



**BEFORE THE  
U.S. INTERNATIONAL TRADE COMMISSION**

**Global Digital Trade I: Market  
Opportunities and Key Foreign Trade  
Restrictions**

**Investigation No. 332–561**

**COMMENTS OF THE COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to respond to the U.S. International Trade Commission’s (ITC) request for comments on *Global Digital Trade I: Market Opportunities and Key Foreign Trade Restrictions* as set forth in the Federal Register notice dated February 10, 2017.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

What unites these individuals and organizations is their reliance on copyright law to protect their freedom to pursue a livelihood and career based on creativity and innovation and to protect their investment in the creation and dissemination of copyrighted works for the public to enjoy. Copyright law is critical not only to their success and prosperity, but also the short and long-term success of the U.S. economy.

Copyright is a critical factor in the contributions of U.S. creative industries to the economy and to jobs. According to the most recent *Copyright Industries in the U.S. Economy* report,<sup>1</sup> the core copyright industries added \$1.2 trillion to the U.S. GDP and employed nearly

---

<sup>1</sup> Stephen Siwek, Int’l Intellectual Property Alliance, Copyright Industries in the U.S. Economy: The 2016 Report (2016).

<sup>2</sup> Julia Jenks, The Number of Online Services Continues to Expand, Benefitting Consumers and Creators, Motion Picture Association of America, <http://www.mpa.org/the-number-of-online-services-continues-to-expand-benefitting-consumers-and-creators/#.WOWFBdLyuUl>.

<sup>3</sup> Jennifer Adams, Andrew Bartels, Dave Bartoletti, and John R. Rymer, Forrester Data: Public Cloud Services

5.5 million men and women. These core copyright industries also contribute significantly to the U.S. trade balance. From a global perspective, sales of U.S. recorded music, television, video and motion pictures, software, newspapers, books and periodicals in foreign markets amounted to \$177 billion, which exceeds exports of major U.S. industries such as chemicals, aerospace, agricultural, electrical, and pharmaceuticals.

We submit the following comments to help the ITC appreciate the role of the copyright industries in the online ecosystem, the increasing availability and diversity of content online via legitimate channels, the threat caused by piracy to the digital marketplace, and the policy measures that impede the digital marketplace.

### **The Role of the Copyright Industries in the Online Ecosystem**

The Copyright Alliance embraces the internet as a powerful democratizing force for our world and for creative industries. We recognize its ability to inspire positive change and improve lives. We also embrace a strong copyright system that rewards creativity and promotes a healthy creative economy. The incredible cultural and economic value that the internet delivers to billions of users is based in very large part on the efforts of creative content makers whose livelihoods depend on being compensated for their efforts.

All creative sectors of the economy have long ago moved online, and are at the forefront of delivering news, entertainment, and information to consumers in cutting edge formats. In fact, the success of the internet and other new media is grounded largely in the availability of professionally created films and television programs, music, journalism, photographs, and other creative works. The internet itself has also benefited from technologies developed by and for the creative industries.

### **The Increasing Availability and Diversity of Content Online via Legitimate Channels**

It has been over two decades since the internet has become widely available, and with it, creators and innovators of all types have used it to bring a broad and diverse array of creative works to the general public. Nearly anything that can exist in a digital format, such as photography, music, audiovisual works, literary works, news and magazine articles, software and video games, and beyond, is available to users in a variety of formats and distribution channels, to access on a multitude of devices—when they want it, where they want it, and how they want it. Below is just a sample of the increasing availability and diversity of content online via legitimate channels.

**Film and television.** While theatrical releases of film and the distribution of television programs via broadcast and cable providers continues to remain strong, online distribution of these works grows in popularity. There are over 100 online services in the U.S. providing film

and television programs online, and close to 500 worldwide. The number of multi-territory services continues to grow, with “broad and expanding geographic coverage.”<sup>2</sup>

**Software and video games.** Cloud computing, where software applications and other services are delivered online rather than housed internally by a user, is, according to a 2016 Forrester Research report, “the biggest disruption in the tech market in the past 15 years”, and it continues to grow rapidly.<sup>3</sup>

