

23 August 2023

United States Patent and Trademark Office
Office of Policy and International Affairs

Comment Request; Future Strategies in Anticounterfeiting and Antipiracy

Docket No. PTO-C-2023-0006

Ten years ago, I stepped away from a three-decades long career as a film executive – because I realized that piracy in the age of the internet posed a significant threat to the creative industries, and we all had to work together to do something about it.

I accepted the opportunity to build a nascent advocacy organization into a broad coalition of individuals, companies, and organizations from the creative communities. Today, as CEO of CreativeFuture, we have a vibrant coalition of over 500 companies and organizations and nearly 300,000 individuals devoted to promoting the value of creativity in the digital age. We speak out against piracy because it represents an existential threat to the value of creativity and to the livelihoods of the millions of Americans who work in the creative communities. We applaud your efforts to find solutions to this threat.

I write to you today on behalf of the almost ten million Americans who make their living in the core copyright industries – from film, television, music, book publishing, video games, and photography. Our nation's creative economy, the world's best, continues to be under siege by digital piracy despite the almost universal availability of our work in the legitimate digital marketplace. We welcome the Office's request for comments about antipiracy strategies.

With more than 30 years of acquiring or producing and distributing independent films under my belt, I know firsthand what is at stake. With my own eyes, I have seen the ways in which creativity can give rise to extraordinary works of art that enrich our lives, ignite social change, and enthrall and inspire millions. I have had the incredible privilege of catalyzing [many wonderful films](#), helping bring together hundreds, sometimes thousands, of artists, craftspeople, crewmembers, and other workers on each and every new production.

According to the Intellectual Property Alliance (IIPA), the core copyright industries – which include film and television, music, publishing, and video games – employ 9.6 million American workers and account for 3.79% of the entire U.S. workforce. The copyright industries also account for 4.88% of total private employment in the U.S – of the 122,000 businesses that make up the film and television industry alone, 92% are small businesses, employing fewer than 10 people. The core copyright industries generate \$1.8 trillion of value to the U.S. GDP, which is 7.76% of the U.S. economy. And U.S. copyright products sold overseas amounted to over \$230 billion in sales in 2021, which is more than other major industries including pharmaceuticals, aerospace, and agriculture.¹

The data bear out what I have always known in my heart to be true – that creativity is not just an important part of American life but is the backbone of our culture and economy. My belief in creativity as an essential force in all our lives led me to become CreativeFuture's CEO.

¹ https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022_Interactive_12-12-2022-1.pdf

The work is anything but easy. These immensely valuable, culturally essential industries are plagued by a staggering level of theft. Large-scale commercial piracy operations have evolved to visually mimic legitimate streaming sites with uncanny accuracy. A [recent study](#) by the Digital Citizens Alliance found that as many as 30 million consumers, across 9 million American households, use illegal streaming services, often without even realizing it. All those economic gains I mentioned? This illegal activity completely undermines them. As your request for comments rightfully highlights, a recent report found that piracy costs the U.S. economy at least \$29.2 billion, and as much as \$70.1 billion, every year. It also results in losses between \$47.5 billion and \$115.3 billion to that significant GDP I mentioned earlier.²

But for a film veteran like me, who always embraced and celebrated the exciting career opportunities my movies offered for so many people, what really opened my eyes were the job numbers that you also included in your Federal Register notice: piracy costs the U.S. economy between 230,000 and 560,000 jobs each year. These are not just the people you see on the red carpet, who are actually part of a larger community of workers who contribute to the movies we all love. The majority of these jobs are the workers behind the scenes. The production designers and their crews, the costume designers and their crews, the cinematographers, the make-up artists, the caterers, the drivers. These are people who rely on these jobs for health insurance, for retirement, for college funds. They *need* these jobs to put food on their tables.

The thing about bad news is, it can always get worse. All of this depressing data was collected *before* the pandemic struck – and we have plenty of evidence that piracy has only worsened in the aftermath. Data from the [piracy research firm MUSO](#) shows that piracy surged globally by more than 33% in 2020 after lockdowns went into place. To give a sense of the scale: during the month of February 2020, before COVID-19 spread across the U.S., there were 104,994,375 visits to movie pirate sites in the U.S. alone. In March, as the country came to a standstill, that number spiked to 137,375,539 visits. And, as the shelter-at-home orders remained in place in April, the number ticked up further to 149,709,350, nearly a 50% increase in two months!

To make matters worse, most piracy that is consumed in the United States is coming from territories beyond the reach of U.S. law enforcement. What is as incomprehensible? The fact that there are common-sense measures in place around the world that have proven to be effective anti-piracy tools in situations like this, but that are not available here at home.

