the material is used beyond its original exhibition.”<sup>22</sup> Importantly, these harms from piracy affect the MPA’s members’ heavily unionized workforce. As a representative of the International Alliance of Theatrical Stage Employees (“IATSE”) recently stated:

While IATSE members do not own the copyrights to the works we help create, our livelihoods depend on collectively bargained contractual residuals paid to our health and pension plans when the copyrights for those audiovisual works are licensed to others over the life of a work. . . . The theft of copyrighted works—domestically and internationally—threatens our hard-won health care benefits and retirement security.<sup>23</sup>

Local and state economies are also impacted by the piracy of film, television, and streaming content. In 2021, there were \$21 billion in payments made by MPA member companies to over 260,000 local businesses located across the United States.<sup>24</sup> On average, location shoots for major motion pictures contribute \$250,000 per day to the local economy, and \$150,000 per day for a single one-hour television episode.<sup>25</sup> The industry also contributes significantly to federal and state tax revenue. In 2021, \$29 billion in public revenues were

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<sup>18</sup> Examples include WHMCS Smarters (operated out of India), 2embed (operated out of Vietnam), and GDrivePlayer (operated out of Russia).

<sup>19</sup> See Blackburn, *supra* note 9, at 14.

<sup>20</sup> Department for Professional Employees, *Intellectual Property Theft: A Threat to Working People and the Economy | 2021 Fact Sheet*, at 3, <https://www.dpeafcio.org/factsheets/intellectual-property-theft-a-threat-to-working-people-and-the-economy>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* Residuals are of particular importance because they provide income stability during the periods when individuals are not actively employed on the production of a creative project.

<sup>23</sup> Statement of Vanessa Holtgrewe, Assistant Director, Motion Picture & Television Department, IATSE, to the AI Insight Forum: Transparency, Explainability, Intellectual Property, & Copyright (Nov. 29, 2023), at 2, <https://www.schumer.senate.gov/imo/media/doc/Vanessa%20Holtgrewe%20-%20Statement2.pdf>.

<sup>24</sup> See Motion Picture Association, *supra* note 2.

<sup>25</sup> *Id.*



generated from sales taxes on goods, state income taxes, and federal taxes including income tax, unemployment, Medicare and Social Security, based on direct employment in the industry.<sup>26</sup> Additionally, \$8.9 billion in public revenues were generated from corporate income taxes.<sup>27</sup> Piracy threatens these contributions to the U.S. economy.

Piracy services can also directly threaten consumers' personal and financial security. This year, the Digital Citizen's Alliance ("DCA") investigated the impact of visiting and signing up for illegal piracy streaming services. First, the DCA signed up for 20 IPTV services using a clean credit card. Within a few weeks of subscribing, the credit card received unknown charges from China, Singapore, Hong Kong, and Lithuania.<sup>28</sup> This result was consistent with the findings of the DCA's survey of 2,330 Americans about their experience with piracy services. Of those surveyed, 33% admitted to using a piracy website at least once within the past year, with 10% admitting to paying for IPTV subscriptions.<sup>29</sup> Consumers who used a credit card to pay for an IPTV subscription were four times more likely to experience a breach than those who never visited a piracy website (72% of those who purchased an IPTV service compared to 18% who did not).<sup>30</sup> In this respect, piracy operators "are helping fuel an explosion of credit card and other identity-theft-related crimes. According to the Federal Trade Commission, Americans lost \$5.8 billion from such fraud in 2021, the last year for which there is confirmed data. That fraud was more than double what occurred in 2020."<sup>31</sup>

The same DCA survey also revealed that consumers who visit piracy sites are more susceptible to identity theft and malware including viruses, malicious ads and pop-ups, and ransomware. Specifically, consumers who visited piracy sites are more than four times more likely to report being a victim of identity theft (44% of those visiting piracy sites compared to 10% for those who did not) and five times more likely to report having an issue with malware over the last year (46% of those visiting piracy sites compared to 9% for those who did not).<sup>32</sup>

