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Congress and the Administration Should Move Against Online Copyright Piracy

by

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A [report](#) released by the U.S. Trade Representative on January 30 highlights the prevalence of online piracy that harms American owners of copyrighted works such as music sound recordings, movies, and TV shows. It is estimated that piracy on the Internet inflicts over \$29 billion in revenue losses on the U.S. economy each year. Digital piracy harms American copyright owners as well as copyright-reliant industries that employ thousands of workers, undermining incentives for investing in creative enterprises and reducing job opportunities.

In 2024, the Biden Administration and Congress should step up efforts to protect copyrighted works from piracy on the Internet. The Senate should confirm an Intellectual Property Enforcement Coordinator (IPEC) to ensure better engagement with foreign nations that are online piracy trouble spots. The U.S. Department of Justice ought to prosecute more commercial streaming piracy operations to stop such unlawful activity and deter future piracy. And Congress should update U.S. law by establishing a “notice-and-stay-down” system that requires major online platforms to prevent serial repostings of copyright-infringing on their websites as a condition for receiving legal immunity for infringements.

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The U.S. Trade Representative's (USTR) [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) spotlights notable examples of online as well as physical markets across the world that "reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial piracy or counterfeiting." A goal of the USTR's report is to prompt public and private sector action to combat piracy and counterfeiting.

The USTR's report observed that "[c]ommercial-scale copyright piracy and trademark counterfeiting cause significant financial losses for U.S. right[s] holders and legitimate businesses, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and pose significant risks to consumer health and safety." The report cites a June 2019 [study](#) by the Global Intellectual Property Center finding that online piracy cost the U.S. economy \$29.2 billion in lost revenue in 2019 alone. That same study found that illegal streaming and file-sharing operations also cost about 250,000 American jobs each year.

According to the USTR's [report](#), the online copyright piracy black market is characterized as a "complex ecosystem" that includes "domain name registries and registrars, reverse proxy and other anonymization services, hosting providers, caching services, advertisers and advertisement placement networks, payment processors, social media platforms, search engines, and network management infrastructure—that providers of pirated content abuse." Online piracy black markets include unauthorized Internet Protocol television (IPTV) wholesalers that stream copyrighted content as well as IPTV resellers of such content via applications and physical illicit streaming devices (ISDs). These illegitimate IPTV services gather vast libraries of copyrighted content, including live sports and premium channels, and sell downloads or streaming access at below-market prices.

These unlawful services are facilitated by "cyberlocker" sites that "act as the hosting and content storage sites for the world's most popular piracy streaming and linking websites." The USTR's report states that "cyberlocker sites typically depend on advertising for revenue and are thus incentivized to drive more traffic to their sites by offering popular copyright-protected content for free." Many cyberlocker sites "offer a tiered revenue sharing system to reward the uploaders of their most popular content," thereby giving users a financial incentive to upload copyrighted works, including content that has not yet been commercially released to the public. Some cyberlocker sites at least appear to have takedown reporting systems. But those sites "typically do no proactive monitoring to stop the uploading, sharing and re-sharing of pirated and infringing content."

Additionally, the USTR report noted copyright owner concerns about the role of overseas "bulletproof" Internet Service Providers (ISPs) in facilitating online infringements. In the report, "bulletproof ISPs" are defined as providers with "terms of service that often explicitly advertise leniency in allowing their customers to upload and distribute infringing content." Bulletproof ISPs do not comply with U.S. law. According to copyright owners, bulletproof ISPs disguise their ownership and locations and refuse to respond to communications and takedown requests.

The USTR report identified international cooperative efforts that helped stop online piracy sites in other countries. Such efforts reportedly led to the shutdown in 2023 of one of the world's most

popular torrent sites operating out of Bulgaria that served up new copyrighted content. Additional cooperative efforts reportedly led to shutdowns last year of online piracy operators based in countries such as Iraq, the Netherlands, France, and Egypt.

