

**DIGITAL COPYRIGHT PIRACY:
PROTECTING AMERICAN CONSUMERS, WORKERS,
AND CREATORS**

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

WEDNESDAY, DECEMBER 13, 2023

Serial No. 118-57

Printed for the use of the Committee on the Judiciary



Available via: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2024

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DIGITAL COPYRIGHT PIRACY: PROTECTING AMERICAN CONSUMERS, WORKERS, AND CREATORS

Wednesday, December 13, 2023

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND
THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

Members present: Representatives Issa, Fitzgerald, Bentz, Cline, Kiley, Lee, Johnson, Nadler, Lieu, Ross, Lofgren, and Ivey.

Mr. ISSA. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

Today we would like to welcome this hearing on digital copyright privacy. I will now recognize myself for a short opening statement.

Today we are exploring the topic of copyright privacy in a digital era. This is not a new subject. The Digital Millennium Copyright Act is more than 20 years old. Yet, emerging technologies and emerging threat have, in fact, caused us to once again have to revisit the threat to this great industry.

In 2019, the industries involved in copyright employed nearly nine million people, contributed at least \$1.3 trillion to the U.S. economy. Of these numbers, online piracy is estimated to cost over 200,000 jobs and approximately \$50 billion to our gross domestic product. You might ask, well, if they are in commerce why it is not in our GDP, because for the most part it goes to foreign countries, and it goes to individuals who will never pay their taxes.

While copyright piracy used to be involved in back-alley sales of ripped CDs, DVDs, or in my day the bootleg 8-track, digital copyright piracy now involves amounts of infringing content made widely available on the internet. Much of it is given away for free, but not without a cost. The cost often includes the spyware and, in fact, side advertising that pays for giving away your rights free.

Unfortunately, many of these websites, like FMovies, are hosted on servers that exist outside the United States, currently outside our ability to take them down. This creates unique judicial challenges for enforcement against widespread privacy on such

websites. In some cases, these websites are even hosted within foreign governments, governments like the Russian government on military bases and other enemies of the United States.

It is vital to understand the important difference between websites that happen to have infringing activities, websites that may host those who, in fact, do not respect intellectual property, and criminal websites who exist only for the purpose of, in fact, giving away that which they did not buy and have no rights to.

In this hearing, we want to explore possible solutions to the worst of the worst, at least a way to minimize the prevalence of this infringing content on these illegal sites. These solutions could include requiring internet service providers to permanently block piracy sites that host only or substantially only infringing content. This is a very small portion of all ISPs but a large portion of that which is stolen on behalf of these individuals. Dynamic site blocking to address privacy of live sports and entertainment for set periods time may also be explored, working with platforms to remove pirated content as soon as possible to better meet the needs of live sports entertainment.

I want to particularly focus on that here today. I look forward to the witnesses, because, in fact, notice and takedown might be fine in a week, a day, or an hour, unless, in fact, the event is only an hour or two along and one or two hours means there is no effective takedown in the live broadcast.

Given the importance of this issue, I want to thank our witnesses for appearing here today. I want to say it once and for all. This Committee is the Committee of jurisdiction. Inaction is not acceptable. We have to find solutions that work for the intellectual property producers or we will not have the robust industry in the future that we have today.

With that, I would like to recognize the Ranking Member for his opening statement.

Mr. JOHNSON of Georgia. Thank you, Chair Issa. Thank you for holding this very important hearing.

When the Barbie movie premiered earlier this year, it made \$155 million its first three days in U.S. theaters. Internationally, it earned \$359 million that first box office weekend. Barbie ultimately brought an estimated nine million new moviegoers to theaters according to a prescreening survey done by the Quorum.

Industries like the film industry, ones that are reliant on the exclusive authority to reproduce and distribute creative derivative versions and—excuse me. Industries like the film industry, ones that are reliant on the exclusive authority to reproduce and distribute, create derivative versions, and publicly perform a copyrighted work contributed \$1.29 trillion to the U.S. GDP in 2019. As the viewing public, we often hear the most about those top line numbers. That is because box office scores and tales of sold-out theaters make the news, but they are only a part of the story.

Of those in this room who joined the crowds to see Barbie in theaters, I bet few, if any of us, sat through and watched as the credits rolled. If we had, we would have read the names of just a few of the myriad individuals required to make a movie. Yes, the film studios are the primary rightsholders of the copyrighted work, and the actors and directors get most of the world's attention. There are

so many more people whose livelihoods depend on the success of a film. Technicians, writers, musicians, carpenters, engineers, artists, programmers, and so many more add up to constitute the film industry. The U.S. film and TV industries support and are supported by millions of individuals employed by those sectors.

In 2019, copyright intensive industries in the United States employed 6.6 million individuals directly and two million more people through indirect employment. I say this all not to diminish the importance of box office success, far from it. It is important for us to remember that copyright law does not just support the bottom line, but also the small creators and industry workers. Copyright law itself may have little to do with driving a truck or feeding hungry studio workers. These are some of the people hurt by piracy of copyrighted works.

Digital piracy of film and television has increased since 2020. Between January–August 2022, there were 141.7 billion visits to copyright piracy sites worldwide. Piracy has caused an estimated annual loss of between 230,000 and 560,000 jobs in the United States and between \$47.5 and \$115.3 billion in reduced GDP. These are staggering losses to our creative fields. They impact not just the stars and studio executives but the many individuals who work in the industry. When industries cannot afford to pay competitive salaries, students look to different fields.

Piracy of copyrighted works is not a new problem. What began as pirated DVDs back in the 1990s became a torrent of files in the 2000s. Torrent files have now become streaming. Today more than 80 percent of digital video piracy is conducted via streaming where copies of movies, television, and other copyrighted content are available in real time over the internet.

Congress has acted to protect copyright dependent industries before. From the moment personal computers landed in homes around the world, we knew content piracy would be a concern. That is why Congress passed Section 512 of the Digital Millennium Copyright Act in 1998 to provide the opportunity to protect copyrighted works on the internet.

I am looking forward to hearing from our witnesses how notice and takedown works today, what challenges exist in removing pirated content, and how changes in technology and the internet itself have impacted how we think about copyright protections overall.

I would also note that I know the stakeholders are not limited to the people in this room. When Congress sets about to solve or even examine an issue, we need to look at all the facts and hear from everyone. We must approach any issue before this Committee with the seriousness and diligence it deserves. I am certain that my Chair will do that. This hearing is, however, an important first step to examining the problem of copyright piracy.

Finally, welcome to our witnesses. I look forward to hearing from you today and appreciate your willingness to testify before us. I thank the Chair once again. I yield back the balance of—

Mr. ISSA. I thank the Ranking Member. Without objection, all other opening statements will be included in the record. It is now my pleasure to introduce our witnesses.

Mr. Richard Gladstein is an Academy Award nominated producer and Executive Director of Brooklyn College Graduate School of Cinema and President and Founder of the motion picture production company, FilmColony. He has produced or executive produced films such as *The Hateful Eight*, *Pulp Fiction*, the one that all us know of, *The Cider House Rules*, *Finding Neverland*, among others. Welcome.

Mr. Riché McKnight is General Counsel of the Ultimate Fighting Championship or UFC, an Executive Vice President, Deputy General Counsel, and Co-Head of Litigation for Endeavor. In addition to being UFC's parent company, Endeavor owns and operates a number of other businesses spanning sports, entertainment, advertising, and talent representation.

Mr. Matthew Schruers. Mr. Schruers is the President of the Computer and Communications Industry Association where he leads its advocacy on behalf of the internet, communications, and technology companies. He is also Co-Founder and Board Chair of the Digital Trust and Safety Partnership, which develops best practices to foster a safer and more trustworthy internet.

A returning champion, to use the UFC terminology, Ms. Karyn Temple. Ms. Karyn Temple is now the Senior Executive Vice President and Global General Counsel of the Motion Picture Association where she oversees the Association's legal affairs, content protection efforts around the world. We knew her in her previous roles as the U.S. Copyright Office, most recently Register of Copyrights. Prior to leading the U.S. Copyright Office, Ms. Temple headed the Office of Policy and International Affairs.

I want to take just one more moment. All of you are distinguished. To have somebody who has looked at clouds from both sides now, so to speak, having been so key to determining copyright and how it is to be inherently protected by government and now seeing in one of the most fiercely competitive areas, the stealing of copyright, is a real honor. I want to thank you for all your service in both roles.

With that, I have to swear you in. Then we can begin. If you would, please rise to take the oath.

Raising your right hand, do you solemnly swear or affirm under penalty of perjury that the testimony you are about to give will be the truth and correct to the best of your knowledge, information, and belief so help you God?

Let the record reflect that all witnesses answered in the affirmative. Please be seated.

We will now begin with Mr. Gladstein.

STATEMENT OF RICHARD GLADSTEIN

Mr. GLADSTEIN. Chair Issa, Ranking Member Johnson, and the distinguished Members of the IP Subcommittee, thank you for your invitation to speak with you today on behalf of America's creative community.

As the Chair said, I am a filmmaker and educator. I produced such films as *The Bourne Identity*, *Finding Neverland*, *She's All That*, *The Cider House Rules*, *Pulp Fiction*, among many others. I am currently the Executive Director at Brooklyn College's Feirstein Graduate School of Cinema, a part of the City University of New

York, where we are educating the next generation of diverse storytellers.

Film and television production benefits a great many of our cities and States. On average, for each and every day a film shoots, approximately \$250,000 is contributed to that local economy. Small films generally shoot for about 24 days and large ones for over 70 days. Throughout the U.S., our film and television industries employ approximately 2.4 million Americans. These numbers bear out what I have always known in my heart to be true. Creativity is not just an important part of American life. It is the backbone of our Nation's cultural and economic strength.

Despite being a robust engine for the U.S. economy, our industries have been besieged by digital piracy since the inception of the internet. We have been fighting these illegal activities with our hands tied behind our backs ever since.

I am not here today to speak about issues concerning fair use or the use of clips from films or television shows or the ways in which ideas or content are used by others in similar works. Rather, I am going to confine my thoughts to the wholesale theft and distribution of our movies and TV shows by criminal enterprises, not facsimile or parts or replicas of our work, but rather the entire and actual film or television program.

Large scale piracy operations today are criminal enterprises. They create internet sites that look deceptively similar to legitimate streaming services. A recent study found that as many as 30 million Americans use these illegal streaming services often without realizing they are doing so. The damages are significant, as another report found that piracy causes losses of at least \$29 billion and as much as \$71 billion each and every year.

It has also been proven that digital piracy costs the U.S. economy between 230,000 and 560,000 jobs every year. The vast majority of these job losses and revenues affect the workers behind the cameras, the production designers, costume designers, cinematographers, caterers, and every member of their crews, including seamstresses, carpenters, electricians, and more. These are well paid, skilled jobs for crafts people. They often do not require a four-year college degree.

Many look at us as large corporations. These individuals, again the backbone of our industry, are mostly freelance and a part of the gig economy. Ninety-two percent of the businesses in film and television employ fewer than ten people. Our workers' pension and health plans are funded by residuals. These residuals are derived from revenue and profits from movies and television shows. Piracy is eviscerating these profits.

So, why are we allowing hundreds of thousands of American jobs to disappear each year? The truth is that most of the piracy happening in the United States is occurring through illegal services that are based overseas and beyond the reach of U.S. law enforcement. Although there are laws in place around the world that are proven to be effective against piracy, these tools are not yet available to us here in the United States.

One such effective tool allows courts to issue no-fault injunctive relief or site blocking, creating orders that direct internet service providers after a full judicial process to block access to offshore

websites that are found to be dedicated to piracy. This tool is effective in more than 40 countries that have implemented it, including in Western democracies like Canada, the U.K., and Australia.

There is a decade of evidence to support its effectiveness. Numerous studies have shown that this tool reduces traffic to pirate sites while also increasing traffic to legitimate and legal sites, the sites that actually result in fair compensation to creatives for their work. Early objections to site blocking erroneously said it would be abused, could cause harm to free speech, or break the internet. Creatives like me are fierce advocates for free speech, and we would never call for this important right to be blocked. When piracy is diminished with effective laws, film financiers and creatives will be able to realize the revenue they are entitled to.

As my time is running out, I will say that, in sum, I am here to request that Congress find reasonable solutions, such as site blocking, to curtail the theft and distribution of our creative work. Those engaged in illegal behavior, as well as internet intermediaries, that consistently aid and abet such theft should be stopped and face penalties. Thank you for your invitation to speak with you and your consideration of my testimony.

[The prepared statement of Mr. Gladstein follows:]

STATEMENT OF RICHARD GLADSTEIN

Chairman Issa, Ranking Member Johnson, and distinguished Members of the IP subcommittee, thank you for inviting me to speak with you on behalf of America's creative communities today.

I have been a filmmaker for over 30 years, producing films such as *The Bourne Identity*, *Finding Neverland*, *The Cider House Rules*, and *Pulp Fiction* among others. I am currently the Executive Director at Brooklyn College's Feirstein Graduate School of Cinema, a part of the City University of New York, where we are educating the next generation of diverse storytellers.

I have lived between New York and Los Angeles my entire career, while shooting films all over the country and the world. As this committee knows, our nation's copyright laws protect American jobs in every state. What you may not know is that each film contributes on average \$250,000 to the local economy each day it shoots. Smaller budget films may shoot for 24 days, and larger-budgeted films shoot in excess of 70 days. In the U.S., the film and television industry employs 2.4 million Americans across the country.¹

Those numbers bear out what I have always known in my heart to be true – that creativity is not just an important part of American life, it is the backbone of our nation's cultural and economic strength, both here and around the world.

Despite being such a robust engine for the U.S. economy, our industries have been besieged by widespread digital piracy from the inception of the internet. And, we have been fighting with one hand tied behind our backs ever since. Let me be clear, we like that the internet helps us reach audiences. But it has also, in many ways, exacerbated piracy.

I am not here to discuss fair use or the widespread use of clips of films and television shows online. Rather, what I am talking about is the wholesale theft of our movies and TV shows by criminal enterprises.

Large-scale commercial piracy operations today are criminal enterprises, not kids in the basement. They are sophisticated operators, creating sites that look deceptively similar to legitimate streaming services. A recent study found that as many as 30 million consumers, across 9 million American homes, use illegal streaming services, often without even realizing it.²

Another report found that digital video piracy causes domestic losses of at least \$29 billion and as much as \$71 billion every year, resulting in losses between \$47 (billion) and \$115 billion to the GDP.³ That same study found that this is costing the U.S. economy between 230,000 and 560,000 jobs each year.

The majority of these jobs are taken from the workers behind the cameras who put in long hours every day to make the entertainment that audiences around the world love. The production designers, costume designers, cinematographers, make-up artists, caterers, and every other member of their crews including seamstresses, carpenters, drivers, assistants and more – rely on these jobs to provide for their families. These are well-paid, skilled jobs for craftspeople that do not require a four-year college degree.

Many people look at us as huge corporations, but it is really these people who work on film and television sets every day who are the backbone of our industry. Actors and directors and producers are just a few of the people on a film set. Grips, electricians, carpenters, and more are the majority. And the vast majority

¹ <https://www.motionpictures.org/what-we-do/driving-economic-growth/>

² <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/DCA-Money-for-Nothing-Report.pdf>

³ <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>

of a film's budget is devoted to those people. In fact, 92% of the businesses in film and television employ fewer than 10 people.⁴ Indeed, most of these workers are freelancers and part of what is now widely referred to as a gig economy.

Most independent and smaller budget films struggle just to break even on their investment, and piracy only makes it more difficult by jeopardizing the ability to develop and fund future films like the ones I have spent my career making. Many directors of the big Hollywood movies that we know started out by making small, independent films. Without a thriving independent film market, we would not have new and interesting voices.