#### **IV. CHALLENGES WHEN ADDRESSING PIRACY**

There are several factors that have encouraged the proliferation of online piracy, including the ease of discoverability of piracy services, increased difficulty for consumers differentiating between illegal and legal services, the availability of programmatic ad revenue and more payment options for illegal subscription services, and lower barriers to entry for piracy operators due to PaaS. In addition to these challenges, there are also a number of hurdles that act as barriers to adequate enforcement. We discuss some of those challenges in more detail below.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Digital Citizens Alliance, *Giving Piracy Operators Credit: How Signing Up for Piracy Subscription Services Ratchets Up the User Risk of Credit Card Theft and Other Harms* (2023), at 1, <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/Giving-Piracy-Operators-Credit.pdf>.

<sup>29</sup> *Id.* at 10-11.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* at 11.

## **A. Global nature of piracy networks**

One of the most significant challenges to addressing piracy is the global nature of piracy networks. While laws around the world aimed at combatting piracy have limited jurisdiction, piracy does not respect national boundaries. This means that the most egregious pirates are able to profit from stolen content and evade the laws of the United States by strategically choosing to operate from within countries that do not provide effective remedies against piracy. But because the internet is worldwide, the impact and scope of these piracy operations are not limited to the borders of any one jurisdiction—they too are worldwide. However, jurisdictional limits prevent us from holding the operators of these websites accountable either criminally or civilly, and instead, they are able to continue to exploit the content of our members for significant financial gain without recourse.

## **B. Role of intermediaries**

Online enforcement efforts are rendered more difficult when intermediaries fail to take adequate steps to ensure their services are not being used to facilitate copyright infringement, a problem compounded by the fact that most website operators operate anonymously and outside the boundaries of the law. Moreover, certain intermediaries lack adequate knowledge of their customers, and the law allows piracy operators to provide fake, incomplete, or unverified information in signing up with domain name providers, hosting providers, advertising networks, and others within the online ecosystem. Many copyright infringing sites utilize reverse-proxy services and content delivery networks (“CDNs”) to mask their internet protocol (IP) address—i.e., the internet location of their server—and the hosting provider of their website, so as to thwart enforcement efforts and operate in anonymity.

This problem is further exacerbated by diminished access to WHOIS data, which contains basic contact details for holders of internet domain names. Domain name registries and registrars have restricted access to WHOIS data based on a misinterpretation of the European Union’s General Data Protection Regulation (“GDPR”). The GDPR does not apply to non-personal information; and, even in the case of personal information, the regulation allows disclosure for legitimate interests such as public safety, law enforcement and investigation, enforcement of rights or a contract, fulfillment of a legal obligation, cybersecurity, and preventing fraud. The MPA and its members have previously raised the need for the Internet Corporation for Assigned Names and Numbers (“ICANN”) to restore access to WHOIS data and urge the USPTO to address this issue further with ICANN.

## **V. WHAT ARE THE SOLUTIONS?**

Online piracy is a complex issue that requires a multipronged solution. In addition to government prioritization of enforcement and cooperation from intermediaries, we should learn from the experiences of our global partners and implement tactics that have proven effective in other jurisdictions. As methods for distributing pirated content continue to evolve, so too must our collective response. It is imperative that new enforcement methods and technologies are developed to address the evolving piracy landscape and that other stakeholders in the internet ecosystem, including internet service providers, hosting providers, domain name system (“DNS”) providers, content delivery networks, payment processors, social networks, and search



engines, take a much more active role in ensuring that their services are not used to facilitate these criminal organizations' activities.