However, given the prevalence of online copyright piracy and the \$29 billion price tag that piracy imposes on the U.S. economy each year, the Biden Administration and Congress should do more to curb online piracy in 2024. Indeed, bold action also is needed because online piracy worldwide appears to be on the rise. According to a [white paper](#) released in January 2024 by anti-piracy and market analytics data company MUSO consulting firm Kearney, visits to online piracy websites climbed to 141 billion in 2023, a 12% increase compared to 2019. And it is projected that economic losses to the global media sector attributable to online video piracy will grow from \$75 billion in 2023 to \$125 billion in 2028.

At least three steps should be taken by the Administration and Congress in 2024 to stem the rising tide of online piracy. First, the Senate should confirm an Intellectual Property Enforcement Coordinator to help direct international cooperative efforts to combat notorious IPTV services, cyberlocker sites, and bulletproof ISPs in foreign nations. Up to this point in the Biden Administration, the position of IPEC has remained vacant. Presumably, international cooperative efforts to combat online piracy have been less effective without a Senate-confirmed leader at the head of the [Office of the IPEC](#). (Otherwise, Congress should eliminate the position and its office and dedicate the budgetary resources to other law enforcement personnel charged with protecting copyrights.) In May 2023, the administration finally submitted a nominee for the position, Deborah Robinson. The Senate should make it a priority to confirm Ms. Robinson to the post – or at least confirm the nomination of someone who can promptly gain Senate approval.

Second, the Justice Department should step up law enforcement efforts against notorious online piracy operations. Private civil lawsuits are often inadequate to stop sophisticated copyright piracy operations that dodge legal processes. In 2020 Congress passed the Protecting Lawful Streaming Act, which makes unauthorized streaming of copyrighted works for commercial gain a felony. But according to [testimony](#) offered before the House Subcommittee on Courts, Intellectual Property, and the Internet on December 13, 2023, only one prosecution has been brought under the Act. Former Register of Copyrights and current Motion Picture Association (MPA) Senior Executive VP and Global General Counsel Karyn Temple testified that “[p]rioritizing 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.”

Congress also should modernize the Digital Millennium Copyright Act of 1998 (DMCA) to better protect copyrighted works from serial infringing users of social media platforms and other legitimate user-upload websites operating inside the United States. Section 512 of the DMCA contains the “notice-and-takedown” system as a means for removing copyright-infringing content from the Internet. Online platforms that respond to takedown requests from copyright owners and expeditiously remove infringing content receive legal immunity for claimed infringements taking place on their websites. Unfortunately, Section 512 is too outdated to adequately address the problem of mass infringements by user uploads of infringing video and music content on platforms like Facebook, Instagram, YouTube, and TikTok. Much of the

infringement is the result of “repeat infringers” who repost copyrighted content on new web pages soon after previously posted infringing content is taken down. Also, courts have interpreted Section 512 to give online platforms overbroad immunity that undermines incentives for online platforms to make sure that infringing content that initially is removed from their sites is not quickly reposted. Indeed, there is a disincentive to remove uploads of infringing content because they drive up website visitors and boost digital ad revenues for online platforms.

Congress should reform the DMCA by establishing a “notice-and-stay-down” system that would better secure copyrights in the social media and high-speed Internet era. Under a “notice-and-stay down” system, an online platform that receives a takedown notice for a specific infringing song, movie, or TV show on its site ought to be required – as a condition for obtaining immunity from copyright infringement – to remove promptly future postings of the same content. A “stay down” requirement for receipt of legal immunity would provide a stronger inducement for online platforms to remove expeditiously repostings of copyrighted content. Moreover, Congress should consider requiring – as a condition for receipt of legal immunity – online platforms to use routinely some type of effective automated content recognition technology for identifying and preventing uploads of infringing content.

These three actions aren’t the only ones that the Administration and Congress should take up in 2024 to secure copyrights. But each step would help protect valuable copyrights and promote creativity and jobs for Americans.

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Further Readings

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