And the loss of film productions is not only catastrophic to the crews whose livelihoods depend on them – it harms the communities that are home to these productions⁵. I currently live and work in Brooklyn, surrounded by the vibrant creative metropolis that is New York City. Our skilled workers are some of the most dedicated and industrious American citizens – and have an even greater need for protection from piracy.

Their pension and health plans are funded by residuals paid *from the profits* of movies and television shows. We know that piracy cuts into those profits and sometimes even eviscerates them. Residuals, which are based on revenue from legitimate and legal viewership, are shrinking because of piracy – a direct threat to pension and health care plans.

Every day, this problem gets worse. According to a prominent piracy tracking firm, there was a 36% increase in film piracy in 2022 over 2021, with exponential increases during 2023.⁶

So how are we letting this happen to one of America's most vital cultural exports? And why are we allowing hundreds of thousands of American jobs to disappear each year as a result of piracy?

The truth is, most piracy happening in the United States is occurring through illegal services based in countries overseas, beyond the reach of U.S. law enforcement. Which begs the question: what can you do as lawmakers here in America to help us protect against the harms caused by these offshore piracy operations that are actively targeting U.S. consumers?

The good news is that there are laws now in place around the world that have proven to be effective tools against this kind of piracy. The bad news is that those tools are not yet available to copyright owners in the U.S.

One such tool, broadly available in developed countries around the world, allows courts to issue no-fault injunctive relief – or “site blocking” – orders, directing internet service providers – after a full judicial process – to block local access to offshore websites that are found to be dedicated to piracy. This tool has proven to be an effective remedy against piracy in the more than 40 countries that have implemented it – including western democracies like Canada, the UK, and most of the countries in the E.U.⁷

⁴ https://www.motionpictures.org/wp-content/uploads/2023/01/MPA_US_Economic_Contribution_2021_Final.pdf

⁵ <https://www.motionpictures.org/what-we-do/driving-economic-growth/#map>

⁶ <https://www.thecinemapoundation.org/wp-content/uploads/2023/03/MUSO-Piracy-Report-1.pdf>

⁷ <https://www.motionpictures.org/press/mpa-applauds-philippine-government-and-isps-on-uniting-to-block-websites-offering-pirated-content/>

Numerous studies have shown not only that reductions in traffic to these pirate sites result from the introduction of this simple tool, but also that traffic to legitimate sites increases with consumers moving instead to the many legitimate options that are widely available to them – options that actually compensate creatives for their work.⁸

This kind of shift away from illegal pirate sites and toward legal choices could be a game-changer not only for America's film and television industry and its 2.4 million workers, but for all Americans. Film and television projects pay out \$21 billion per year to more than 260,000 businesses in cities and small towns across the country.⁹ I have seen this firsthand during the production of my films, in towns from Colorado to Wyoming to Georgia and beyond.

On the flip side of the monetary benefits of the industry to everyday Americans, there are the very real consumer dangers of piracy sites like malware and identity theft. One in three visitors to piracy sites get malware or compromise their identity – simply by landing on the site.¹⁰

Early objections to site blocking suggested that it would be abused by rightsholders, would negatively impact free speech, and harm the internet as we know it. Creatives like me are fierce advocates for free speech and in no way would I advocate for that right to be diminished. But we now have well over a decade of experience and have learned that site blocking works, without any harm to consumers or democracies. Blocking sites that traffic in illegal activity is not a violation of free speech. With more than 40 countries now actively blocking these sites, the internet is still alive and well.

Protecting intellectual property and the creative industries has always been a bipartisan issue. And I hope that Members of Congress can begin to have a serious discussion about site blocking legislation.

In sum, I am here to ask you, our lawmakers, to find reasonable solutions that curtail blatant theft of our creative work. Those engaged in what is clearly illegal behavior, as well as those internet intermediaries that aid and abet such theft, should be appropriately disincentivized from doing so.

No one understands this as well as you, Chairman Issa, and the members of this IP Subcommittee. My community is incredibly grateful for the Committee's dedication to protect our livelihoods. I ask you to please consider what I have said and let us work together to ensure that we create robust protections for one of our country's most valuable exports and important cultural contributions.

Thank you for your invitation to speak with you here today and for your consideration of my testimony.

Submitted by:
Richard N. Gladstein
December 11, 2023

Submitted to:
Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary hearing titled, "Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators." scheduled for Wednesday, December 13, 2023, at 10:00 a.m. in 2141 Rayburn House Office Building.

⁸ <https://www.judiciary.senate.gov/imo/media/doc/Smith%20Testimony1.pdf>

⁹ <https://www.motionpictures.org/what-we-do/driving-economic-growth/>

¹⁰ <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/malware.pdf>

Mr. ISSA. I thank the gentleman. We now go to Mr. McKnight.

STATEMENT OF RICHE T. McKNIGHT

Mr. McKNIGHT. Chair Issa, Ranking Member Johnson, distinguished Members of the Subcommittee, thank you for inviting me to testify today.

My name is Riché McKnight. I am Executive Vice President and General Counsel of the Ultimate Fighting Championship and Deputy General Counsel and Co-Head of Litigation at Endeavor, one of the world's largest sports, entertainment, and fashion companies. I am honored to testify about the internet piracy challenges that UFC faces as a provider of popular live sports content. UFC appreciates working with Congress on this issue, including the enactment of the Protecting Lawful Streaming Act in 2020.

UFC is a preeminent content creator that hosts and airs live mixed martial arts content, including through a pay-per-view option in the United States in partnership with ESPN+. UFC events are beloved and highly anticipated.

As explained in my written statement, a critical element of UFC's content is that the essence of the event often involves highly impactful but very brief moments in time, such as a knockout in a fight or a well-executed move. These key moments frequently last only minutes or even seconds.

Because UFC's content is so popular, UFC faces pervasive piracy of its live content. Pirates record the live streams not just through holding their phones up to a screen to record a UFC event and livestream it, but also through more sophisticated techniques resulting in HD quality video. The pirates also brazenly advertise on social media platforms to get viewers to come to their pirate websites with slogans like Watch UFC Free. When people learn that they will be able to access UFC content for free, they have no reason to purchase UFC content via pay-per-view.

The problem is not unique to UFC. UFC recently submitted a joint letter with the NBA and the NFL to the U.S. Patent and Trademark Office that highlighted the challenges we all face with respect to the piracy of live sports events. By one estimate, the financial impact of online piracy across the global sports industry is up to \$28 billion in additional potential annual revenue. UFC estimates that online piracy diverts multiple millions of dollars from legitimate purchases of UFC's content each year. In turn, this results in a substantial loss of tax revenue and harms sports providers' ability to host events that benefit local businesses and communities.

UFC does the hard work to submit thousands of takedown requests to a variety of online service providers during and immediately after each UFC event. It has also engaged in outreach to individual platforms. However, despite these efforts, piracy persists. You have heard from and will continue to hear from my copanelists about site blocking. UFC supports those efforts for the reasons that have already been discussed.

UFC has also identified a few additional solutions that I will talk about today and that would significantly help address the problem of piracy of live sporting events. First and foremost, OSPs do not remove infringing livestreams and videos expeditiously, as is re-

quired for them to attain a safe harbor from liability for the infringement of their users under the Digital Millennium Copyright Act. In fact, infringing livestreams often stay online for a full UFC event. UFC has found the OSPs exploit a lack of clarity in DMCA as to what it means to remove content expeditiously, which clearly must account for whether the request is time sensitive.

To put matters concretely, for each UFC pay-per-view event between January of last year and this past November, UFC sent thousands of takedown requests on average, even putting aside infringing content that was automatically removed by certain OSPs. For livestream content, 26 percent of infringing UFC content was permitted to stay up for longer than one hour after requests, a significant portion of a live event. Approximately six percent of content was permitted to stay up for longer than five hours. It is not uncommon for these streams to collect hundreds of thousands or even millions of views while they are available.

Congress can and should clarify that at least for time-sensitive content like live sporting events expeditious removal means that infringing content must be removed instantaneously or near instantaneously. It is not enough if an infringing livestream is left up until the live content ends.

Second, many OSPs have not adopted an effective process for identifying and terminating repeat infringers, as is also required for them to have a safe harbor under the DMCA. Too frequently, UFC sees that after a user is terminated for repeat infringement, that same user will create new accounts that are obviously connected to the previous account. Clarification is needed that a reasonable repeat infringer policy would among other things involve account verification measures that prevent the creation of new accounts by the same person and other measures that would limit the ability of newly created accounts to live stream for a certain period or reach a widespread audience of viewers.

We recognize this continues to be an ongoing conversation requiring input from all stakeholders. We hope to be able to work with you and the Members of this Subcommittee going forward. I want to thank the Subcommittee again for giving UFC the opportunity to testify today. I would be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. McKnight follows:]

Written Statement of Riché T. McKnight

Executive Vice President & General Counsel, Ultimate Fighting Championship; Deputy General Counsel & Co-Head of Litigation, Endeavor

Hearing on Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators
Before the United States House of Representatives Committee on the Judiciary, Subcommittee
on Courts, Intellectual Property, and the Internet

December 13, 2023

Chairman Issa, Ranking Member Johnson, distinguished Members of the Subcommittee, thank you for inviting me to testify today. My name is Riché McKnight. I am Executive Vice President and General Counsel of the Ultimate Fighting Championship, UFC, and Deputy General Counsel and Co-Head of Litigation at Endeavor, one of the world's largest sports, entertainment, and fashion companies. I am honored to testify before you about the internet piracy challenges that UFC faces as a provider of live sports content. UFC is proud of the work it has done and is doing with Congress on this issue, including with respect to the enactment of the Protecting Lawful Streaming Act back in 2020. Thank you for your efforts in passing that important reform, and for recognizing that additional legislative solutions to online piracy are needed.

UFC

UFC is a preeminent content creator that hosts and airs live mixed martial arts content, including through a pay-per-view option, in the United States in partnership with ESPN+. Earlier this year, UFC became part of TKO Group Holdings, a premium sports and entertainment company that houses both UFC and World Wrestling Entertainment, or WWE, an integrated media organization and the recognized global leader in sports entertainment. While WWE also faces many similar piracy issues, my testimony today will focus on UFC.

UFC “events” are beloved and highly anticipated by a large international fan base, and are broadcast in over 170 countries and in 50 languages. The core competitions, called UFC “numbered events,” feature UFC’s top talent. They occur approximately once a month and are available to watch in the United States on pay-per-view via ESPN+. UFC also offers additional live content in the form of “UFC Fight Night” competitions, which often feature up-and-coming talent and are broadcast on network television and streaming services. UFC fans are passionate, and communicate on forums dedicated to UFC in advance of and following events, attend UFC events in person, and even congregate for an annual “Fan Expo” where fans can meet top UFC athletes. Unfortunately, UFC’s popular content also attracts widespread piracy across a variety of online service providers (OSPs), diverting viewers that would otherwise pay for UFC’s content to places they can watch it for free.

Because piracy is such an important issue for UFC, we are proud to have played a leading role in many of the discussions and efforts surrounding piracy and potential legislative reform of antipiracy laws in recent years. For example, as already discussed, we were a leader in sharing our perspective with Congress as it considered and eventually passed the Protecting Lawful Streaming Act of 2020, which eliminated the “streaming loophole” and enabled federal felony penalties for large-scale commercial piracy. That legislation sent a signal to the rest of the world that the U.S. is prepared to rigorously enforce its anti-piracy laws. We encourage the Department of Justice to prioritize this important legislation. More recently, we shared our perspective and experiences with the United States Patent and Trademark Office as part of its solicitation of comments on topics involving piracy. We submitted comments on behalf of UFC and through a joint submission on behalf of UFC, the National Basketball Association’s marketing and licensing arm NBA Properties, Inc., and the NFL’s licensing arm NFL Productions LLC, focused on the

unique piracy challenges shared among providers of live sports content.¹ We have also engaged in various congressional efforts examining potential reform of the Digital Millenium Copyright Act.

The Impact of Piracy on UFC and Its Industry

A critical element of UFC's content is that the essence of the event often involves highly impactful but very brief moments in time, such as a knockout in a fight or a particularly well-executed move. Because UFC's content is so popular generally, and because people often desire to see the key moments at the same time as they occur live, UFC faces pervasive piracy of its live content. This piracy occurs both in the form of pirated livestreams and in the form of recorded, video-on-demand content that is posted during or shortly after a UFC event.

UFC estimates that within hours of a single UFC event, hundreds of thousands of viewers may have already seen infringing versions of the event, including those critical moments. UFC further estimates that due to piracy, multiple millions of dollars are diverted from legitimate purchases of UFC content each year. Pirates record the livestreams not just through holding their phone to record a television or other screen on which a UFC event is playing, but also through more sophisticated techniques like redistributing a source of UFC content the pirate has acquired on their own device from a legitimate purchase or unauthorized source, or tapping into ESPN's source signal. They also brazenly advertise on social media platforms to get viewers to come to their pirate websites, with slogans on social media sites such as "Watch UFC Free." In other words, enterprising pirates will often first advertise in advance of a UFC event where viewers can go to access illicit UFC content, they will then post those livestreams and recorded videos to those sites, and those videos will often collect hundreds of thousands or millions of views before they are

¹ The joint submission is appended to this submission as Appendix A.

taken down (with the caveat that some videos are actually never taken down despite UFC's requests). In turn, would-be viewers have no reason to purchase UFC content via pay-per-view because they know they will be able to access it for free, contemporaneously with the event.

UFC is not alone in facing significant harm due to online piracy. Because of the time-sensitive nature of live sports content, other sports content providers face similar issues where potential viewers of legitimate live content are diverted to free, pirated content instead. By one 2021 estimate, the global sports industry loses up to \$28 billion in additional potential annual revenue due to online piracy.² This estimate is conservative and is based on the sports fans who would be likely to "convert" from pirated content to paid content, while excluding the impact of viewers who are least likely to pay for sports content even if pirated content were unavailable. Piracy does not just harm content creators like UFC; it also results in a substantial loss of tax revenue and impacts sporting event providers' ability and willingness to host events that in turn benefit local communities and businesses. For an additional discussion of the harms of piracy on live sporting event providers, UFC respectfully refers the Subcommittee to the appended joint comment submitted by UFC, NBA Properties, Inc., and NFL Productions LLC to the United States Patent and Trademark Office on August 23, 2023.

Pressing Challenges and Proposed Solutions

UFC has worked with its enforcement partners to implement a robust takedown strategy during and immediately following live events, and to engage in a concerted effort to identify and reach out to platforms that, notwithstanding UFC's takedown efforts, allow rampant pirated UFC content to remain on the platform and do not terminate repeat infringers. Although these efforts have had some traction, they are still not enough, particularly given an influx of commercial-scale

² Synamedia & Ampere Analysis, Pricing Piracy: The Value of Action 4 (2021).

and non-domestic piracy in recent years. A common thread is that, although the Digital Millennium Copyright Act was an important solution to the new problem of digital copyright infringement at the turn of the millennium, it is twenty-five years old, and does not fully address the particular issues that arise due to the widespread and increasingly sophisticated piracy of live content. Legislative reform is sorely needed, particularly in the following areas.

Expeditious Removal: Although Section 512(c)(1) of the Copyright Act is intended to provide platforms a safe harbor from liability for their users' infringing material if these platforms "expeditiously" remove a user's infringing material, among other things, UFC's experience is that many OSPs frequently take hours or even days to remove pirated content posted during or immediately after UFC's live sporting events. This is likely because OSPs have exploited the lack of a definition of "expeditiously" in the statute, and thus can claim a lack of clarity over what "expeditious removal" actually involves. They often will claim to us that they are removing content expeditiously even when they allow a livestream to stay up for the entirety of a UFC event or remove recorded content days later. Of course, this is problematic. Given the time-sensitive nature of UFC's live sports content, the value of the content is at its highest during this critical period, and then sharply diminishes.