## **A. No-fault Injunctions: Site Blocking**

MPA's experience with no-fault injunctive relief, which includes site blocking, over the past decade has led us to the firm conclusion that it is the most effective remedy available to combat piracy by websites based in jurisdictions where direct enforcement action is not possible. Those countries that have implemented no-fault injunctions to disable access to structurally infringing websites have demonstrated through clear evidence and multiple years of data that this remedy is effective in reducing visits to blocked piracy sites and causes users to change their behavior and migrate to legal, paid VOD services. It is now time for Congress to consider providing express authority for a no-fault injunctive relief regime that will give rights holders what more than a decade of experience around the globe has shown is an effective tool to address piracy.

### **1. How No-fault Injunctive Relief/Site Blocking Works Internationally**

In typical copyright litigation, a court first determines whether the defendant (e.g., a pirate site) has violated the plaintiff's rights. If the defendant has been found liable for copyright infringement, the court may then order that defendant to cease its infringement, as well as order other remedies, including the payment of money damages.

A case under a no-fault regime proceeds differently. The copyright owner typically does not "sue" a pirate site (or any other entity) in the traditional sense, or seek damages for copyright infringement. Rather, it merely seeks for the infringement to stop, and, without assigning blame or fault, seeks relief directed at those positioned to halt the infringement, such as intermediaries that connect the pirate site to users.

The piracy site's operation in almost all cases is happening offshore, anonymously and out of reach of the courts where the no-fault action is brought. The intermediaries (e.g., ISPs that connect their customers with the pirate site) are not "defendants" as in typical litigation. They are subject to orders not because they are engaged in wrongdoing, but only because they are in a position to mitigate the infringement. To emphasize, in such a process, the intermediaries are not accused of copyright infringement, and the court does not hold them liable or order them to pay any damages to the copyright owner that brought the action. Of course, it is incumbent on the copyright owner first to prove to the court<sup>33</sup> that the target online location—the alleged piracy site—is dedicated to infringing copyright. If that is proven, then the court may issue the order directing the intermediaries to disable access to the site. Most jurisdictions around the world require rightsholders to bear the costs of identifying and continuing to monitor the infringing

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<sup>33</sup> In most countries that have enacted no-fault injunctive relief regimes, it is the courts that issue blocking orders. Judicial site blocking occurs in both common law jurisdictions, such as the United Kingdom, Australia, Singapore, and India, and in civil law jurisdictions such as Spain, Denmark, and France. In other countries, no-fault relief is granted by administrative agencies, which are authorized by statute to issue orders to intermediaries to disable access to a structurally infringing site. Such administrative site blocking sometimes occurs in common law countries like Malaysia but is more common in civil law countries like Italy and Indonesia.

nature of blocked sites, while intermediaries handle implementation of the order in the manner they deem technically appropriate.

No-fault injunctive-relief processes do—and MPA agrees must—provide due process protections for all affected parties. The accused pirate sites are notified of the action and have the opportunity to appear in court and contest such designation. Intermediaries to which blocking orders may be issued are also notified and may appear to oppose the order. And, once the court finds that the site is dedicated to infringement, it takes into consideration various factors in determining whether to issue the blocking order, including potential burden on the intermediaries and whether disabling access to the site will have a negative impact on any party (including, e.g., the public’s interest in accessing non-infringing material).

Through careful adjudication, seeking narrowly tailored and no-fault relief against only egregious infringing sites/services, and through strict adherence to the rule of law, rights holders in countries where site blocking exists have ensured precedent that strikes the proper balance between protection of copyright from those who aim to profit off piracy, and respecting the rights of those affected by blocking orders, including accused infringers, intermediaries, and the public at large. Precedents in judicial jurisdictions have progressed incrementally to address issues such as “pirate brand” criminal organizations that quickly migrate and switch domains, locations, operations, servers, etc. to circumvent court orders.

