**Re:Create Comments on 5.29.2025 Discussion Draft Framework for the American Copyright Protection Act (ACPA)**

Almost exactly one year ago, Re:Create and its members sent a letter to Chairman Issa to express gratitude for his defense of balanced IP in key moments like the SOPA/PIPA debates and to urge him to avoid the pitfalls associated with site-blocking legislation. Unfortunately, the ACPA framework does not address the arguments or concerns we raised last year. And in the meantime, those concerns have only grown more serious. Indeed, the concerns we raised in June 2024 have been bolstered by new evidence:

**Site-blocking is a solution in search of a problem**. The case for site-blocking depends on a crucial premise: that "digital video piracy" by U.S. consumers using foreign pirate sites has a significant negative impact on the U.S. economy. Advocates for site-blocking have relied on a 2019 report by the Global Innovation Policy Center to substantiate that premise, citing bold claims in its conclusions: $29.2 billion in lost U.S. revenues, a reduction of between 11% and 24%.[1] In March 2025, CCIA released an expert report detailing a cascade of methodological biases that explain why the GIPC report found estimates that were wildly out of step with previous studies that had concluded impacts from piracy were much smaller, potentially as low as zero.[2] Among the GIPC paper's flaws, according to CCIA:

- Reliance on BitTorrent data as the basis for estimates of streaming piracy, using a chain of dubious assumptions about the relationship that consistently favor overcounting;
- Uniform use of U.S. media prices for non-U.S. consumption of pirated content, despite 90% of the documented piracy in GIPC data taking place outside the U.S., in places where media prices can be significantly lower;
- Failure to account for VPN use, which undermines all of the report's claims about the locations of alleged pirates; and
- Implausibly high displacement rates for allegedly non-U.S. contexts, i.e., wildly overestimating how many alleged pirate streams represent lost sales.

So, this axiomatic assumption behind site-blocking, that the U.S. video streaming industry is gravely harmed by overseas pirate sites, is even shakier today than it was in June 2024.

[1] "Impacts of Digital Video Piracy on the U.S. Economy," U.S. Chamber of Commerce Global Innovation Policy Center, June 2019, available at https://www.uschamber.com/assets/documents/Digital_Video_Piracy_June_2019.pdf.
[2] "Digital Video Piracy Impacts on Sales Overestimated in Key Report," Computer & Communications Industry Association Research Center, March 2025, available at https://ccianet.org/wp-content/uploads/2025/03/Digital-Video-Piracy-Impacts-Rebuttal.pdf.

**Site-blocking would destabilize the foundation of the creative ecosystem—the open internet. Collateral damage is inevitable, and user privacy is at risk.** Advocates for site-blocking have downplayed the threat of overblocking and pooh-poohed the idea of "breaking the internet," saying that site-blocking can be achieved without threatening the integrity of the internet or lawful internet use. However, the latest research suggests site-blocking advocates may be trying to rush their idea into law before the facts can catch up to them. A recently released i2Coalition report[3] concludes:

- Overblocking is widespread. DNS or IP-level restrictions, especially on shared infrastructure like cloud platforms and CDNs, cause widespread overblocking. A single IP or domain in shared environments often supports numerous unrelated services, so blocking these shared assets can instantly disrupt many lawful websites, APIs, and applications.
- Internet fragmentation due to content policies is increasing, with some nations using firewalls or alternative DNS. When governments use infrastructure for domestic content enforcement, this degrades global interoperability and often fails. Enforcement should target content removal at the source, not interfere with neutral systems enabling global connectivity, as infrastructure-level measures only offer temporary reduction in visibility.
- Severe collateral damage disproportionately impacts U.S. cloud, Internet infrastructure, and small businesses. This undermines revenue, reliability, investment incentives, and market access within a globally connected economy.
- Policy interventions often fail to meet their goals, introducing technical risks, network inefficiencies, and business uncertainty. These technical measures threaten the long-term structural design and integrity of the open Internet architecture, the health of the digital economy, and fundamental rights if left unaddressed.

**Ex parte proceedings are fundamentally flawed.** The slow-motion trainwreck of SAD Scheme litigation in the intellectual property space continues to show the danger of giving one party to an IP dispute an opportunity to win dramatic remedies, including website blocking and seizure, using a one-sided proceeding. The SAD tactic involves listing the names of targeted online merchants in a sealed "Schedule A" document, kept separate from the main complaint. These "Schedule A Defendants" (or SADs, a term coined by Professor Eric Goldman[4]) are often unaware they are targets until their website operator freezes their accounts. Once the accounts are frozen, SAD plaintiffs can extract a settlement payment based on the value of their victims' ongoing business, which is stuck for as long as the legal action is pending, rather than the value of their underlying legal claim. In February 2025, four esteemed law professors filed an amicus

[3] "DNS at Risk: How Network Blocking and Fragmentation Undermine the Global Internet," Internet Infrastructure Coalition, May 2025, available at https://i2coalition.com/wp-content/uploads/2025/05/DNS-at-Risk-How-Network-Blocking-and-Fragmentation-Undermine-the-Global-Internet.pdf.

[4] Goldman's blog provides extensive coverage of the SAD scheme phenomenon, and he has written a scholarly paper on its dangers. *See* Eric Goldman, A SAD Scheme of Abusive Intellectual Property Litigation, 123 Columbia L. Rev. Forum 183 (2023), https://www.columbialawreview.org/wp-content/uploads/2023/11/November-2023-Forum-Goldman-final.pdf.

brief with the Federal Circuit urging the court to curb this litigation tactic.[5] Site-blocking petitions, like Schedule A cases, would "require judges to analyze extensive but vague allegations of infringement on an ex parte basis, and to do so quickly and at scale." The professors explain that this kind of faulty process is "especially harmful when courts are asked to issue mass orders shutting down storefronts and freezing often-unrelated assets without having sufficient time and information to accurately assess the facts particular to each defendant." The risk of abusive and excessive blocking is substantial, and ex parte procedures only increase the likelihood of these harms.

I appreciate the opportunity to share this feedback with you, and I hope that you will reconsider taking this approach to online copyright enforcement.

Best regards,

Brandon Butler
Executive Director
Re:Create Coalition

[5] Brief of Law Professors Sarah Fackrell, Eric Goldman, Elizabeth Rosenblatt, and Saurabh Vishnubhakat as Amici Curiae in Support of Defendant-Appellee and Affirmance, Jacki Easlick LLC v. Accencyc US et al., No. 24-1538, Feb. 28, 2025, (Fed. Cir.), available at https://law.stanford.edu/wp-content/uploads/2025/02/Easlick-v-AccEncy-Profs-Amicus-Brief-AS-FILED.pdf