To put matters concretely, for *each* UFC pay-per-view event between January 2022 and the end of November 2023, UFC sent, on average, 1,173 takedown requests for infringing livestreams to all OSPs, and 2,246 takedown requests for infringing recorded content to all OSPs. For livestreamed content, 26% of infringing UFC content was permitted to stay up for longer than 1 hour after a request (a significant portion of a live UFC event), and approximately 6% of content was even permitted to stay up for longer than 5 hours. For recorded content, 74% of infringing UFC content was permitted to stay up for longer than 1 hour, and 57% of content was permitted

to stay up for longer than 5 hours. Some recorded content even remains online for days following a UFC event, despite prompt UFC takedown requests. It is not uncommon for these streams to collect hundreds of thousands or even millions of views while they are available online.

This issue can be easily remedied by adding a statutory definition to clarify what “expeditiously” means for the purposes of determining whether OSPs are eligible for a safe harbor from liability based on the infringing conduct of their users. Specifically, we believe the law should be clear that, for live events specifically, “expeditiously” means “instantaneously” or “near instantaneously.” Importantly, this would also deter further piracy by making pirate accounts unsuccessful, because viewing pirated content is less enticing if pirated livestreams and other time-sensitive content typically come down shortly after they begin airing. This simple measure of creating a definition of expeditious removal—or otherwise ensuring that OSPs understand they need to remove infringing livestreams and otherwise time-sensitive content expeditiously—will be a critical way to address the harm caused to UFC and other live content providers by widespread internet piracy. Moreover, this is a feasible requirement: UFC’s experience is that certain OSPs already remove live content essentially instantaneously in response to UFC’s requests, or at least in a matter of minutes.

Repeat Infringers: UFC has also learned that a significant amount of pirated UFC content is posted by the same set of repeat infringers, notwithstanding UFC’s diligent submission of takedown requests. To be eligible for a safe harbor under existing law, OSPs must also adopt and reasonably implement policies that provide “for the termination in appropriate circumstances of . . . repeat infringers.” 17 U.S.C. § 512(i)(1)(A). However, again, the law does not define what it means for someone to be a “repeat infringer” or what constitutes “termination in appropriate circumstances” of such users. UFC has observed a set of interrelated problems.

First, the same accounts will often post multiple infringing streams during the same event, even after content posted by an account is removed in response to a UFC takedown request. One straightforward way of addressing this would be to require OSPs to freeze the ability of an account to post new content in the period immediately following a takedown for copyright infringement, for several hours or until a specific event is over.

Second, although it should be obvious that an account that received numerous copyright takedowns should not be permitted to keep posting new infringing content, UFC has found that certain OSPs are delayed in terminating these accounts or never terminate them at all. Legislation on this issue should make clear that accounts that have amassed a certain number of copyright takedowns (such as three takedowns) should be immediately disabled, which is a policy that some OSPs already have.

Third, UFC has observed that, for a number of OSPs, the same users will create new accounts with very similar usernames after being suspended, and will continue infringing UFC's contents from these new accounts—which are obviously connected to the prior ones. Even where an OSP promptly disables one of these “related” accounts upon notification from UFC—and not all OSPs do this—UFC must play a game of whack-a-mole to identify new infringing accounts and make sure that they are disabled. OSPs do not do enough to address this problem.

To be eligible for any sort of safe harbor under the Copyright Act, OSPs must take reasonable actions to prevent the creation of new accounts by users who have previously been terminated for repeat infringement. This could involve more stringent account verification measures, which some OSPs have already successfully implemented to reduce the prevalence of spam accounts. These include requiring a working phone number in order to verify an account and implementing tools to prevent the creation of new accounts from the same IP address and

machine identifier. In addition, and at minimum, OSPs should be required to implement measures to proactively prevent previously suspended users from posting new infringing content—such as through limiting the ability of newly created accounts to stream live content or limiting the number of simultaneous views of live content posted by a newly created account. Future legislation could make clear that it is not enough to simply terminate a specific account and then turn a blind eye when the same user creates one or more additional accounts.

Recalcitrant platforms: In addition, UFC has found that a significant number of OSPs simply do not respond to takedown requests at all, and that this number has been growing over time. UFC’s investigation has revealed that these OSPs are generally based outside the United States, obscure their contact information, and frequently have a reputation for hosting pirated content. UFC, like other copyright owners, must then make the decision as to whether to proceed with potentially costly litigation against any individual OSP, many of whom may be likely to claim that U.S. courts lack jurisdiction or otherwise evade the judicial process.

UFC supports efforts to address this problem by, for example, enacting legislation that would implement the ability to obtain a no-fault injunction process (with corresponding safeguards) similar to that adopted by many other jurisdictions around the world. The jurisdictions that have already implemented site-blocking regimes have demonstrated not only that this method significantly curbs the spread of piracy, but also that, with appropriate safeguards, this is an effective tool to combat piracy on websites that simply refuse to address pirated content.³ Under this sort of “site-blocking” framework, copyright owners like UFC could address the harm caused

³ See Nigel Cory, *A Decade After SOPA/PIPA, It's Time to Revisit Website Blocking*, ITIF (Jan. 26, 2022), <https://itif.org/publications/2022/01/26/decade-after-sopa-pipa-time-to-revisit-website-blocking/>.

by these websites—enabling U.S.-based users to easily view pirated content—without the existing hurdles to effective enforcement actions against such sites.

Conclusion

The very purpose of copyright law is to incentivize the creation and distribution of new works and content, and the harms from piracy threaten that purpose, particularly when pirates divert countless potential legitimate viewers away from copyrighted content to unlawful pirated content. The solutions above reflect targeted remedies to the ongoing problems that UFC and other copyright owners—particularly owners of time-sensitive content like live sports content—face on a regular basis. UFC recognizes that this continues to be an ongoing conversation that requires input from all stakeholders, and we hope to be able to work with you and the Members of this Subcommittee going forward.

I want to thank the Subcommittee again for giving UFC the opportunity to testify today. I'd be happy to answer any questions you may have. Thank you.

Mr. ISSA. Thank you. Mr. Schruers.

STATEMENT OF MATTHEW SCHRUEERS

Mr. SCHRUEERS. Chair Issa, Ranking Members Johnson, and the Members of the Subcommittee, thanks for the invitation. It is good to be with you again today. My name is Matt Schruers. I'm President of CCIA.

For over 50 years, CCIA has been a voice for information, communications, and technology firms. Products provided by our members connect and empower users around the world, enabling work and study in commerce and entertainment for billions. In so doing, the digital sector is a proud and critical partner to the creative industry. Widespread adoption of technology products and services have created entirely new markets for the legal consumption of content, permitting users to lawfully enjoy digital media nearly anywhere at any time, generating more revenue opportunities for creators than have ever existed before.

Tech companies are themselves IP creators, spending hundreds of millions of dollars on premium, award-winning content and millions more licensing content from others for lawful distribution. As leading providers of content and licensees, they understand well the value of that investment.

It is the case that a small minority of bad actors' misuse digital tools to infringe IP rights. The digital sector shares the goal of preventing this. We must achieve this goal without interfering with legitimate online commerce, communication, and the Constitution. The most powerful tool to prevent infringement is ensuring that consumers can lawfully access the content they want, where they want it, when they want it on the device want it. Products provided by American tech leaders are making this possible.

Now, in addition, CCIA members regularly engage with rights-holders to identify and enforce against infringers, including through extensive content moderation systems that go above and beyond the notice and takedown that is currently contemplated by Federal law. Now, automated filtering is not always effective. It relies on third-party input, granular information. It can be misused. It can result in over-removal and over-enforcement against non-infringing content and fair use, thus suppressing lawful expression. So, automated systems do require human oversight and pairing the right solution with the problem to ensure they function properly.

Policymakers should be wary of the proposal for online enforcement that is DNS level site blocking. This approach involves interfering with the basic architecture of the internet to suppress content. This blunt instrument of architectural regulation is inherently imprecise. It cannot be achieved file by file or even country by country, but instead disappears entire sites for the entire world. This puts far more speech at risk of suppression, similar to closing the Library of Congress over a single book. So, for that reason, DNS level site blocking is not technically or constitutionally possible to implement and certainly not without significant collateral damage.

My written testimony describes in greater detail the EU's website blocking system, which is littered with false positives. It provides an instructive example of the unintended consequences of

policy. There is little transparency around blocking orders and few ways to determine when content is being withheld from the public by court order. This is why technological experts like ICANN and the Internet Society have strongly advised against DNS level blocking.

Now, election season is on us. It is prudent to recall that political speech is frequently a target of wrongful copyright allegations. In the last Presidential election, multiple candidates were prevented from livestreaming their own speeches due to dubious copyright claims. Campaign advertisements are regularly accused of infringement. Whether inadvertent or intentional, this cannot be tolerated in a democracy.

So, in conclusion, the more blunt the instrument, the greater the risk to expression. So, we must calibrate solutions appropriately. Nevertheless, CCIA members are committed to fighting infringement by investing significant resources in new products that give new opportunities to creators and create better responses to infringement.

I look forward to your questions. Thank you.

[The prepared statement of Mr. Schruers follows:]

Statement of

Matt Schruers

President

Computer & Communications Industry Association

“Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators”

Subcommittee on Courts, Intellectual Property, and the Internet

Committee on the Judiciary, U.S. House of Representatives

December 13, 2023

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee, my name is Matt Schruers, and I serve as President of the Computer & Communications Industry Association (CCIA), which represents Internet, technology, and communications firms.¹ CCIA was founded in 1972 to promote open markets, open systems, and open networks in the computer and telecommunications industry.

I. Introduction

The increasingly diverse and digital sector has become a cornerstone of the U.S. economy. According to figures published by the U.S. Department of Commerce last week, the digital economy contributed \$2.6 trillion to the U.S. economy in 2022, or 10% of U.S. GDP.² The digital sector is one of the fastest-growing industries powering the U.S. economy, with American technology companies growing their GDP contributions by an average of 7.1% annually from 2017 to 2022 after adjusting for inflation, greatly outpacing growth in the overall economy.³

A thriving economy goes hand in hand with a strong labor force and the digital sector is a key contributor, employing more than 8.8 million U.S. workers⁴ who received over \$1.3 trillion in compensation in 2022.⁵ Those large-scale benefits to the U.S. economy driven by American technology leadership can be seen across the country. Today, the tech industry is a key driver of the success of small businesses, with 95% of small business owners using technology developed by leading tech providers,⁶ and 100% of surveyed startups using three or more digital tools in their operations.⁷

Content-producing industries are also thriving amid this digital revolution. For example, the recording industry produced \$26.2 billion in revenue in 2022,⁸ higher than any other year in the 2000s. The global movie industry recorded \$99.7 billion in revenue in 2021, breaking records notwithstanding global COVID lockdowns.⁹ The video game industry broke \$200 billion in

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Digital Economy, U.S. Bureau of Economic Analysis (Dec. 6, 2023), <https://www.bea.gov/data/special-topics/digital-economy>; U.S. Digital Economy: New and Revised Estimates, 2017–2022, U.S. Bureau of Economic Analysis (Dec. 6, 2023), <https://apps.bea.gov/scb/issues/2023/12-december/1223-digital-economy.htm>.

³ *Id.*

⁴ New Digital Economy Estimates, 2017–2022, https://www.bea.gov/system/files/2023-12/DigitalEconomy_2017-2022.xlsx.

⁵ U.S. Digital Economy: New and Revised Estimates, 2017–2022, *supra* n.2.

⁶ *Empowering Small Business: The Impact of Technology on U.S. Small Business* (2023), <https://americaninnovators.com/empowering-small-business/>.

⁷ CCIA Research Center, *Tools To Compete: Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem* (Jan. 25, 2023), <https://research.ccianet.org/reports/tools-to-compete/>.

⁸ IFPI Global Music Report: Global Recorded Music Revenues Grew 9% In 2022 (Mar. 2023), <https://www.ifpi.org/ifpi-global-music-report-global-recorded-music-revenues-grew-9-in-2022/>.

⁹ Global Theatrical, Home Entertainment, and Pay TV Market Rebounds to \$328.2 Billion, New MPA Report Shows (Mar. 2022), <https://www.motionpictures.org/press/global-theatrical-home-entertainment-and-pay-tv-market-rebounds-to-328-2-billion-new-mpa-report-shows/>.

global revenue in 2022.¹⁰ Digital disruption has dramatically reshaped content industries for the better.

Products provided by CCIA members connect and empower users around the world, enabling work, study, commerce, and entertainment for millions. Whether finding information or connecting with friends and family, countless people across the world use digital tools to find and share information.

At the same time, a small minority misuse digital tools to infringe intellectual property rights. The digital sector, including CCIA's member companies, are committed to addressing this online infringement. We must ensure that the creative sector is incentivized to bring works to market, and that the public can access creative copyrighted works through legitimate channels.

History and research have shown that the most effective way to prevent infringement without shutting down legitimate and constitutionally protected speech is to ensure that consumers have options to lawfully access content when and where they want it.¹¹ We know that as access to legitimate services increases, infringement decreases.¹² CCIA members play a critical role in this by enabling and facilitating artists and creators to reach audiences everywhere. Digital technologies afford instantaneous and often free-to-the-user opportunities to engage with audiences around the world, in ways not possible without the Internet.

Yet infringers persist, and this raises the question as to how we can mitigate online infringement without impairing legitimate online commerce and communication—or the Constitution.

II. Addressing Copyright Infringement Is a Shared Goal

A collaborative approach that brings together stakeholders—including IP owners, online services, and consumers—is key to effectively addressing copyright infringement at scale, while also fostering expression and creativity. These three categories of stakeholders—rightsholders, service providers, and individual users—increasingly overlap and intersect. Many Internet services and individual users are themselves key parts of the creative economy; digital services have become critical avenues for content discovery and distribution, and millions of American creators earn income from distributing their personal creations online, collectively earning billions of dollars.¹³

¹⁰ PwC, *Perspectives and insights: Global Entertainment and Media Outlook 2023–2027* (June 2023), <https://www.pwc.com/gx/en/industries/tmt/media/outlook/insights-and-perspectives.html>.

¹¹ João Quintais & Joost Poort, *The Decline of Online Piracy: How Markets – Not Enforcement – Drive Down Copyright Infringement*, 34 Am. U. Int'l L. Rev. 807-76 (2019), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1992&context=auilr> (decline in piracy “is linked primarily to increasing availability of affordable legal content rather than enforcement measures. Where content is available at affordable prices, in a convenient manner, and in sufficient diversity to address demand, consumers are willing to pay for it.”).

¹² Joost Poort et al., *Global Online Piracy Study* (IViR (Institute for Information Law) July 2018), <https://www.uva.nl/binaries/content/assets/uva/en/news-and-events/global-online-piracy-study---ivir-ecorys-july-2018.pdf>.

¹³ Robert Shapiro & Siddhartha Aneja, *Taking Root: The Growth of America's New Creative Economy* (2019), <https://www.recreatecoalition.org/wp-content/uploads/2019/02/ReCreate-2017-New-Creative-Economy-Study.pdf>.

a. Digital Service Efforts to Mitigate Copyright Infringement

Leading online intermediaries engage with rightsholders extensively and have established programs that encourage information sharing between stakeholders to enable the identification of and enforcement against infringement.¹⁴

Enforcement solutions vary depending on their respective environments. While larger services may invest heavily in complex, highly automated systems, smaller or more resource-constrained services (e.g., startups and SMEs) often rely upon manual efforts. All responsible services consider IP matters in their content moderation processes, however, and choose strategies appropriate for their particular ecosystems.