## **2. Site blocking is effective.**

The evidence shows that site blocking is effective both in reducing traffic to pirate websites and increasing the use of legitimate services. A site-blocking order applicable to the main access providers in a given country effectively reduces traffic to the targeted piracy domains in the period after blocking is implemented. For example, blocking 53 piracy websites in the United Kingdom caused an 88% drop in visits to the blocked sites and an 80% to 95% drop across user groups in other waves.<sup>34</sup> Additionally, analysis in Australia, Portugal, and South Korea found average drops in visits to blocked sites of between 60 and 90%.<sup>35</sup>

Site blocking also increases traffic to legitimate content sources among former users of the blocked sites, as shown by research in the U.K. and Australia.<sup>36</sup> In the U.K., along with a decrease in usage of pirate sites, blocks caused a 7%-12% increase in usage of paid legal

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<sup>34</sup> Danaher, *supra* note 8, at 17.

<sup>35</sup> Motion Picture Association, *Measuring the Effect of Piracy Website Blocking in Australia on Consumer Behavior: December 2018* (2020), at 4, <https://www.mpa-apac.org/wp-content/uploads/2020/02/Australia-Site-Blocking-Summary-January-2020.pdf>; Incopro; *Site Blocking Efficacy - Key Findings Australia* (July 2018), at 2, <https://creativecontentaustralia.org.au/wp-content/uploads/2021/03/INCOPROAustralianSiteBlockingEfficacyReport-KeyFindingsJuly2018FINAL.pdf>; Incopro; *Site Blocking Efficacy in Portugal (September 2015-October 2016)* (May 2017), cited at Fig. 2, <https://itif.org/publications/2022/01/26/decade-after-sopa-pipa-time-to-revisit-website-blocking>; Motion Picture Association, *MPA Study on Site Blocking in Korea: 2016*, at 1, [https://www.mpa-apac.org/wp-content/uploads/2018/01/MPAA\\_Impact\\_of\\_Site\\_Blocking\\_in\\_South\\_Korea\\_2016.pdf](https://www.mpa-apac.org/wp-content/uploads/2018/01/MPAA_Impact_of_Site_Blocking_in_South_Korea_2016.pdf).

<sup>36</sup> Danaher, *supra* note 8, at 38; Motion Picture Association, *supra* note 35.

subscription streaming sites like Netflix.<sup>37</sup> It also caused an increase in new paid subscriptions.<sup>38</sup> In Australia, in December 2018, 233 piracy domains were subject to blocking, the largest single wave of site blocking in the country at that point. For users of targeted sites, site blocking caused traffic to legal content viewing sites to increase by 5% in the post-period following the December 2018 wave.<sup>39</sup>

### 3. Site Blocking Does Not Produce Ill Effects.

As mentioned above, concerns about alleged ill effects from site blocking have been wildly overblown and conclusively debunked over time. Examples of over-blocking (i.e., blocking of non-infringing sites or material), once cited as the primary argument against site blocking, are virtually non-existent.<sup>40</sup> Forty countries have successfully implemented site blocking, without jeopardizing free speech or civil liberties. Around the globe, courts and governments have ensured the site-blocking remedy is used judiciously to target only the most blatantly infringing sites, and is implemented with extensive safeguards and due-process protections to ensure adherence to principles of free expression and the rule of law. The legal precedents ensuring compatibility with fundamental rights have been established at the highest levels (for example, and notably, the Court of Justice of the European Union in the *Kino.to* decision).<sup>41</sup> Following the confirmation of such principles, ISPs and governments alike are now supporting the remedy as a proportionate and reasonable way to counter the wholesale piracy committed by pirate sites. Over the years, many cooperative arrangements between MPA and ISPs have emerged, often supported by their governments via codes of conduct. Examples include the U.K., France, Germany, Denmark, Netherlands, and Sweden.

In fact, the European Commission has very recently adopted the EU Recommendation on combatting live-events piracy, encouraging EU member states to make available in their national legislation efficient dynamic site-blocking procedures and calling on all stakeholders to work

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<sup>37</sup> Danaher, *supra* note 8, at 41-43.

<sup>38</sup> *Id.* at 38.