One such tool, judicially-ordered “site blocking,” allows courts to direct internet service providers to block local access to offshore websites found to be dedicated to piracy. Such site blocking has proven to be an effective remedy against piracy in the [more than 40 countries](#) that have implemented court-adjudicated site blocking – including western democracies like Canada and the UK.

[Numerous studies](#) have shown the dramatic reductions in piracy that result, in countries ranging from Portugal (69.7%) to Australia (53%). And, in a [2018 joint study](#) by researchers at Carnegie Mellon University and Chapman University, site blocking led users who previously frequented major pirate sites to change their behavior after those sites were blocked.

In fact, the users subsequently *increased* their visits to legal streaming sites. In one representative sampling from the study, “blocking 19 different major piracy sites caused a meaningful reduction in total

² <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>

piracy and subsequently led former users of the blocked sites to increase their usage of paid legal streaming sites such as Netflix by 11% on average.”

This kind of shift away from illegal pirate sites and toward the legal marketplace 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 – and the industry itself is composed of more than 122,000 businesses, 92% of which employ fewer than 10 people. And piracy threatens to undermine all of it.

All the evidence indicates that as site blocking scales up to include the major pirate sites, it creates systemic change – by shifting consumer behavior away from stealing content and toward purchasing it. But just because proper site blocking legislation would make it easier for authorities in America to cut off illegal websites at scale does not mean – as site blocking critics have suggested – that it would open up abuse by rightsholders or negatively impact lawful internet use.

On the contrary, as found by the [Information Technology and Innovation Foundation](#), well-crafted site blocking legislation and court orders, such as the ones “in Australia, the United Kingdom, and elsewhere have built-in safeguards to ensure that only rights holders with high-quality cases – those involving websites that are dedicated to copyright infringement – are granted an injunction.”

Rather than harming internet freedoms, these well-vetted, court-adjudicated site blocking measures targeting large-scale commercial piracy operations (not sites that accidentally, or incidentally, host pirated material) are associated with countries with the strongest records on internet freedom. In fact, many of the countries that permit judicial site blocking, including Canada, Australia, and the UK, ranked *higher* than the U.S. in the Economist Intelligence Unit’s [latest annual index](#) of the state of democracy around the world.

The takeaway? There is little, if any, evidence of a negative correlation between site blocking and freedom of expression.

It is time for these outdated arguments against common-sense anti-piracy tools to stop. Protecting the creative industries has always been a bipartisan issue, and I hope that Members of Congress on both sides of the aisle will soon be ready to discuss site blocking legislation. I know that they believe in preserving the incredibly robust economic contributions of the creative industries while ensuring creatives will continue to produce the entertainment we all enjoy.

It will take time to quantify the impact of the surge in piracy since 2020, but I can tell you this: It came as productions and cinemas were shut down during the pandemic. And in this total void, the theft of our works reached unprecedented levels.

How could any industry, let alone the creative industry, survive such a setback? The fact that we *did* survive shows the importance of our contributions to this country, and to the world – and it demonstrates our resilience.

But no financial rebound can offset the staggering losses from piracy, even for the biggest Hollywood films. And, as we all know, smaller independent films are lucky if they make any money at all. And when piracy cuts into film earnings, as it is [expected to do to the tune of \\$52 billion](#), the financial risk is too great to bear. Most indie films struggle just to break even on their investment and piracy only makes it more

difficult, jeopardizing the ability to fund future films. And the loss of film productions is not only catastrophic to the people whose livelihoods depend on them – it harms [the communities who host these productions](#).

Culling [data from the U.S. Bureau of Labor Statistics](#), the Motion Picture Association has offered a [state-by-state breakdown](#) of jobs supported by the film and television industry. In Georgia, for instance, the film and television industry is directly responsible for more than 46,000 jobs and \$3.5 billion in wages. In Florida, it is responsible for more than 42,000 jobs and more than \$3.2 billion in wages. And in Texas, it is responsible for more than 54,000 jobs and over \$4 billion in wages. The list goes on – a continuous wave of job generation across every state in the union.

Then there are all the jobs that film and television productions are *indirectly* responsible for in a given community – the business activity that even one production’s bustling village of workers generates for local restaurants, clothing stores, hardware stores, coffee shops, and many more. Using the United States Bureau of Analysis’ [RIMS II economic model](#), the MPA calculates more than 155,000 such jobs in Georgia, more than 145,000 jobs in Florida, and more than 162,000 jobs in Texas.

There is no shortage of data supporting the incredible impact of the creative industries and the danger we face from piracy. But I hope that this submission helps demonstrate that what we do matters, that a robust and thriving creative industry benefits all of us, and that piracy is a terrible threat that we must work together to stop.

Ten years after making the decision to join CreativeFuture, I am more committed to protecting this industry than ever before.

Thank you for your consideration.

Sincerely,



Ruth Vitale
CEO, CreativeFuture