These efforts require participation and collaboration from all stakeholders. Digital services cannot be expected to tackle infringement proactively in a vacuum; they need information and cooperation from rightsholders. As there exists no comprehensive database of what has been licensed to whom, only rightsholders know with certainty what material online is properly licensed, particularly when “infringing” content is often uploaded by rightsholders as a marketing ploy.¹⁵

Some websites invest considerably in elaborate systems that provide rightsholders with additional tools to protect content, in addition to notice-and-takedown compliance. These voluntary, additional layers of protection can expedite action against alleged infringement, and often provide rightsholders opportunities not just to remove infringing content, but also to track and monetize their works online.

In addition to aiding copyright enforcement, these voluntary measures can generate billions of dollars in revenue for rightsholders. For example, YouTube’s Content ID paid out more than \$9 billion to rightsholders from ads alone as of December 2022, and paid more than \$50 billion to creators, artists, and media companies in ad revenue over three years as of June 2022.¹⁶ With Content ID, rightsholders can opt to remove the content, but may also claim the right to monetize it, in which case advertisements are placed adjacent to said content and rightsholders receive a share of the revenue stream associated with those advertisements. In the latter half of 2022, rightsholders chose to monetize more than 90% of Content ID claims.¹⁷ Meta also recently announced a new Music Revenue Sharing feature of its Rights Manager tool in collaboration

¹⁴ See CCIA Comments to the Department of Commerce, Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations, Docket No. DOC-2019-0003 (July 29, 2019), <https://www.cciainet.org/wp-content/uploads/2019/07/DOC-2019-0003-0001-CCIA-Comments-Counterfeiting-Pirated-Goods-Trafficking-Report.pdf>; CCIA Comments to the U.S. Patent & Trademark Office, In re Future Strategies in Anticounterfeiting and Antipiracy, Docket No. PTO-C-2023-0006 (Aug. 23, 2023), <https://ccianet.org/wp-content/uploads/2023/08/CCIA-Comments-to-USPTO-on-Anticounterfeiting-and-Antipiracy.pdf>.

¹⁵ Zahavah Levine, *Broadcast Yourself*, YouTube Blog (Mar. 18, 2010), <https://blog.youtube/news-and-events/broadcast-yourself/>.

¹⁶ YouTube, Copyright Transparency Report, https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-22_2022-7-1_2022-12-31_en_v1.pdf.

¹⁷ *Id.*

with partnerships across the music industry.¹⁸ The inclusion of an advertising option benefits all key constituencies, since users and creators' disputed content remains online, while the rightsholder also receives previously unrealized revenue.

Some companies offer multiple tools tailored to different types of creators. The more powerful the copyright management tool, the bigger the risk of abuse or misuse. Companies must therefore balance these concerns so that the risk of abuse and misuse is as low as possible. Companies calibrate access to tools to the needs of different rightsholders and creators, which may differ in, for example, the types of content they own, the volume of requests they submit, their ability to dedicate time and resources, their understanding of copyright law, and the complexity of their licensing arrangements.¹⁹

Unfortunately, even major rightsholders have mismanaged these powerful tools, resulting in unfair or inaccurate claims on legally uploaded content. Given the outsized negative effect that misuse of these tools has on the broader ecosystem, companies work to ensure that they match rightsholders with the solution that best suits their needs and the resources they can dedicate to responsibly managing the tool.

b. Concerns Regarding Free Expression, Abuse

Content filtering by automation is not always effective or accurate. In particular, “off-the-shelf” filtering technologies tend to be focused only on specific classes of works, and cannot necessarily provide meaningful protection to content on sites whose users can create many different types of works. Automated tools are also unable to take into account context or nuance of individual uses, so may result in over-removal of non-infringing, fair uses. These false positives merit particular attention because any unjustified content filtering or takedown may suppress lawful expression.²⁰

Tools intended to reduce infringement also regularly receive fraudulent and abusive notices. Over-reaching claims of copyright infringement that in fact are fabrications intended to remove content considered undesirable by the claimant are common. Publicly documented examples that digital services and users have experienced include extortion schemes tied to the notice-and-takedown process;²¹ blatant disregard for fair use;²² notice-and-takedown abuse as a business model, such as reputation-related removals masquerading as copyright;²³ abuse to target

¹⁸ Meta, *Music Revenue Sharing: A New Way For Creators to Earn Money Through Facebook Videos* (July 25, 2022), <https://about.fb.com/news/2022/07/music-revenue-sharing-for-video-creators-on-facebook/>.

¹⁹ For example, for Google's YouTube, everyone has access to its webform. YouTube has also developed additional tools such as Copyright Match and Content ID which users can apply for if they meet eligibility criteria and their works are audiovisual.

²⁰ See, e.g., EFF, *Automated Copyright Filter Can't Detect Infringement or Irony* (2020), <https://www.eff.org/takedowns/automated-copyright-filter-cant-detect-infringement-or-irony>.

²¹ Julia Alexander, *YouTube gets alleged copyright troll to agree to stop trolling YouTubers*, *The Verge* (Oct. 15, 2019), <https://www.theverge.com/2019/10/15/20915688/youtube-copyright-troll-lawsuit-settled-false-dmca-takedown-christopher-brady>.

²² Brief for Amici Curiae Automatic, Google, Tumblr, & Twitter, *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2015), https://www.eff.org/files/2015/10/30/lenz-automatic_google_twitter_tumblr_amicus.pdf, at 7-11.

²³ Andrea Fuller, Kirsten Grind & Joe Palazzolo, *Google Hides News, Tricked by Fake Claims*, *Wall St. J.* (May 15, 2020), <https://www.wsj.com/articles/google-dmca-copyright-claims-takedown-online-reputation-11589557001>.

competitors in online marketplaces;²⁴ and flawed automated systems that broadly target unrelated content.²⁵ Some companies receive floods of batch notices from large rightsholders directed to short clips of content in which music is incidental as a means to force them to negotiate.²⁶ Abuse and trolling also occurs often in the litigation context.²⁷ Therefore, services balance their work to protect intellectual property rights with their work to protect users' free expression online.²⁸

c. The Best Strategy Against Piracy Is Facilitating Legitimate Access

Studies consistently show that piracy rates fall when consumers have broad access to lawful means of digital media consumption,²⁹ such as when legitimate services like Spotify and Netflix enter new markets.³⁰ Ultimately, the most effective way to prevent infringement is to ensure that members of the public, most of whom want to pay for content, can lawfully consume works digitally whenever and wherever they want.

In fact, U.S. policymakers have recognized that “the availability of licensed offerings is an important element in combatting online infringement. Providing consumers with attractive legal avenues to enjoy copyrighted content in the manner of their choosing decreases the lure of illegitimate services.”³¹ By facilitating many options for consumers to lawfully consume content, digital services are a key component in the piracy prevention landscape.

III. Site Blocking Is Not Possible Without Stifling Speech and Due Process

Policymakers should be wary of validating one proposed approach to online enforcement: site blocking. The blunt instrument of architectural regulation is particularly inappropriate for policing subject matter like copyright. Authoritarian regimes hostile to the open and democratic character of the Internet frequently resort to architectural information controls, and while they

²⁴ Alexandra Alter, *A Feud in Wolf-Kink Erotica Raises a Deep Legal Question*, N.Y. Times (May 23, 2020), <https://www.nytimes.com/2020/05/23/business/omegaverse-erotica-copyright.html>.

²⁵ Ernesto Van der Sar, *Bizarre DMCA Takedown Requests Censor EU 'Censorship' News*, TorrentFreak (Aug. 11, 2018), <https://torrentfreak.com/bizarre-dmca-takedown-requests-censor-eu-censorship-news-181011/>.

²⁶ See Jennifer Urban et al., *Notice and Takedown in Everyday Practice* (2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755628, at 72.

²⁷ Eric Goldman, *A SAD Scheme of Abusive Intellectual Property Litigation*, 123 Colum. L. Rev. Forum 183, note 2 (2023), <https://columbialawreview.org/wp-content/uploads/2023/11/November-2023-Forum-Goldman-final.pdf> (discussing “an underreported system of abusive intellectual property (IP) litigation,” as well as a string cite of “prior work on mass-defendant intellectual property enforcement”).

²⁸ *How Google Fights Piracy* (2018), https://blog.google/documents/27/How_Google_Fights_Piracy_2018.pdf/ at 8 (“fabricated copyright infringement allegations can be used as a pretext for censorship and to hinder competition. Google is committed to ensuring that it detects and rejects bogus infringement allegations, such as removals for political or competitive reasons, even as it battles online piracy.”); Meta, Rights Manager: Protecting our users, <https://rightsmanager.fb.com/#user-protection> (explaining how Meta’s tools “help ensure that lawful expression, such as fair use and other copyright exceptions, are protected.”).

²⁹ Karl Bode, *Studies Keep Showing That the Best Way to Stop Piracy Is to Offer Cheaper, Better Alternatives*, Vice (Feb. 26, 2019), https://www.vice.com/en_us/article/3kg7pv/studies-keep-showing-that-the-best-way-to-stop-piracy-is-to-offer-cheaper-better-alternatives.

³⁰ See, e.g., Scoop Media, *Netflix is killing content piracy* (Feb. 26, 2019), <https://www.scoop.co.nz/stories/BU1902/S00685/netflix-is-killing-content-piracy.htm>; Copia Institute, *The Carrot Or The Stick? Innovation vs. Anti-Piracy Enforcement* (Oct. 8, 2015), <https://copia.is/library/the-carrot-or-the-stick/>.

³¹ Department of Commerce Internet Policy Task Force, *Copyright Policy, Creativity, and Innovation in the Digital Economy* (July 2013), <http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>, at 77.

need no excuse to regulate online speech, any U.S. efforts to do so will certainly encourage similar activities abroad, for less noble purposes. As a leading exporter of digital services over the Internet, the U.S. has the most to lose from increased extraterritorial regulation on online intermediaries. In the long run, whatever benefits may accrue to U.S. rightsholder interests as a result of more aggressive content regulation may be lost to the broader economy by hamstringing the export of U.S. technology.

Overblocking is a very real concern raised frequently by technologists, including Internet luminaries earlier this year.³² The impact on speech and lack of due process is not speculative.³³ There exists a long history of site-blocking injunctions leading to overreach.³⁴ This includes examples of overblocking restricting access to thousands of websites,³⁵ without evidence or process.³⁶

It is simply not possible to craft a uniquely American, speech-protecting site-blocking regime. While other countries may have certain types of programs or vendors that promise network-level enforcement, that doesn't mean that it is technically—or Constitutionally—possible to implement site-blocking without substantial collateral damage.³⁷

a. DNS and Internet Architecture in Brief

Site blocking proposals generally start with the Domain Name System (DNS). DNS is similar to the Internet's phonebook; it is essentially a naming database that links IP addresses with more accessible text-based domain names. DNS resolution can be provided by an ISP, or a third party who may differentiate their product with features to protect users from dangerous sites and content.

While ISP-provided DNS resolution tends to be limited to a single local or national market, DNS resolver services like those operated by some CCIA members are generally global providers that provide universal resolution services regardless of where users are located. These tools are

³² Vint Cerf, *et al.*, *Concerns over DNS Blocking* (June 23, 2023), <https://medium.com/@vgcerf/concerns-over-dns-blocking-988ef546a100>.

³³ Glyn Moody, *Good And Bad News On Attempts To Implicate DNS Services For Copyright Infringement At The Domains They Resolve*, Techdirt (Dec. 7, 2023), <https://www.techdirt.com/2023/12/07/good-and-bad-news-on-attempts-to-implicate-dns-services-for-copyright-infringement-at-the-domains-they-resolve/>.

³⁴ Andrew McDiarmid, *An Object Lesson in Overblocking*, CDT (Feb. 17, 2011), <https://cdt.org/insights/an-object-lesson-in-overblocking/>; CDT *Warns Against Widespread Use of Domain-Name Tactics To Enforce Copyright* (Mar. 21, 2011), <https://cdt.org/insights/cdt-warns-against-widespread-use-of-domain-name-tactics-to-enforce-copyright/>; Center for Democracy & Technology, *The Perils of Using the Domain Name System to Address Unlawful Internet Content* (Sept. 2011), <https://cdt.org/wp-content/uploads/pdfs/Perils-DNS-blocking.pdf>.

³⁵ Ernesto Van der Sar, *U.S. Government Shuts Down 84,000 Websites, 'By Mistake'*, TorrentFreak (Feb. 16, 2011), <https://torrentfreak.com/u-s-government-shuts-down-84000-websites-by-mistake-110216/>.

³⁶ Cindy Cohn & Corynne McSherry, *Unsealed Court Records Confirm that RIAA Delays Were Behind Year-Long Seizure of Hip Hop Music Blog*, EFF Deeplinks Blog (May 3, 2012), <https://www.eff.org/deeplinks/2012/05/unsealed-court-records-confirm-riaa-delays-were-behind-year-long-seizure-hip-hop>.

³⁷ Alissa Starzak & Marwan Fayed, *The unintended consequences of blocking IP addresses*, The Cloudflare Blog (Dec. 16, 2022), <https://blog.cloudflare.com/consequences-of-ip-blocking/>; Patrick Nemeroff, *Latest copyright decision in Germany rejects blocking through global DNS resolvers*, The Cloudflare Blog (Dec. 5, 2023), <https://blog.cloudflare.com/latest-copyright-decision-in-germany-rejects-blocking-through-global-dns-resolvers/>.

currently unable to carry out DNS-level blocking on a country-by-country basis — only globally. Blocking domain names at this level could in many instances render content inaccessible to all users worldwide based on its alleged illegality in a single jurisdiction. Requests to block content that is illegal in one jurisdiction may be seen as undesirable censorship in another.

Technical expert groups like ICANN³⁸ and Internet Society³⁹ have strongly advised against DNS-level filtering or blocking and instead urged that content-level decisions be made at the network edge and not at the Internet’s infrastructure core.

b. Recent Examples of Overblocking

The European Union’s website blocking system provides an instructive example of unintended consequences. On paper, the EU has rather high-level and seemingly proportionate laws for website blocking. However, EU member state laws often lack granularity and do not specify how a site should be blocked, or by whom. Some of the technical ways to block access to illegal content are incredibly broad. There is little transparency into blocking orders, with few ways to know when a site is being blocked by court order, a fact that raises due process, accountability, and free expression concerns, and can even have national security implications.⁴⁰

- In Austria, a 2022 blocking order resulted in a partial Internet outage in the country for two days, with the blockage of thousands of innocent websites. The court order targeted 14 websites that copyright holders argued were infringing copyright. But the order served on the local ISP linked back to 11 IP addresses run by a content delivery network (CDN) provider and commonly used by thousands of websites. This ultimately resulted in thousands of collateral sites being silenced despite doing nothing wrong — “a temporary casualty of the failure to build legal remedies and systems that reflect the Internet’s actual architecture.”⁴¹ A local regulator ultimately concluded that IP address blocking would no longer be allowed.⁴²
- A 2019 case in Germany involved a rightsholder’s attempt to obtain an order requiring blocking through a public DNS resolver. A court originally granted the order, resulting in blocking access to the entire website for all users around the globe, not just the webpage which hosted the alleged violating copyright content. This is because DNS can only block access at the domain name level — not specific pieces of content, individual webpages, or even subdomains. On appeal, a court eventually found that DNS resolvers are not an appropriate tool for seeking to address online infringement—also pointing out that blocking through a public resolver is not effective.⁴³
- In 2020, the European Court of Human Rights considered a case involving a site that was blocked in Russia because it shared an IP address with a blocked website. The court

³⁸ ICANN Security and Stability Advisory Committee Advisory on Impacts of Content Blocking via the Domain Name System (2012), <https://www.icann.org/en/system/files/files/sac-056-en.pdf>.