<sup>39</sup> Motion Picture Association, *supra* note 35, at 7.

<sup>40</sup> See Nigel Cory, Information Technology & Innovation Foundation, *A Decade After SOPA/PIPA, It's Time to Revisit Website Blocking* (2022) at 4, <https://www2.itif.org/2022-revisiting-website-blocking.pdf> (“[W]ith dozens of democratic, human-rights-respecting countries using website blocking against thousands of piracy websites, it’s clear that [...] these claims remain untrue”); see also Nigel Cory, Information Technology & Innovation Foundation, *How Website Blocking Is Curbing Digital Piracy Without “Breaking the Internet”* (2016), at 18, <https://www2.itif.org/2016-website-blocking.pdf> (“[T]he growing use of website blocking since then shows that these claims were not based in reality and that website blocking did not “break the Internet,” nor lead to a multitude of other predicted dire outcomes, such as the widespread circumvention of blocking orders, the fragmentation of the global DNS namespace for the Internet, an alternative DNS system for the Internet, nor contribute to a breakdown in user trust and an exodus of users from the Internet.”).

<sup>41</sup> European Court of Justice, *UPC Telekabel vs. Constantin*, 27 March 2014 (Case C-314/12). In other jurisdictions, such as India, the courts have taken up the question of whether seeking blocking of a website dedicated to piracy makes one an opponent of a free and open internet, answering, “advocating limits on accessing illegal content online does not violate open Internet principles,” and “[t]he key issue about Internet freedom, therefore, is not whether the Internet is and should be completely free or whether Governments should have unlimited censorship authority, but rather where the appropriate lines should be drawn, how they are drawn and how they are implemented.” *Delhi High Court, UTV Software Communications Ltd. and Ors. v 1337x.to and Ors. (consolidated)*, CS(COMM) 724/2017 & injunction applications 12269/2017, 12271/2017, 6985/2018, 8949/2018 and 16781/2018.

together cooperatively to block access to infringing live event streams (sports).<sup>42</sup> Governments in various EU member states—Italy, Portugal, and Germany, among others—and in the APAC region—Australia, India, and Singapore—have voiced support for site blocking.<sup>43</sup>

In sum, the past decade’s experience with site blocking is a true success story. These developments represent examples of real collaboration between online intermediaries and rights holders, to the ultimate benefit of the entire internet ecosystem. There is no reason to believe that the successes with site blocking outside the U.S. could not be replicated here, consistent with our legal system and values.

## **B. Cooperation from Intermediaries**

Voluntary measures and cross-industry collaborations are another vital solution for decreasing the presence and accessibility of infringing content online. The reality is that there is only so much copyright owners can do on their own, and combatting online piracy requires a cooperative and collaborative approach. When we refer to the internet as an “ecosystem,” we do so purposefully. Users of the internet rely on intermediaries to ensure that they can easily and safely access legitimate content that is free from malware and other malicious and surreptitious threats; intermediaries benefit from and rely on the creation and dissemination of the creative content that draws users to their services; copyright owners rely on intermediaries, which are best situated to employ the necessary technology to identify and remove infringing content that threatens the sustainability of the creative industries; and so on. Every entity in the online ecosystem is interconnected and has a role to play in ensuring that the ecosystem thrives. To that end, online intermediaries must work cooperatively with copyright owners and play a proactive role in working to combat piracy.

As an example, some payment processors and advertising networks have worked collaboratively with the MPA and deny services to known piracy websites. As another example, Meta has proactively worked with us to improve the consistency and time necessary to remove infringing content and to otherwise collaborate in fighting piracy on its platforms. And the MPA has entered into trusted-notifier agreements with companies such as DNS providers Donuts and

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<sup>42</sup> See European Commission, *Commission Recommendation of 4.5.2023 on combating online piracy of sports and other live events* (2023), <https://digital-strategy.ec.europa.eu/en/library/recommendation-combating-online-piracy-sports-and-other-live-events>.

