



Perspectives from FSF Scholars
May 28, 2020
Vol. 15, No. 27

Modernize Copyright Protections to Combat Worldwide Online Piracy

by

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The immense importance of copyrighted works to the U.S. economy is reflected in popular Internet-delivered streaming media services like Netflix and Spotify. But a report released in late April by the U.S. Trade Representative makes clear that valuable copyrights held by Americans are threatened by worldwide online piracy.

Modernized copyright protections and enforcement are needed to stop, or at least curtail, mass online piracy operations.

The [U.S. Trade Representative's 2020 "Special 301" Report](#), an annual review of the status of intellectual property protections among U.S. trading partners, calls out China, Russia, and several other countries where copyright laws and enforcement are weak. Piracy in foreign countries comes at a steep cost to American copyright owners. A study cited in the Trade Representative's report estimates that international online video piracy annually inflicts at least \$29.2 billion – and as much as \$71 billion – in revenue losses on the U.S. economy. Indeed, Frontier Economics estimates that global losses due to digital piracy of movies will rise to at least \$289 billion and global losses due to piracy of music will reach at least \$53 billion in 2022.

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As the Trade Representative's report explains, online copyright piracy occurs in many forms. "Stream-ripping" websites and apps allow users to make infringing copies of videos and sound recordings from legitimate streaming sites. Stream ripping is reportedly popular in Canada, Mexico, the Netherlands, Sweden, and Switzerland.

Illegal Internet Protocol Television (IPTV) services impermissibly sweep up huge libraries of copyrighted content, including live sports and premium channels, and sell the content at low prices. IPTV piracy is rampant in countries like Argentina, Brazil, China, Hong Kong, India, Indonesia, and Saudi Arabia. Some Internet users own "illicit streaming devices" (ISDs) that allow them to search for and stream IPTV services or to illegally download copyrighted content from rogue websites. Many ISDs are sold pre-installed with piracy-enabling applications, while other ISDs are legitimate devices that are modified by users to access pirated content. The Trade Representative's report identifies China as "a manufacturing hub" for ISDs.

According to the Trade Representative, high quality pirated recordings of movies shown in theaters, also known as "camcords," are the primary source of unauthorized copies of newly released movies found online. China, India, and Russia are among the countries identified as sources for high numbers of illegal camcords.

Cable and satellite signal theft is a related form of digital piracy whereby illegitimate cable operators, including some foreign hotels, circumvent encryption systems, steal "overspill" broadcasts or satellite signals from nearby countries, or hack set-top boxes to make copyrighted content viewable. The USTR report identifies Chile, Thailand, and Vietnam as the countries where signal theft is a serious problem.

As we explain in our new book, [*Modernizing Copyright Law for the Digital Age – Constitutional Foundations for Reform*](#), action is needed to better combat foreign online piracy operations. The U.S. must continue to insist on strong copyright provisions in free trade agreements and proactively seek enforcement of those provisions when foreign countries fail to live up to the agreements.

Additionally, the U.S. should lead the world by example and increase criminal penalties for copyright infringement via online streaming. Under existing law, criminal infringement involving streaming only constitutes a misdemeanor while unlawful reproduction or distribution of copyrighted materials generally constitutes a felony. There is no good reason to subject the most rampant forms of infringement to lesser penalties.

Prosecutions target mass-scale infringement operations that cannot effectively be stopped using private civil lawsuits. To aid such prosecutions, Congress should give federal law enforcement authorities the ability to seek court approval for wiretaps for copyright crimes.

Importantly, the U.S. also should modernize its domestic civil copyright laws to better prevent online infringement. U.S. copyright law's "notice and takedown" system for expeditiously removing copyrighted content from websites is twenty-two years old. The system is inadequate to address massive uploading of copyrighted movies, TV shows, and music by users of YouTube and other popular online platforms. Many copyright owners do not have the resources to closely

track online platforms and quickly send mass takedown notices. Congress should establish a "notice and stay down" system. Online platforms that receive takedown notices regarding infringing postings of specific copyrighted works on their sites should be required to promptly remove new postings of those same works from their sites.

To combat the world of online piracy, and consistent with the Founders' commitment to secure intellectual property rights, the U.S. needs to push for stronger copyright protections and enforcement protections, not only here at home and but abroad as well.

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