³⁹ Internet Society Perspectives on Domain Name System (DNS) Filtering (2018), <https://internetsociety.org/wp-content/uploads/2018/10/Perspectives-on-Domain-Name-System-Filtering-en.pdf>.

⁴⁰ Cerf, *supra* n.32, <https://medium.com/@vgcerf/concerns-over-dns-blocking-988ef546a100>.

⁴¹ Starzak & Fayed, *supra* n.37.

⁴² Andy Maxwell, *IP Address Blocking Banned After Anti-Piracy Court Order Hit Cloudflare*, TorrentFreak (Aug. 11, 2023), <https://torrentfreak.com/ip-address-blocking-banned-after-anti-piracy-court-order-hit-cloudflare-230811/>.

⁴³ Nemeroff, *supra* n.37.

concluded that the indiscriminate blocking of lawful content of the site “amounts to arbitrary interference with the rights of owners of such websites.”⁴⁴

- Informed by instances such as these, a German appeals court recently concluded that DNS resolver services should not be subject to liability or a duty to block based on a notice in a case involving the Quad9 Foundation, a Swiss non-profit DNS resolver.⁴⁵ The court also explained how such blocking “should only be considered as a last resort.”⁴⁶ In particular, the decision highlighted the copyright owner plaintiff’s failure to pursue less sweeping remedies against the individual direct infringers.

As these experiences from countries throughout Europe demonstrate, responding to infringement at the infrastructure level means overblocking is inevitable. The German *Quad9* decision just last week concluded that website blocking must be a remedy of last resort.⁴⁷

Given differences between the U.S. and EU legal systems, any new legislative proposal in the United States should maintain remedy limitations for online service providers, as in the Digital Millennium Copyright Act, where any duty to block is subject to provisions in 17 U.S.C. § 512 (j), whereby a court must weigh a four-factor balancing test. Unfortunately, courts and attorneys for rightsholders in *ex parte* proceedings can’t always be entrusted with formulating sufficiently tailored blocking orders.

The Internet is a complicated network, and taking an action in one place can have an unintended consequence elsewhere. The most effective way of targeting rogue websites, with the least amount of collateral damage, is to pursue those sites in the jurisdiction where they are located, and to promote the licensing of lawful content. Any blocking, even if intended narrowly, runs the substantial risk that access to other legitimate speech will be blocked as well.

IV. Conclusion

CCIA members are committed to mitigating intellectual property infringement, and invest significant time and resources in doing so. Digital services do not want their products used for infringing purposes. But they also want to ensure that copyright enforcement does not block lawful commerce and speech. Experience teaches that the twin goals of ensuring that creator compensation and appropriate public access are best served by promoting a diversity of legitimate options for accessing media, while avoiding overbroad enforcement mechanisms.

⁴⁴ Starzak & Fayed, *supra* n.37.

⁴⁵ Glyn Moody, *Good And Bad News On Attempts To Implicate DNS Services For Copyright Infringement At The Domains They Resolve*, Techdirt (Dec. 7, 2023), <https://www.techdirt.com/2023/12/07/good-and-bad-news-on-attempts-to-implicate-dns-services-for-copyright-infringement-at-the-domains-they-resolve/>.

⁴⁶ 14 U 503/23, 05 O 807/22, 5 Dec. 2023 [Ger.], available at https://quad9.net/uploads/URT_05_12_2023_en_Korr_MH_en2_2e629b1f7b.pdf (English translation).

⁴⁷ Quad9 Turns the Sony Case Around in Dresden (Dec. 6, 2023), <https://quad9.net/news/blog/quad9-turns-the-sony-case-around-in-dresden/>.

Mr. ISSA. Thank you. Ms. Temple.

STATEMENT OF KARYN TEMPLE

Ms. TEMPLE. Thank you, Chair Issa, Ranking Member Johnson, and the Members of the Subcommittee, for the opportunity to testify today on behalf of the motion picture, television, and streaming industries. Thank you for the very kind introduction at the beginning.

The American motion picture and television production industry is the world leader in this sector, distributing its films and TV shows in over 130 countries. In 2021, the enduring value and global appeal of the U.S. movie industry earned \$14.4 billion in exports. Our industry is also a major U.S. employer that supported 2.4 million jobs and \$186 billion in total wages in 2021.

The topic of today's hearing is an issue of critical importance to our industry and to the many other industries that are part of the creative sector, piracy of valuable intellectual property.

Piracy, of course, is not a victimless crime as you have heard. Piracy of filmed entertainment costs the U.S. economy \$29.2 billion in over 230,000 jobs annually. It does not just affect big Hollywood studios and megastars. It affects everyone who works in the industry, such as carpenters, electricians, and hair stylists, as well as the businesses, as you heard most of them small businesses, that provide related services, like caterers, dry cleaners, and florists.

In addition, piracy services can directly threaten Americans' personal and financial security, including exposing everyday people to credit card fraud, identity theft, and malware. Take FMovies, for example. It is a piracy website that has been blocked in 16 countries and was referred to U.S. law enforcement more than four years ago in 2019. It is still up and accessible to millions of users in the United States.

If you would, please turn your attention to the screens. Anyone can simply type the FMovies' URL into their favorite browser today and an extremely professional and legitimate looking site pops up. You can literally scroll through thousands of movies and television shows, including this year's blockbusters, and even movies that have not yet hit theaters. You will see all our top-rated blockbusters and popular films.

Here you see coming up Wonka, which won't be out into the United States' theaters until this Friday. It is just a click away on this piracy streaming service. Also, notice the ads for *slotlights.net*. That is an illegal online casino, likely Russian, that is targeting U.S. consumers. Analysis shows that this single piracy site had 168 million visits in just the month of November. Most of these visits come from the United States, accounting for roughly 38 percent of all users. This means that this site was visited more than 64 million times by people in the United States in just one month.

As you clearly saw from this video, this is not a legitimate site that might include grandma's home movies or public domain documentaries. This is a commercial-scale operation whose sole purpose is to steal creative content and funnel the proceeds back to criminal organizations. If we had site blocking in the United States, as we do in the 16 other countries where versions of this site had been blocked already, then this piracy site's U.S. traffic would have

plummeted, protecting U.S. consumers and the U.S. creative sector, and removing the financial incentives for piracy.

So, it is beyond time for Congress to revisit no-fault injunctive relief to combat blatant forms of piracy. When Congress a decade ago considered establishing an express authority for such relief, opponents responded with the unfounded prediction of potential harm to the internet. As a result, Congress declined to move forward with legislation.

Much of the world enacted these tools despite the overheated rhetoric. More than 40 countries, including leading democracies, such as the U.K., much of Western Europe, Canada, Australia, India, and South Korea, have enacted no-fault injunctive relief regimes that expressly authorize courts or administrative agencies to issue orders to ISPs to block access to websites dedicated to piracy. These laws work. They dramatically reduce visits to piracy sites. Even more important, they result in more visits to legal sites.

None of the hyperbolic predictions about the effects of site blocking have come true. Examples of over-blocking, that is blocking of noninfringing content, or stifling free expression or deprivation of due process have been rare to the point of nonexistence. In fact, none of the examples of purported over-blocking that CCIA cited in its testimony actually involved a blocking order to an ISP because of copyright infringement.

So, I am here today with some very good news. Effective tools to combat piracy exist. The sky has not fallen. Despite the widespread use of site blocking around the world, the internet is emphatically not broken. Thus, it is time for Congress to consider enacting express authority for a no-fault injunctive regime that will give rightsholders what more than a decade of experience around the globe has shown is one of the most effective tools to address piracy.

Thank you for your time and attention to this important issue. I am happy to answer your questions.

[The prepared statement of Ms. Temple follows:]



MOTION PICTURE ASSOCIATION

TESTIMONY OF KARYN A. TEMPLE
 SENIOR EXECUTIVE VICE PRESIDENT AND GLOBAL GENERAL COUNSEL
 MOTION PICTURE ASSOCIATION, INC.

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”

DECEMBER 13, 2023

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.¹ 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.² Today, there are more than 871 legitimate streaming services providing

¹ 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.

² 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.

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.³

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 2021.⁴ 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.⁵ 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.⁶

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.”⁷ 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.⁸ 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).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 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>.

⁸ 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.

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.⁹ And in 2022, there were an estimated 191.8 billion visits to movie and TV piracy sites globally.¹⁰ 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.¹¹ 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.

⁹ 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>.

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

¹¹ 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.¹² 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.¹³

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

¹² 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.

¹³ 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.¹⁴

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.¹⁵

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.¹⁶

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.¹⁷

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

¹⁴ 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.

¹⁵ 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).

¹⁶ 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).

¹⁷ 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.¹⁸

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.¹⁹

Piracy also negatively impacts employees' income and benefits, those received during employment, as well as in retirement.²⁰ "[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."²¹ Piracy "reduces the real earnings of professionals already working in creative industries," including "compensation if the material is used beyond its original exhibition."²² 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.²³

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.²⁴ 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.²⁵ The industry also contributes significantly to federal and state tax revenue. In 2021, \$29 billion in public revenues were

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

¹⁹ See Blackburn, *supra* note 9, at 14.

²⁰ 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>.

²¹ *Id.*

²² *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.

²³ 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>.

²⁴ See Motion Picture Association, *supra* note 2.

²⁵ *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.²⁶ Additionally, \$8.9 billion in public revenues were generated from corporate income taxes.²⁷ 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.²⁸ 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.²⁹ 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).³⁰ 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."³¹

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).³²

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.

²⁶ *Id.*

²⁷ *Id.*

²⁸ 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>.

²⁹ *Id.* at 10-11.

³⁰ *Id.*

³¹ *Id.* at 2.

³² *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 court³³ 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

³³ 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.³⁴ Additionally, analysis in Australia, Portugal, and South Korea found average drops in visits to blocked sites of between 60 and 90%.³⁵

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.³⁶ In the U.K., along with a decrease in usage of pirate sites, blocks caused a 7%-12% increase in usage of paid legal

³⁴ Danaher, *supra* note 8, at 17.

³⁵ 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.

³⁶ Danaher, *supra* note 8, at 38; Motion Picture Association, *supra* note 35.

subscription streaming sites like Netflix.³⁷ It also caused an increase in new paid subscriptions.³⁸ 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.³⁹

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.⁴⁰ 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).⁴¹ 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

³⁷ Danaher, *supra* note 8, at 41-43.

³⁸ *Id.* at 38.

³⁹ Motion Picture Association, *supra* note 35, at 7.

⁴⁰ 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.”).

⁴¹ 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).⁴² 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.⁴³

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

⁴² 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>.

⁴³ 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.⁴⁴

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,⁴⁵ 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.⁴⁶ 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.

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

⁴⁵ 18 U.S.C. § 2319C.

⁴⁶ 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.

Mr. ISSA. Thank you. I am going to forego my initial round of questions and first go to the gentlelady from Florida, Ms. Lee.

Ms. LEE. Thank you, Mr. Chair. Thank you to all our witnesses for being here today and sharing with us your insights and your expertise.

Mr. Gladstein, I would like to begin with you. During your testimony, you described one remedy that you propose, which is site blocking. That is directing ISPs to block local access to websites that are dedicated to privacy. You also mentioned that you personally have a strong commitment to the First Amendment and protecting free speech. If you would please, elaborate for us on your perspective that site blocking does not infringe on First Amendment rights to speech and expression.

Mr. GLADSTEIN. Thank you for your question. You just were shown a website that is dedicated virtually entirely to distributing illegal programming that they don't own the rights to be disseminate. Blocking that site from doing what they are doing, the concept that this would be an infringement on free speech is I think a specious argument.

If someone were to go and take a bunch of Ford F-150s and steal them and create a lot and judicial process went in and showed that. You looked at the VIN numbers, and you saw that they didn't have the right to sell. So, the person that set up this shop to sell these cars didn't have the right to do it. You went through a judicial review. You wanted to stop that store from selling illegal merchandise. The concept of saying that free speech would be infringed by blocking their advertising to sell free merchandise I think is specious, irrelevant, and it just makes no sense to me whatsoever.

Ms. LEE. Tell us if you would, why and the what are the alternative remedies of the takedown? If the site is identified, having it shut down, why is that different and inadequate instead of the all-out site blocking?

Mr. GLADSTEIN. Well, I believe, I am not an expert at this, and Karyn would be better probably to answer, but the laws in which what we are able to do with companies that U.S. companies versus companies that are international companies is different. I think Karyn—

Ms. LEE. We will give that to Ms. Temple. If you would, share with us a little bit more about your concepts of remedies, no-fault injunctive relief, and the distinction there.

Ms. TEMPLE. Yes, as he mentioned, the issue that we have been focusing on with respect to no-fault injunctive relief are those websites that are dedicated exclusively to infringement. They are not UGC sites. If we send them a takedown notice, they are not going to take it down because that is their primary and sole purpose. They are also often located overseas. So, the DMCA doesn't even apply necessarily to them.

So, the only way that we can go after those types of sites is through a lot of civil enforcement, a lot of trying to get law enforcement overseas to actually go after the sites. If we are not able to get law enforcement overseas and we aren't able to find the website operators wherever they may be, then site blocking is the only remedy we have for the United States.

For example, FMovies is a site where the operators of the site are actually located in Vietnam. Their servers are actually in Bulgaria. I recently went to Vietnam and requested and asked the Vietnamese law enforcement to go after those website operators. Again, we also referred this to U.S. law enforcement. So far, we have not been able to get that site down. So, again, millions and millions of U.S. consumers are accessing this illegal content.

Ms. LEE. Mr. McKnight, you have a unique perspective on the takedown process, given your industry. Tell us if you would, your perspective on why that is inadequate.

Mr. MCKNIGHT. Yes, we think that essentially the speed with which material moments occur in live events. Focusing on UFC, in particular, we may have a main card that features a popular fighter like Connor McGregor. In 5–10 minutes or less, sometimes 5–10 seconds, those moments that the fans care most about seeing can elapse. So, if they are able to pirate a stream for 5–10 minutes, they get what they want, essentially taking away any incentive to pay a dime for a legitimate piece of content.

The technology is advancing, not just the means to access the content, but the quality. Some of these feeds, if you look at these pirated sites, are HD quality. They are just as good, or close to as good, as what you are getting on our site.

So, our focus is on the definition of expeditious removal. We have evidence, empirical evidence that sites can do better. These are oftentimes social media platforms, not specifically folks who are dedicated to criminal conduct, but simply folks who have an opportunity and the technology to do better taking down these illegal streams in a way that we believe is appropriate. They can do it. We think they have a commercial incentive not to always put their best foot forward. We think in the absence of clarification as to what expeditious removal should mean, which is immediate or near immediate, then they will continue to not put their best foot forward. That is the issue we have in the—

Mr. ISSA. Would the gentlelady yield for just a second?

Ms. LEE. Yes, Mr. Chair. I yield the balance of my time to the Chair.

Mr. ISSA. We will say balance. Just as a followup to make sure it is in the record with your questioning, Mr. McKnight, what is the fastest that you have seen takedown occur, just so that we understand how fast it has been and can be?

Mr. MCKNIGHT. Yes, we have seen it happen in several minutes. That is about the fastest we see it happen. It has taken sometimes hours, sometimes days. It is really these fluctuations that give us the proof that the best foot forward is not always being put forward.

