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**Congress Must Modernize Copyright Law to Curb Mass Online Theft**

by

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Copyrighted video and music are tremendous sources of value in the era of Internet streaming. Subscriptions to streaming services continue to grow, even amidst COVID-related lockdowns. Yet evidence shows that online infringement is also increasing, as pirated video streaming has become a global billion-dollar industry.

Right now, the Senate Subcommittee on Intellectual Property is in the midst of reviewing the Copyright Law's "notice-and-takedown" mechanism that is intended to remove expeditiously infringing content from Internet websites. This important congressional review should be part of a broader move by Congress to curb massive online infringement by updating the law to better protect copyright owners.

According to the Recording Industry Association of America, during the first half of 2020, revenues from streaming music services [rose 12 percent to \\$4.8 billion](#). Streaming services generated 85 percent of U.S. music industry revenues during the first half of 2020, up from 80 percent during 2019. These revenue increases are driven by rising U.S. subscribership. In early

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2019, [Apple Music reportedly had over 28 million subscribers](#) and Spotify had 26 million paid subscribers. Millions more subscribe to other streaming music services.

Meanwhile, the success of streaming video services is epitomized by Netflix, which surpassed 67 million subscribers in the U.S. and Canada as of the third quarter of 2020. Global revenues for [Netflix totaled \\$6.4 billion for the quarter](#). By that same time, Hulu had 35.5 million U.S. subscribers, up from 27.9 million a year earlier. New entrant [Disney+ reached 60 million subscribers worldwide in August 2020](#), and reportedly most of those are in the U.S.

Unfortunately, online infringements of copyrighted video and music are also on the rise. These infringements take place through a variety of means. Users of popular online platforms like YouTube, Facebook and Twitter upload mass amounts of copyrighted works without authorization. Copyright owners try as they might to spot infringements of their works and send takedown notices to online platform providers. Yet, new postings of their works reappear almost immediately on those same sites. Many copyright owners lack the necessary resources to constantly monitor online platforms and promptly send numerous takedown notices.

Additionally, so-called "torrent" sites enable users to download illegal infringing copies of movies and sound recordings. "Stream-ripping" websites and apps allow user to make unauthorized of copies of movies and sound recordings hosted on legal streaming sites. And illegal Internet Protocol Television (IPTV) services amass extensive libraries of copyrighted content, including live sports broadcasts and premium channels, and sell access to that content at low prices.

Indeed, a [white paper](#) published earlier this year by Sandvine found that subscriptions to illegal IPTV services increased to 6.9 percent of North American households by the end of 2019 compared to 5.5 percent from about two years earlier. According to an August 2020 [report](#) by the Digital Citizens Alliance, "[c]onservatively, pirate subscription IPTV services generate subscription revenues of \$1 billion annually in the U.S. alone," with an estimated U.S. fixed broadband subscriber base of 9 million. As the DCA report describes, the illegal IPTV ecosystem that has emerged is global in scope and sophisticated. It includes retailers as well as wholesalers that purportedly engage in black market sales and bartering transactions to expand their illegal content libraries. IPTV pirates offer professional-looking content menus and use social media to draw subscribers.

And there is evidence that online copyright piracy has further increased amidst COVID-related lockdowns. Muso, a piracy tracking firm, [found](#) a 43 percent spike in Americans visiting sites that pirate movies during the last week of March 2020 compared to the last week of February 2020. [Reportedly](#), data collected by Muso also showed music-related U.S. visits to torrent sites during the last week of March 2020 grew to over 1.5 million or over 15 percent compared to a month earlier.

Congress must take action to better protect copyright owners from widespread infringement on the Internet. In our book, "[Modernizing Copyright Law – Constitutional Foundations for Reform](#)," we identify key ways that Congress ought to improve criminal and civil copyright enforcement.

Congress should increase criminal penalties for infringement involving Internet streaming. Currently, infringing via streaming is only a misdemeanor. Streaming piracy should be a felony like other forms of unlawful reproduction or distribution of copyrighted works. And Congress should give federal law enforcement agencies authority to seek wiretaps for investigations.

Furthermore, Congress should modernize the 22-year-old "notice and takedown" system for removing copyrighted content from user-upload websites. For example, to receive immunity, online platforms should have to remove expeditiously infringing content posted by users of their sites about which they "have reason to know" based on surrounding circumstances. Congress also should adopt a "notice and stay down" policy. This would require online platforms that receive formal takedown notices to expeditiously remove future postings of that same infringing content from their sites.

Finally, Congress should pass the Copyright Alternative in Small-Claims Enforcement Act. The "CASE Act" would provide copyright owners of modest means a less expensive, voluntary venue to bring infringement claims involving alleged damages of \$30,000 or less.

Congress's duty to protect copyrights is as old as the Constitution of 1787. It can fulfill that duty today by updating copyright law to curb online infringements.

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