<sup>43</sup> See Nigel Cory, Information Technology & Innovation Foundation, *A Decade After SOPA/PIPA, It’s Time to Revisit Website Blocking* (2022), at 5-6, 11, <https://www2.itif.org/2022-revisiting-website-blocking.pdf> (quoting government officials from Australia, Brazil, France, Germany, India, the Netherlands, the Philippines, Singapore, Spain, who have spoken out in support of their respective website-blocking frameworks). For example, Mitch Fifield, Minister for Communications & the Arts, said in 2018: “[W]here a site exists purely to facilitate piracy, and with judicial oversight playing a crucial role, the website blocking scheme has been very successful in further reducing copyright infringement.” In India, Justice Manmohan Singh, Delhi High Court, said in his seminal UTV judgment on April 10, 2019: “[W]ebsite blocking in the case of rogue websites, like the defendant-websites, strikes a balance between preserving the benefits of a free and open Internet and efforts to stop crimes such as digital piracy.” In Singapore, the Intellectual Property Office of Singapore remarked on July 19, 2018: “We are glad to see rights holders utilizing the [site blocking] legal framework that we have put in place to protect their copyright works.”

Radix. MPA has also had success working with Google, which demotes pirate sites in search results based on notices from rights holders.<sup>44</sup>

Unfortunately, some intermediaries fail to do their part to reduce and deter piracy. In many instances, web hosting providers, CDNs and reverse-proxy services that are frequently exploited by bad actors to avoid detection and enforcement make no effort to terminate piracy sites despite those sites having been clearly identified as notorious infringers of copyright. In addition, some ad networks continue to serve ads on piracy services despite knowing the nature of those services. Introducing “Know Your Business Customer” (“KYBC”) requirements would be a real and concrete solution to solve the online anonymity issue and allow rightsholders and law enforcement to address piracy more effectively.

### **C. Continued Government Prioritization**

Continued prioritization by government authorities of the enforcement of criminal laws against copyright infringement is also vital to combatting piracy. The Protecting Lawful Streaming Act,<sup>45</sup> which was signed into law in 2020, harmonized criminal penalties for piracy by enabling federal prosecutors to bring felony cases against services designed for the express purpose of illegally streaming copyrighted works. However, we are aware of only one case that has been prosecuted under the Act to date.<sup>46</sup> Prioritizing streaming piracy cases will have the dual effect of both holding bad actors accountable and deterring future acts by signaling that the Justice Department takes seriously the impact of piracy on American consumers and the creative community.

Filling the role of the Intellectual Property Enforcement Coordinator (“IPEC”), which has been vacant since 2021, is another critical next step. We applaud President Biden for his nomination of Deborah Robinson to be the next IPEC, and we urge the Senate to confirm her for the role as soon as possible. Confirmation of an IPEC to coordinate enforcement efforts across federal agencies and amongst our trading partners demonstrates that the administration and Congress view the protection and enforcement of America’s intellectual property both domestically and abroad as a top priority.

## **VI. CONCLUSION**

Although digital piracy is a serious problem, it is not an insoluble one. There are proven and effective methods that can help to protect content creators, consumers, and the many downstream jobs that the creative industries support. We urge Congress to consider reasonable and tailored no-fault injunctive relief as one proven way to combat digital piracy and its negative impact on the creative industries and our economy as a whole.

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<sup>44</sup> See Charles H. Rivkin, *Working Toward a Safer, Stronger Internet* (March 21, 2022), <https://www.motionpictures.org/press/working-toward-a-safer-stronger-internet>.

<sup>45</sup> 18 U.S.C. § 2319C.

<sup>46</sup> See *United States v. Streit*, No. 1:22-cr-00350-ALC (S.D.N.Y, filed Oct. 25, 2021). The defendant eventually pled guilty pursuant to a plea deal that did not include the charge under § 2319C.