We have been told by a particular platform that at one point we were elevated to kind of most favored Nation status. We saw a dramatic improvement for a few weeks. Then things kind of went back to what they were, status quo.

Mr. ISSA. I thank the gentlelady for yielding. With that, I recognize the Ranking Member for his questions.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

Mr. Gladstein, what does copyright enforcement in the United States look like for individuals or small group creators who do not

have access to resources like the UFC's or the MPA's Alliance for Creativity and Entertainment?

Mr. GLADSTEIN. We have various guilds and unions that assist filmmakers of all types. So, they are helpful. We rely on the distributors, who are often the financiers, of our films to make the decisions about where our films go. As a producer of *Pulp Fiction*, I am not, I don't get to weigh in on where my film is distributed. I can have an opinion, but it is often not listened to.

I think the important thing to cite is that as a creator, the more people that see that very product that I have created thrills me. So, there are, I think, 140 legal streaming sites. So, it isn't a problem if there is not enough places to find the films in legitimate areas. Studios such as Warner Bros., Disney, and smaller art house distributors are trying to find the most vast audience that they can find in every corner of the world.

We rely on those studios or distributors to issue these kind of takedown notices, et cetera. As a filmmaker, it is not something that I participate in. I would rather create my next movie while someone else is fighting the battle of swiping money from us somewhere else.

Mr. JOHNSON of Georgia. Thank you.

Ms. Temple, one of the many developments in recent years has been the trend from illegal downloads to illegal streaming. Can you explain what the implications of this shift are?

Ms. TEMPLE. Yes, thank you for the question. To add on to what the other witness said as well, in terms of notice and takedown and individuals not being able to really protect their rights, I will say that it is very difficult. We spend hundreds and millions of dollars to develop notice and takedown systems to send millions of notices to various UGC sites. Individual artists and creators often don't have the ability, and resources to do that. So, it is a very difficult situation for individual creators. That is something that has often been discussed with respect to the DMCA.

I will say that with respect to how piracy works now, we are seeing online piracy that is streaming piracy now be the vast majority of the type of piracy that is out there. That is more than 90 percent of the piracy that is out there is streaming piracy. The difficulty, of course, as I mentioned earlier, is that it starts outside of our jurisdiction. So, the operators are not in the United States. We are able to go after them when they are here.

The operators might be in one country. The servers where the infringing content is hosted might be in yet another country. The registrar or registry might be another country's registry that is actually like from Tonga. So, it is extremely complicated and difficult for us to actively go after these dedicated infringing sites because of the global nature of piracy.

Mr. JOHNSON of Georgia. Thank you.

Mr. McKnight, can you explain why this is especially significant for live events like those put on by the UFC?

Mr. MCKNIGHT. Yes, as mentioned previously, we think that the short timeframe with which material moments can take place in the context of live events makes it ultimately important that platforms are putting their best foot forward in taking down this illicit content as soon as possible.

This proverbial case of justice delayed is justice denied. So, often-times, if we're getting take-downs in 10–15 minutes, and hour, or certainly days, it's too late. The folks viewing the pirated streams have already seen these material moments and they've already made the decision that if those are available, they're not going to pay for legitimate content.

Mr. JOHNSON of Georgia. Thank you. The Protect Lawful Streaming Act was enacted nearly three years ago to close certain gaps that made enforcement of infringement challenging when it was conducted by digital streaming. What effect has the Protect Lawful Streaming Act had on internet piracy so far, Mr. McKnight?

Mr. MCKNIGHT. So, I think that the passage is certainly helpful. We worked long to get that passed. We would like to see it enforced because I think that the end of the day the true deterrent to folks who are professional pirates that we've been—some of which we've been speaking about today, is when they actually see these laws enforced. So, I think it's a huge step in the right direction and we'd love to see greater enforcement so that a true deterrent effect can take place in the market.

Mr. JOHNSON of Georgia. Thank you, and I yield back.

Mr. ISSA. I thank the gentleman.

We now go to the gentleman from Mr. Wisconsin, Mr. Fitzgerald.

Mr. FITZGERALD. Thank you, Chair.

Ms. Temple, how does piracy affect the type of films that might be financed or produced? Any opinion on that?

Ms. TEMPLE. Yes, that's a great question. Unfortunately, piracy does affect the variety of films that might be produced because you—it costs so much money to be able to produce a film that you want to make sure that the film will actually be able to get back its revenue. If a film is pirated, if it's an indie film or a niche film, then the revenue that is going to be affected by piracy will even be lower.

So, unfortunately, that means that you often might see a few more of those blockbusters and those sequels and series types of films because those you know are going to have a large amount of revenue versus being able to have a wider variety of types of films. It really does impact minority filmmakers and independent filmmakers because they are not able as much as some of the larger studios to prevent the piracy that is going on.

Mr. FITZGERALD. Yes, so the studios are more or less likely to take a risk on a film knowing that the prevalence of that piracy might be related to the content. Does that sound accurate?

Ms. TEMPLE. Yes, exactly.

Mr. FITZGERALD. OK. Very good.

Mr. McKnight, the area that you have been discussing is fascinating to me, to many other people, because of the live stream angle. What financial impact does copyright privacy—do you have any idea what impact it has on the live sports industry per se? Ballpark or any type of estimate on that?

Mr. MCKNIGHT. So, we've done studies. You can't do it with exactitude, obviously, because you can't say every single person who looks at a pirate stream is going to convert to a paying consumer.

Mr. FITZGERALD. Right.

Mr. MCKNIGHT. Even if you take very conservative numbers, one out of five, you get into tens to hundreds of millions of dollars in losses. As Ranking Member Johnson correctly pointed out, the real problem here is a lot of people view this as victimless crimes, but the lack of these resources aren't just affecting an inanimate entity, or the wealthy members of that entity. There are also people downstream. They're the athletes, they're people who work the cameras, people who work in just very basic jobs like in the production crew, driving trucks, and doing things of that nature, all whom are impacted by this loss in revenue.

Mr. FITZGERALD. The other thing I would say is as someone who—you brought up Connor McGregor, and I have seen a few of his fights. Oftentimes, that results in somebody organizing a party or bringing a group of people together to watch that. So, have you looked at the consumer end of it? Are people aware oftentimes that they may be not on an official site, but on a pirated site? What do people—how do they gauge where they are going to seek their entertainment or a live stream of a sporting event?

Mr. MCKNIGHT. So, I think people are aware. I think the real issue is, like I said, they view it as somewhat of a victimless crime. If you go on a social media platform, for example, and someone uploads a UFC fight, you go and you click on the link, you don't view yourself as doing anything inappropriate. What you think you're doing is getting free access to an event you enjoy, and that the wealthy UFC won't miss the money they could be obtaining as a result of a legitimate purchase.

When you multiply that thought process by hundreds of millions of times, obviously the dollars get significant and then you have that cascading effect on everyone involved up and down the stream of producing that event that I had mentioned before.

So, I do think they know. They certainly know in the case of folks who are going to the professional pirates and paying cut rates that are advertising sometimes on the social media platforms essentially saying don't buy the event from the UFC; come here and get it for free. They're doing it in ways that I think it's readily easily to identify that you're not doing something proper.

Mr. FITZGERALD. In a lot of commercial settings, whether it be a bar or a restaurant or someplace where they are actually using it to bring people to their restaurant or their place of business—have you guys looked at that angle of it? Is this something that is happening and is it a violation?

Mr. MCKNIGHT. So, we do look at that. We do have commercial licensing agreements with many of these establishments—

Mr. FITZGERALD. OK.

Mr. MCKNIGHT. —that are showing it at bars and things of that nature. We have ways to police it when people are showing it without paying that commercial fee. That aspect of it is actually less of an issue than the individual user going to the social media sites or folks going to these professionally pirated sites where they are putting these sites up for the specific reason of showing pirated content.

Mr. FITZGERALD. Very good. Thank you very much.
I yield back, Chair.

Mr. ISSA. The gentleman yields back.

We now go to my friend and colleague from California, Mr. Lieu. Mr. LIEU. Thank you, Chair Issa and Ranking Member Johnson, for holding this important hearing.

So, Ms. Temple, I have a question for you. You showed FMovies, the online piracy site for movies. If you are in Europe and you typed in that website, would you be able to watch free movies in Europe?

Ms. TEMPLE. No, and the vast majority would not because again it's been blocked in 16 countries including most of the EU. So, you would not be able to access FMovies in those places where it has been site blocked through the legislation there.

Mr. LIEU. Thank you.

So, Mr. Schruers, I just went on my phone and went on FMovies, and it is still up, and I can watch Willy Wonka for free without paying for it. Why don't the online server providers block it right now, like today?

Mr. SCHRUEERS. So, I take as described the site that we saw here, though I do have to ask—that might have to do with something with why Federal law enforcement hasn't taken action against this either. There are, of course, lots of remedies that are available today under existing Federal law.

Mr. LIEU. I think the reason is because they are based in Vietnam. You don't have to take it as described. You can just go on your phone right now.

Mr. SCHRUEERS. So, I think we should take a step back and recognize that if the remedy that is sought is implemented here, all we're doing is preventing a domain name from resolving to an IP address, right?

Mr. LIEU. Right, I think that is important. So, I am going to ask the members of your organization to take it down right now.

So FMovies is so popular, there is a whole Wikipedia site on it. I just read it. It has been in existence since 2016. It was launched seven years ago. It says what countries have blocked it, what countries haven't. Your members can take it down or can block it right now. I am just asking you to do that.

Because we are trying to be reasonable here. This is such an unreasonable case. It is so clearly online piracy, copyright infringement. You don't want your organization, your members to be defending something so blatantly unlawful and unreasonable. So, I just asked your members to block that site today.

Mr. SCHRUEERS. So, the broadband providers that actually provide the resolution of these domain names are not at this table, right?

Mr. LIEU. Get them to block the site today. People should block the site today because you cannot defend this. It is just not defensible, and the Members of Congress here are watching this. This is not where you want to be. This is not where your industry wants to be. I get the nuances. I may not even oppose the views that you espouse today, but this particular site for example is not defensible, and certainly not for seven years.

Mr. SCHRUEERS. I think I—

Mr. LIEU. You did say in your testimony—you talk about how your organization and your companies work with stakeholders to do with copyright infringement. This has been going on since 2016.

It is so clearly indefensible. I am just asking you to take it down, to block it.

Mr. SCHRUEERS. The digital services that are—content creators among my constituent are also victims of these sites. They, too, distribute content online and their content is also pirated. So, this is a broadly shared interest in preventing infringement. Obviously, the best tool for that is to make content as widely available as possible where and when consumers want it. Meeting consumers' needs is—

Mr. LIEU. So, that is very interesting. I know you said that; you put it in your testimony. Do you think people actually don't know how they can watch the movie Willy Wonka? Do you think with internet search they won't be able to figure out how they can stream it and pay for it?

Mr. SCHRUEERS. I think that's a great question because, at least as we've been told, Wonka is not yet available on this market, but it's available on other markets. So, we often see that pirates arbitrage windowed releases to try and take advantage of content not being available on one market. That's why a number of audiovisual producers have gone to worldwide releases, but—

Mr. LIEU. So, what you are saying is that all movie CDOs immediately on releasing a movie in the movie studios need to also release it, right, online? Then is that your solution?

Mr. SCHRUEERS. What I'm saying is the best strategy to fight piracy, among many strategies, is ensuring that consumers can access the content that they want to pay for. We've seen that when lawful services are launched in countries where there is high piracy, those rates go down because consumers by and large want to pay for the stuff. They want to consume it lawfully. There's obviously risk to infringing services. The vast majority of them want to support the creators that they enjoy.

Mr. LIEU. Thank you. So, I ask the Members of your organization that can block this to block it. If they don't exist in your organization, I ask Chair of this Committee to call in a hearing with a witness that does represent the Members that could block this site and block it now.

Mr. ISSA. Would the gentleman yield?

Mr. LIEU. Yes. No, no. Go ahead.

Mr. ISSA. Pursuant to your request I will agree to invite, if you will, members of the ISP community here to have a discussion about the proposed remedies and how some or all them might be implemented pursuant to court order. So, that will be an invitation that the Ranking Member and I will send out before we get to Christmas.

Mr. LIEU. Thank you, Mr. Chair. I yield back.

Mr. ISSA. I thank the gentleman.

We know go to the gentleman from Oregon, Mr. Bentz.

Mr. BENTZ. Thank you, Mr. Chair.

Thank all of you for being here.

Ms. Temple, I am trying to figure out if this is an issue of technology that we can fix it, or a lack of enforcement, or something else. So, tell me—as we listened to the exchange just previous to my questions, I am a little bit unclear. So, which is?

Ms. TEMPLE. Well, as I mentioned earlier, it is a very complicated issue. I will respond to what Mr. Schruers said about access to legitimate content. I think that is an argument that we were hearing 20 years ago, but quite frankly today, there are hundreds of ways to access movies legally online through streaming services throughout the world. So, there are a wide variety of legitimate offerings for consumers. Piracy still exists.

What makes piracy so complicated and difficult is that technology does change and we do have to keep laws updated to be able to address the changing technology. As I mentioned before, streaming piracy has become one of the most prolific types of piracy that we have out there.

Also, it's cross-jurisdictional again so it's difficult to be able to attack the websites where they are. I think Representative Lieu was right when he said that probably the reason that the U.S. law enforcement has not gone after FMovies is because the website operators are in Vietnam. We do encourage law enforcement and they do work together, but it sometimes takes time and years. We also went to Vietnam. Personally, I went to Vietnam to ask law enforcement to take action, but they have not done so yet.

So, if we had a solution in addition to the solutions—this is not a panacea. We don't think that site blocking alone is the only solution. We still engage in a lot of self-help, but if we had that additional tool of site blocking that would allow us to be even more effective to combat piracy today the way it occurs.

Mr. BENTZ. All right. Well, you take us directly to my question of what we should anticipate should the ISP folk come in. What are they going to say?

Ms. TEMPLE. Well, it's interesting because in our experience overseas where this has happened in 40 countries, we actually worked collaboratively with the ISPs. So, we have had great relationships and cooperative relationships with the ISPs because they understand that this is a process that is not overly burdensome to them. It's a process also that they are engaged in.

So, my hope would be that the ISPs that you would call in would talk to the ISPs in the 40 countries that have this type of legislation. Then they would realize that the type of legislation we're asking for is legislation that works, that's effective, and that provides all the guardrails and due process issues that have been raised in the past.

Mr. BENTZ. We will see. So, let's stick with this for a second. The tools that you suggest: Site blocking, ham-handed, not directed. What is wrong with the device?

Ms. TEMPLE. Yes, certainly those who are not familiar with legislation and the way site blocking works could say that is the case, but in our experience for the last 10 years, that is just not true. The way that site blocking works is in all the jurisdictions in which we operate there is a very specific process first to assess whether the website is actually dedicated exclusively to infringement.

Mr. BENTZ. So, let me hop ahead. Does it on occasion not get it right?

Ms. TEMPLE. In our experience—

Mr. BENTZ. Is it perfect?

Ms. TEMPLE. Well, no law is perfect, so I can't say that—

Mr. BENTZ. I am not talking about the law; I am talking about the technology.

Ms. TEMPLE. In our experience, as I said, we do not see instances of over-blocking or—

Mr. BENTZ. In anticipating a difference of opinion, Mr. Schruers, maybe you can answer the question.

Mr. SCHRUEERS. Yes, so I think there are a number of examples cited in my testimony and others that we can provide where these architectural-level solutions have gone wrong.

Now, if we're talking about this one site that we've seen, and this remedy that's being proposed would only be available against that site, then that's one situation. If this remedy would be available against any online presence that's accused of infringement, well then would this remedy be available against campaign advertisements that are alleged to have not licensed their music? I mean, we have to ask against what constituency can this be applied, first of all. Then second, what's the potential collateral damage?

It may not be remembered, but 10 years ago due to miscalibration I understand of IT the digital service Spotify was blocked in this building, right? So, mistakes happen, and we need to ensure that the remedies are properly scoped for the problem.

Mr. BENTZ. Thank you. I yield back.

Mr. ISSA. I thank the gentleman.

We now go to the gentlelady from North Carolina, Ms. Ross.

Ms. ROSS. Thank you, Mr. Chair and Ranking Member. Thanks to all the witnesses for joining us today.

When artists and creators pour their energy into developing a product or a creative work, whether it is a song, a movie, a book, an article, a piece of visual art, or anything else, they deserve the opportunity to profit from their work. Digital privacy is theft of that opportunity. It deprives not only the copyright holders, but the individual artists and technicians who have contributed to a product to earn their livelihood and be able to profit from their creativity and their work. This is embodied in our Constitution.

Ms. Temple, I know you have gotten a lot of questions about how site blocking works. Which countries have been most effective in executing site blocks while also respecting due process?

Ms. TEMPLE. Thank you for the question. I think in our experience the United Kingdom has been very effective in implementing site blocks, but also recognizing and protecting individual freedoms. Australia is another jurisdiction that has extensive experience in this and has been very effective. They recently in 2018 did a full review of their legislation to see if it had any negative impacts and continued on with the legislation because it did not. So, those are two jurisdictions that we find to be very, very effective.

Ms. ROSS. Just to pick up in Australia, because you cited evidence from studies in Australia that when there were no-fault injunctions that would encourage a shift to legal channels. Can you tell us more about these findings and how no-fault injunctions affect users' behavior and choices?

Ms. TEMPLE. Yes, thank you. We've done a lot of studying over the last 10 years in which we've been operating in countries that have no-fault injunctive relief regimes, and our statistics and research shows that not only does traffic to the websites, that are ac-

tually illegal websites—not only has that plummeted, but consumers then go to legal websites. So, we see an increase of between 5–12 percent to legal websites after we block in a certain jurisdiction.

Ms. ROSS. That is great. That goes a little bit to Mr. McKnight's testimony.

I want to shift a little bit. I represent the Research Triangle area of North Carolina, a number of research universities, and I want to highlight how digital piracy impacts scientific journals and threatens the security of American research. For example, *Sci-Hub*, an active private website based on Russia, has amassed over 80 million scientific journal articles often by illegally targeting university websites in the U.S.

Mr. Schruers, are you familiar with *Sci-Hub* and do you know if your members, including AI developers, have systems in place to ensure that they do not obtain content to train AI systems from *Sci-Hub* or other pirated sites?

Mr. SCHRUEERS. I'm familiar with the website, but I don't think I have enough information to answer that question right now. I'm happy to followup for the record.

Ms. ROSS. That would be terrific.

Then for all the witnesses, and maybe we will start with Mr. McKnight because I haven't addressed a question to you, yet.

Have there been any international policies that have been especially effective at preventing consumers from cyber fraud that often result in engagement with piracy sites?

Mr. MCKNIGHT. I think the site blocking that we've been talking about has been demonstrated to be effective in certain countries, at least against professional pirates. I'm certainly not an expert in this area. We're focusing more on expeditious removal and enforcement here in the U.S. So, that's how I would answer from our perspective.

Ms. ROSS. Mr. Gladstein, do you have anything to add? Then we can come to the other two.

Mr. GLADSTEIN. No.

Ms. ROSS. OK. Mr. Schruers?

Mr. SCHRUEERS. I don't know if I have any more to add to that. Thank you.

Ms. ROSS. Ms. Temple?

Ms. TEMPLE. Yes, I would just add that again we've noticed that site blocking has been effective and in our analysis of those harms that come to consumers that go to those sites you're for example four times more likely to be the victim of credit card fraud, four times more likely to be the victim of malware, I think 30 times more likely to have viruses on your computers. So, site blocking does help protect consumers.

We were actually very pleased that we were able to work with the Department of Homeland Security and the IPR Center a few months ago to issue a PSA that talked about the harms to consumers from online pirated websites. So, site blocking would be able to help that as well.

Ms. ROSS. Thank you very much.

Mr. Chair, I yield back.

Mr. ISSA. I thank the gentlelady. The gentlelady yields back.

We now go to the gentleman from California, Mr. Kiley.

Mr. KILEY. Thank you, Mr. Chair.

Mr. McKnight, I appreciated your testimony and certainly understand the harm that is done that is sort of unique when we are talking about live sports, that there is a real value proposition to actual live consumption. So, a remedy that is delayed even by an hour or so is insufficient.

So, we have talked about various potential remedies, maybe redefining expeditiously to mean instantaneously or near instantaneously. Could you help me understand kind of how the mechanics of this work? Like if there is a fight going on how do you sort of in the moment find the illegal streams and then alert the ISPs?

Mr. MCKNIGHT. Sure. There's a number of ways. Some of the ISPs have automatic—to the extent you can identify and digital—the technology, depending on how good the stream is and the quality of it, can identify it and pull it down.

Where we have the issues is where we then have to identify and then submit these take-down requests. Then it's a question of how fast they take action after that, after those requests are submitted. We're seeing very, very uneven performance. In some areas there's just nonresponsiveness and that's when you're seeing things like hours to days.

Then with other sites we've worked with we've—social media platforms that we've worked with we've seen it happen 7–9 minutes. It's not terrible, but it's not effective. Most importantly we know it's not the best they can do because it's been better.

Mr. KILEY. Right.

Mr. MCKNIGHT. We've had conversations and seen things improve, but only momentarily, only to go back to sort of like the problematic practices that we observed a long time.

Mr. KILEY. So, you said that the ISPs—that if the quality of the stream is good enough, they can find it. How do they do that?

Mr. MCKNIGHT. They have technology. Like say if someone holds their phone up to a screen.

Mr. KILEY. Yes.

Mr. MCKNIGHT. Depending on the quality of which that stream is put forth on a social media platform, for example, there is technology that can identify it as a problematic stream and automatically take it down off of a social media platform or—

Mr. KILEY. OK. So, it is automatic? In other words, the technology identifies this as a copy essentially?

Mr. MCKNIGHT. Correct.

Mr. KILEY. There is no need for notice and take down, and for a person to approve it? It just comes down?

Mr. MCKNIGHT. Correct, in those instances where that can be identified.

Mr. KILEY. So, is there a way to incorporate that technology even on the provider side where you could sort of include it in—

Mr. MCKNIGHT. Giving us access. Yes. One particular provider has offered to do that, but many others haven't. Yes, there are technological potential to develop that type of technology. Some folks have it already. They're just not putting their best foot forward.

Mr. KILEY. Yes.

Mr. MCKNIGHT. Look, without making accusations, the natural commercial incentive, if you're running one of these sites, is the more users you have viewing content over your site the better it is for you commercially.

Mr. KILEY. Right.

Mr. MCKNIGHT. Right? So, you don't necessarily have the incentive to put your best foot forward here. If you look at the law the way it's currently constructed, it's not clear that we have a case that hours isn't expeditiously or that even a day isn't expeditiously. The point we're making is if you're dealing with a live event as opposed to something like a movie; and there are other issues there that have been explained well by my co-panelists, that isn't expeditiously. It's definitionally not expeditiously to not take it down after it's already over.

Mr. KILEY. Right.

Mr. MCKNIGHT. In effect the commercial value is gone.

Mr. KILEY. Is there any way to—I think there is a way with the technology where it can just be scrambled, or whatever, so you don't have to have an active taking it down per se. It is just that there is no—it doesn't actually—I don't know, Mr. Schruers, do you want to weigh in on that as well? Maybe you have some technical expertise. I am just trying to understand the nature of what is available technologically so that can inform the best solution from a policy perspective.

Mr. SCHRUEERS. Filtering technology is sadly not magic. There's no metadata that says this is an infringing stream, although perhaps humans can determine from certain contextual clues whether or not something is authorized, although we can get that wrong, too.

Mr. KILEY. How can you not make that—if you have one authorized transmission wouldn't any retransmission of that sort of definition unauthorized? So, that could be identified?

Mr. SCHRUEERS. So, there's a crucial piece of data there, which is what is the authorized transmission? A number of leading services do allow and invite live sporting events to pre-identify what content is lawful. They may furnish hashes that allow for real-time filtering, but that does require data and interindustry collaboration to ensure that the digital services have the tools to prevent the content from being ingested into their system. Of course, that all assumes that this isn't just a hyperlink to some site elsewhere.

Mr. KILEY. Right. Yes. Did you have anything else you wanted to add? I am sorry, Mr. McKnight.

Mr. MCKNIGHT. Well, I would just say in our case we only have one legitimate authorized partner in the U.S., which is ESPN+. So, if our live events are being shown anywhere else, it's definitionally unauthorized.

Mr. KILEY. Right. Right. OK. Thank you very much.

Mr. ISSA. I thank the gentleman.

Continuing with our California run, the gentlelady from San Jose, Ms. Lofgren.

Ms. LOFGREN. Well, thank you very much, Mr. Chair, and thanks to each one of these witnesses for their excellent testimony.

Mr. Gladstein, no one is going to defend that infringing site, including me. To me the only question is how do we prevent this pi-

racy? None of us should be defending it, and I include myself very much in that category.

It was just 12 years ago that we had a very tumultuous markup in this room. I think just Mr. Issa, Mr. Johnson, and I were here. At the time technical experts: The Internet Society, ICANN, and others, strongly advised against DNS-level filtering or blocking and instead urged that content-level decisions be made at the network edge and not at the internet's infrastructure core. I think that probably continues to this day. So, the question is what are the best remedies? I think that is something I would love to focus on, Mr. Chair.

One of the things that I am interested in is when we have done a number of laws to help on this, I would like to know how they are being administered by those charged with enforcement. For example, the Copyright Claims Board has the ability to take action as part of the CASE Act, which I supported. I don't know how that is going. I would like to know that. Obviously, that is not the major studios.

Federal prosecution under the Protecting Lawful Streaming Act of 2020. What has been done on that? Has the DOJ brought any cases? I would like to know about that.

The National Intellectual Property Rights Coordination Center led by Homeland Security is supposed to help with the Protecting Lawful Streaming Act. They have a center there. How is that working? I would like to know that as well.

One of the concerns, I think that we are missing the boat, frankly, and I thought so 12 years ago when we had this tumultuous markup. These piracy sites would not exist if they weren't lucrative. They are making money and that is why they exist.

There are problems in terms of the effectiveness of trying to block IP addresses. There are technical issues that the internet engineers brought to a head 12 years ago, but there is no technical problem in preventing the funding. If the credit card companies are going to be told they cannot process the funds for a variety of sites, these sites will go away.

Now, there is a problem internationally, but the OPEN Act that I supported would have made the copyright trademark infringements and unfair trade practice and would have brought in the U.S. International Trade Commission as a partner in this. I think even though sometimes we are not happy with their level of concern, and sometimes they go in the wrong direction, it is a hook actually in terms of going abroad with the financial services component of this. To me the answer has always been to cutoff the money and this will go away.

So, I am interested—Mr. Schruers, you are the only one here with—speaking from technology, and I know the Chair has said we are going to have other hearings on technology, but part of—YouTube for example has gotten the digital file for various content, so that they can take action when there is an infringement.

One question I have, and it has been problematic, because you can make minor changes to that digital file and evade it—have we explored or is it even possible to do that kind of digital file on a broader basis and would it work given the alteration that could be made?

Then if anybody has a comment about cutting off the money, which I think is probably going to be the most lucrative, the most effective method we can—I would be very interested.

Mr. SCHRUEERS. Thank you for the question, Congresswoman. I think that's a great point. There are among leading services and leading content providers evolving strategies to share what we call hashes, which are sort of like digital fingerprints of a piece of content. Digital services will filter for that hash. That's used both in the copyright context and outside of it, and it's a very effective way to intercept at the point of ingestion content that should not be in a particular place or should not be available for any number of reasons.

Obviously, technology is expensive. It has to be implemented in each service in a different fashion, but it is a very effective way to solve these problems at the front end. It requires a lot of intersectoral cooperation.

Ms. LOFGREN. I see my time is expired, but I would invite the witnesses—

Mr. ISSA. I would ask unanimous consent that the gentlelady have one additional minute. Without objection, so ordered.

Ms. LOFGREN. Thank you. I would just invite each of the witnesses to comment, even after this hearing, on the concept of denying access to financial rewards through the financial system, the credit card companies and the like, on how we might work together to explore that. I know that we have got just a few minutes here and it is a deep subject.

Mr. GLADSTEIN. May I make a quick comment?

Ms. LOFGREN. I would love to make this impossible to profit from.

Mr. GLADSTEIN. May I make a quick comment?

Ms. LOFGREN. Sure.

Mr. GLADSTEIN. One of the issues with following the money that might not service this issue as well as you've just stated, quite frankly, is that many of these sites don't charge the consumer anything to be able to watch that film. So, what Netflix or Apple or anyone is competing with is the free dispersal of the product. The way in which those sites are making money is from advertising and from selling malware that they get from those that go onto their sites. For credit cards—

Ms. LOFGREN. Right. So, we would have to go after the advertisers as well?

Mr. GLADSTEIN. So, the consumer isn't using their credit card. They're just hitting a button. The technology is such that the programming that they're watching doesn't look like someone sat in the back of a theater with their iPhone and copied the movie. It is a digital copy of the film that looks exactly like the film I just made. I couldn't tell the difference between the version that's on FMovies and the version that's on Netflix.

So, following—and also bitcoin is used often now.

Ms. LOFGREN. Right.

Mr. GLADSTEIN. There are various other ways in which these folks doing this illegal activity is doing other illegal activity and benefiting from those that are going on to their sites. So, merely the credit card is not a solution, I don't think.

Ms. LOFGREN. Not all of it.

Mr. Chair, I appreciate your giving me an additional minute. I will just close with this: I hope we don't get into another tumultuous dysfunctional technical fight as we did 12 years ago, but I do think we have a lot of opportunity to look at enforcement including DOJ, including potential financial cutting off. I think the gentleman's testimony is enlightening and we could spend a lot more time getting into this and maybe getting some real results. So, I yield back, and I thank—

Mr. ISSA. I thank the gentlelady. Those 12 years ago the names SOPA and PIPA were bantered around, and we thought that this was going to be a solution without any debate. I can promise the gentlelady that we are going to invite all the parties, we are going to go through a process that at least makes sure that all facts and capabilities are known before any legislation goes forward.

I have a history with several here on the dais of fighting against our own Chair at the time and Ranking Member and against the Senate. We won, but unfortunately the content producers do not have a solution. So, I want to find justice at a fair rate, something that you and I fought against more than a decade ago, but we know we still need to protect the content producers. So, I look forward to working with it and I promise an open and transparent process.

Ms. LOFGREN. Very good.

Mr. ISSA. I know thank the gentleman from Virginia for his patience and yield to him.

Mr. CLINE. Let me tell you, Mr. Chair, thank you for the time. I want to thank the gentlelady from California, because I wasn't here 12 years ago, but I was here 20, 25 years ago, but I was sitting back there and watching the DMCA debate and watching the telecom activate. So, this is fascinating for me, and I appreciate the gentlelady's expertise and all her work.

Ms. LOFGREN. If the gentleman will yield, I think—

Mr. CLINE. I am happy to.

Ms. LOFGREN. —the Chair, former Chair, and I may be the only Members of this Subcommittee who were here when the DMCA was approved, and obviously the technology has changed since that time. So, I appreciate your—

Mr. CLINE. It has. I would want to start by agreeing with the gentlelady in her comments about DOJ. In 2020 only four criminal copyright cases were charged. In 2021 only five were charged. Only three were charged in 2022. So, we have a ways to go.

I would like to have DOJ here and have the opportunity to get into a discussion with them about this issue, because there are so many different issues with DOJ that we have to discuss that it is a challenge to cover everything you need to. With this topic I think having a specific hearing regarding the lack of prosecution would be helpful.

I also want to address your comments about the technologies 12 years ago. The changes in technology might not be all that significant, but when you are talking about the internet, I mean 12 years is a lifetime. I would guess that there have been changes in technology that may make site blocking more feasible, more effective, maybe more targeted.

Ms. Temple, can you comment on any of the technological developments in that area?

Ms. TEMPLE. Yes, I think the main thing that we have learned over the last 10 years of working with these laws with ISPs is to work again collaboratively with them and provide them flexibility in terms of the use of technology. I know that there's been a lot of talk about DNS-level blocking, but that's not the only type of blocking, and that's not even the primary type of blocking that we're talking about.

So, when we ask for site blocking orders overseas, we work with the ISPs. They have flexibility in the law in terms of utilizing the most effective and most efficient and least burdensome type of technology, whether that is DNS blocking, IPS address blocking, or URL blocking. So, that is one of the things that we've found to be—one of the most effective ways to accomplish it is to work collaboratively with the ISPs and allow them the flexibility to determine how they will actually implement blocks that don't negatively affect networks.

Mr. CLINE. Mr. Schruers, I will give you the opportunity to respond there and talk about the technologies that are used.

Mr. SCHRUEERS. So, it's critical to think about the—I'd say the first question you have to ask is: At what level of abstraction are we solving this problem? I'd say throughout the digital sector there's an interest, a desire, an urgency about responding to piracy because in many cases these sites are dangerous. Of course, there's a lot of content interest within the digital sector. So, everybody agrees this is a problem.

Mr. CLINE. I want to go specifically to the technology, though.

Mr. SCHRUEERS. Right. So, as to the technology, if we're talking about broadband providers at the architectural level—and I should make clear those—not principally my constituents and I don't want to speak for them—I am aware of and my testimony cites a number of problems with that.

For digital services that are at the edge of the network they, of course, comply with the Digital Millennium Copyright Act notice and take down, and maybe go above and beyond that and do allow even live events to pre-identify URL-level filtering to ensure that URLs don't resolve.

Mr. CLINE. How many take-down notices do CCIA members who operate content platforms receive in a given year?

Mr. SCHRUEERS. I don't have that at my fingertips, but the number is in the millions, if not the billions.

Mr. CLINE. OK. How much money is spent processing these take-down notices?

Mr. SCHRUEERS. Again, I don't know that companies break that out, but they spend extraordinary amounts not only on the processing by their trust teams, but on the development of technologies that go well beyond what they're required to do by law. Tens of millions of dollars are being invested every year for some companies in their systems that don't just block content, but actually allow rights holders to monetize infringing uses of the works.

So, in many cases they're given the option to say, hey, I can leave this content up and get a share of the revenue if I so choose, or

of course have it removed. Increasingly rights holders choose to do that and get a cut of the ad revenue, which is a win/win.

Mr. CLINE. Mr. Chair, my time is expired. I would just like to note that this hearing is focused on audiovisual, but copyright piracy impacts several industries, from movies, music, books, and publishing. I would like unanimous consent to submit a comment for the record from the American Association of Publishers regarding the online—

Mr. ISSA. Without objection, so ordered.

Mr. CLINE. Thank you, Mr. Chair.

Mr. ISSA. If the gentleman would yield, I would share with you that I was not here in 1998, but I was Chair of the Consumer Electronics Association.

Mr. CLINE. OK. Yes.

Mr. ISSA. So, we were paying close attention and working closely, of not collaboratively, with the MPAA.

Mr. CLINE. Mr. Chair, I do see a lot of familiar faces who might have been on this side of the dais, whether staff or otherwise, out in the audience and they may be a little grayer and a little more wrinkled, but they are recognizable today.

Mr. ISSA. Just as interested. I thank the gentleman.

We now go to the Ranking Member of the Full Committee, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair, for holding this important hearing. Mr. Chair, not only do the creative arts serve to entertain and educate us, but they also support industries that contribute billions of dollars to the economy every year. Those industries exist because of the audiences that buy their final product. We as consumers want the inspiration, emotion, and diversion evoked by artistic expression. In exchange we are expected to pay a fair market rate for those products no matter the format in which we consume them.

Intellectual property laws including copyright laws exist to foster creativity and innovation. They are a promise that with hard work and a lot of luck you can monetize your imagination. No technological changes have challenged that promise like the advent of the internet. Even as technology helped us discover art beyond our small corners of the world it made those creations easier to steal and thus less lucrative to produce.

Copyright law is nothing without the ability to enforce those ownership rights. It was with this reality in mind that in 1998 when the internet was still in its infancy Congress passed the Digital Millennium Copyright Act, or DMCA, to protect copyrighted works online. Even with that landmark law in place copyright piracy is still an issue that threatens industry stability and artists' livelihoods, and the problem is growing larger each year.

I appreciate the opportunity to examine the issue of piracy, but as we consider any potential solutions, we should make sure we are looking at the problem not as it existed 25 years ago, but as it exists today. Copyright piracy now encompasses broad cybersecurity concerns, artificial intelligence considerations, and distribution changes like streaming services. Any action we contemplate must be flexible enough to stand not just the test of time, but also changes in technology that we cannot possibly imagine.

Artists and content creators deserve to have their works and industries protected from illegal online piracy and I am grateful to Chair Issa and Ranking Member Johnson for giving this issue the attention it deserves. With that in mind I have a few questions for our excellent panel of witnesses.

Ms. Temple, could you please help clarify the differences between IP address blocking, DNS blocking, and dynamic site blocking? When and how are each of these remedies useful?

Ms. TEMPLE. Yes, thank you for the question. As I mentioned earlier, in most of the jurisdictions in which we operate the site blocking order that is issued is flexible, so the ISP is just ordered to block access to the site. The actual way in which that is done is up to the ISP. They might use DNS blocking. They could use IP address blocking or URL blocking. In most cases it's usually either DNS or IP address blocking.

With respect to DNS blocking it's typically—imagine I guess sending an envelope through the mail and you have an address that you're looking for. The ISP, the access ISP is going to need to look for the address of *pirate.com*, for example, because they don't know the specific IP address. They have to go to a DNS resolver and get the actual physical IP address, the 12312.34.5 address for the website. So, in DNS blocking the access ISP knows that they should not be going to look up the IP address for that site. Instead, usually they just disregard the request to go look up that site. So, they can't get the address to that website.

IP address blocking is similar, but it's looking at the IP address. So, as opposed to the *pirate.com* issue it might—if you know the actual IP address, the ISP will not actually allow access to the specific IP address that the website has.

Then URL blocking is a little bit more complicated, but that is really they inspect the packet that's going over the internet and ensure that the very, very specific URL is not able to be returned back to the customer.

Mr. NADLER. Thank you.

Mr. McKnight, one of the primary challenges of enforcing anti-piracy laws is that the source of most pirated content is overseas. Could you please explain why this is significant and what policies if any can improve identification and enforcement of overseas actors?

Mr. MCKNIGHT. So, a lot of our enforcement efforts are actually based here domestically because even though it is certainly true, as has been explained by my co-panelists, that a lot of the problem does start and originate overseas, a lot of the social media platforms in things like Facebook, Twitch, the usual suspects that we're seeing our content pirated over, actually here is domestically in the U.S. So, when we're looking for the definition of expeditious removal to be clarified, it's primarily to address that issue.

The closing of the streaming loophole, which was something that we got—you all helped us get passed in 2020, has been tremendously effective. I think with respect to that it's all about enforcement, domestic or overseas is getting enforcement against these career pirates. Because unless they see folks actually going to jail or being shut down as a result of this legislation that's powerful and has been enacted, they don't necessarily have a full incentive not

to engage in the conduct. They pay attention to laws being passed. It's meaningful. It's helpful. What's really helpful is when they see folks being caught and they see them suffering consequences.

Mr. NADLER. Thank you. My last question is to Mr. Schruers. Mr. Schruers, sites hosting pirated content often endanger consumers through malware, cyber schemes, and insecure connections. If in your view site blocking regimes go too far, how do you suggest we keep consumers safe?

Mr. SCHRUERS. So, thank you for the question. Obviously, as I said, the best defense is a good offense and making content widely available on as many platforms and in many contexts possible is one of the first things that we need to do.

Once we've moved beyond that we need to look at interindustry collaboration to ensure that digital services have the granular data and metadata about content to meaningfully pre-identify, for example, in the context of live streams that something would be infringing, to filter on ingest, and obviously strike arrangements such as those that I described earlier where in some cases rights holders can choose to monetize instead of simply prevent. So, there's a lot of options available.

Then of course we have the existing panoply of remedies that are available under existing copyright law. Statutory damages, actual damages, all the extrajudicial relief that's available under Section 512, to say nothing of technological protection measures and small claims. There are probably more remedies in the Copyright Act than many of our other IT laws.

So, we have a lot of robust tools at our disposal. There are many arrows in the quiver that we can use. To be clear, we're only raising concern about one specific arrow and one specific context when we raise concerns about DNS-level site blocking.

Mr. NADLER. Thank you. Mr. Chair, I thank you for your indulgence and I yield back.

Mr. ISSA. You have always granted me similar indulgences. I thank the former Chair and Ranking Member.

Now for me. Mr. Schruers, I found it interesting that one of the things we haven't gotten too much into is Mr. McKnight's question. From your knowledge, technical knowledge, forgetting about how something is blocked, when Mr. McKnight puts in a notice and take-down, is there any reason that it should not be able to be done in single-digit minutes as it sometimes is, or even faster today based on technology?

Mr. SCHRUERS. So, the ability of a given service is going to respond to take-downs are going to vary depending on the context, the nature of the work, the scope of the take-down. It's not uncommon for a rights holder to submit millions of URLs, some of which may not be accurate. Because every take-down does terminate access to expressive content, there are consequences for getting things wrong.

So, I know many services are instantaneous. A lot of services that allow rights—

Mr. ISSA. Wait a second. I didn't ask that question. I only asked is there any technological reason that it can't be done instantly?

Mr. SCHRUERS. When access to content is terminated—if you remove—

Mr. ISSA. You are getting into the ramifications. Maybe I will clarify my question. We I think can all agree that the technology using AI is available for Mr. McKnight to submit for it to be validated against metadata comparison. If he is making that data available through the live stream, the idea that it can be compared and identified and taken down essentially without human interaction would seem to be unequivocal. So, it sounds like there may be administrative reasons that an entity can respond to why they're not taking it down.

As the entity that created the original notice and take-down and the entity that can update it, as Mr. McKnight is asking us to, is there any reason we shouldn't update a requirement that it either be taken down using that technology, which is near-instant, or that he or his—any company receive a response within the same period of time as to that which delays it?

That is what I am asking. It is much more narrow than the other subjects we are talking about because we are not talking about do you have the capability? We are assuming the capability exists, because it does exist for notice and take-down. What is your response to that? Either do it or respond near instantly?

Mr. SCHRUEERS. I think we agree that an expeditious response is appropriate, particularly where there's economic consequences as have been described. Of course, Section 512 already requires expeditious response. There has been some litigation about what that means in practice.

Mr. ISSA. Well, we are really good at eliminating the need for litigation by redefining to the courts what we really meant. It sometimes saves a court a lot of trouble.

Let me just go on with another round of questions. Ms. Temple, you have heard a lot here and you certainly saw us say we don't want to have SOPA and PIPA revisited. We want to have full and complete. I want to leave free speech in another bucket, but I want to ask you a question.

Based on the actions of these internet providers of using their protections under 230 to regularly take down infringing content that you often see—in other words Mr. McKnight and others, and even Mr. Schruers has said that providers do it, but lawyers say sua sponte. They do it without a complaint often and they do it with reasonable protection. If they can do it without a complaint, as they often do, by matching, is there any reason that we shouldn't encourage them to do it more often or substantially all the time?

Ms. TEMPLE. Yes, if you're talking about filtering and ensuring that illegal content is not posted up on UGC sites, that is something that certainly we want them to do more of and we want to have more automated ways that you don't have to send them millions and millions of notices that the other mentioned.

With respect to dedicated websites, of course it's much—that are dedicated to infringement, are not UGC sites where people are posting, it is much more complicated because those websites are not going to take down the infringing content. They're not going to filter it out because they're dedicated to piracy.

Mr. ISSA. Let me close with just a couple of questions.

Mr. Gladstein, I haven't asked you any questions, but I am going to ask these questions in a sense on your behalf as a producer of content that finds himself somewhat harmless—or harmed without any ability. I might note that at one time I had dinner at a large banquet, but we were at the end of the table. It was Francis Ford Coppola who bemoaned how little control he had over Godfather III, and if he had only had more control how much better it would have been. So, it is not just the fire and forget. Sometimes it is even when you are producing it.

Ms. Temple, because you have this unique expertise on both sides of it, let me just ask a few simple technical questions. To the best of your knowledge when somebody imports a tangible product that violates IP rights, including patent, trademark, copyright, does the U.S. Customs have the authority to stop it?

Ms. TEMPLE. Yes, it does.

Mr. ISSA. When a court or the ITC issues either an exclusion order in the case of the ITC or injunction in the case of Article 3, do all Federal agencies have the ability to use their powers to stop the importation of those products?

Ms. TEMPLE. Yes. Yes, they do.

Mr. ISSA. So, today as a closing question aren't we just talking about finding the equivalent of what for 200-plus years our Customs and other agencies have done when there is due process and entities such as Article 3 courts have reached a decision? The execution of that protection is done by our government or on behalf of our government by orders to those who participate in bringing things into the United States?

Ms. TEMPLE. Yes, I would agree that's a very similar process.

Mr. ISSA. So, as we invite the Department of Justice, which was suggested, and as we reinvite those who chose not to be here today, those who can talk to us about—Mr. Schruers, I appreciate your expertise, but I want to have more of those entities in here to talk about what is technically possible, not just what is technically difficult. Because it is this Committee's jurisdiction and this Committee's decision that we protect through our ports of entry when a DVD comes in bootleg, we must be able to protect on the internet. If we do not have that ability today, it is our responsibility to create that ability.

I want to close by just making one statement: I know there have been good-faith negotiations that have gone on behind the scenes. I have been told that those negotiations broke down to a certain extent because of hold harmless questions in our very litigious society. It is also the jurisdiction of this Committee, at the Full Committee level, to provide that type of protection.

So, let's be clear that in getting it I am aware that if you get a court order and Customs seizes DVDs coming into the country, everybody is held harmless. There isn't, in fact, a government right to do so, and all you can do is maybe get your DVDs back later if there was a mistake. You don't get to litigate against the person that brought the claim in court.

What is possible in the tangible world; I want to put on notice those that we are going to have in followup, we want to find a solution in the internet world. We will not quit under this Committee,

including my Ranking Member to my left and my Full Committee Ranking Member also to my left, until we do so.

With that I want to thank your witnesses and I want to thank all those in attendance who often represent people who did not speak here today. With that we stand—oh, I am sorry. All Members will have five days to issue questions.

I would ask the witnesses would they respond to written questions if they receive them?

Ms. TEMPLE. Yes.

Mr. SCHRUERS. Yes.

Mr. ISSA. Thank you. With that we stand adjourned.

[Whereupon, at 11:51 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116671>.