Entertainment software companies have long embraced the internet for a wide variety of content. Along with offering online access to video games, downloadable game content, and features like online multiplayer gaming, many video game consoles also operate as general-entertainment portals, offering access to film and television shows, music, and other software applications. In 2016, the Entertainment Software Association reported that the U.S. video game industry generated more than \$30.4 billion in overall revenue, with consumers spending \$24.5 billion on software, downloadable content and subscriptions, up 6% from 2015.<sup>4</sup> In 2016, sales of digital content (including subscriptions, full digital download games, digital add-on content, mobile apps and social network gaming) outpaced sales of video game content in physical format, constituting 74% of total game sales.<sup>5</sup> In 2013, consumer spending on game content delivered in innovative formats stood at \$9 billion; by 2015, that number had reached \$11.2 billion.<sup>6</sup>

**Literary works.** The internet has provided publishers with increased flexibility in making their works available. Publishers are taking advantage of this flexibility by, for example, embedding multimedia, developing interactive courseware, improving functionality for the visually impaired, and embracing social media to connect authors to new audiences.

**News media.** In 2016, the Newspaper Association of America, the premier trade association for news publishers, changed its name to the News Media Alliance to highlight the news media industry’s evolution to multi-platform, digitally-savvy businesses and premium content providers. In the past three years, news audiences have grown 66% on mobile. The popularity and presence of online and mobile news is evidenced by that fact that 96% of

---

<sup>2</sup> Julia Jenks, The Number of Online Services Continues to Expand, Benefitting Consumers and Creators, Motion Picture Association of America, <http://www.mpa.org/the-number-of-online-services-continues-to-expand-benefitting-consumers-and-creators/#.WOWFBdLyuUl>.

<sup>3</sup> Jennifer Adams, Andrew Bartels, Dave Bartoletti, and John R. Rymer, Forrester Data: Public Cloud Services Forecast, 2016 To 2020 (Global), Forrester (Nov. 9, 2016), <https://www.forrester.com/report/Forrester+Data+Public+Cloud+Services+Forecast+2016+To+2020+Global/-/RES136524>.

<sup>4</sup> See the 2017 Essential Facts About the Computer and Video Game Industry, p. 15, available at <http://essentialfacts.theesa.com/mobile/>.

<sup>5</sup> See 2017 Essential Facts at p. 14.

<sup>6</sup> 2016 Essential Facts About the Computer and Video Game Industry, p. 12, *available at* <http://essentialfacts.theesa.com/Essential-Facts-2016.pdf>.

Millennial digital news readers get their news from mobile, and 36% of them only get their news from mobile.<sup>7</sup>

**Music.** Music has long been available online. In 2016, the RIAA reported that digital revenues of the U.S. music industry accounted for over three-fourths of total revenue.<sup>8</sup> Over half of all revenues came from streaming alone, a category that accounted for only 9% of the market in 2011.

**Scholarly Publishers.** Beginning in the 1990s, scholarly journal publishers have shifted to digital distribution of their articles. Since then, they have invested \$100s of millions in scanning, archiving and making digital versions of their articles accessible online.<sup>9</sup>

**Visual arts.** Photographs, illustrations, and other works of visual arts are ubiquitous online, and visual artists are on the forefront of using online tools and platforms to promote and distribute their work. To provide just one example of how visual artists are providing works online, in 2014, Getty Images, the largest U.S. stock photography agency, made 35 million of its images free to end users for noncommercial purposes through an embed tool that it had developed.<sup>10</sup>

## **The Threat that Piracy Poses to the Digital Marketplace and the Copyright Industries**

Despite the tremendous growth in legitimate online channels for copyrighted works, piracy remains a threat to the health of both the digital marketplace and the copyright industries. Individual livelihoods and corporate investments alike are jeopardized by relentless battles with blatantly infringing sites that steal the content, and redistribute it. Many of these sites profit handsomely from the work of artists and creators by monetizing it through payment systems, and subsidizing it by advertising. The effect of piracy is not just immediate; by reducing the ability for creators and innovators to earn a return on their investments, piracy makes it less likely for these individuals and companies to continue to invest in the creation of new works for the public to enjoy.

Research by Netnames in 2013 found that the problem of piracy continues to be “tenacious and persistent” and that “users of piracy ecosystems, the number of internet users who regularly obtain infringing content, and the amount of bandwidth consumed by infringing uses of

---

<sup>7</sup> Adam Lella, *The State of Mobile News Audiences in 3 Charts*, Comscore (July 8, 2016) <https://www.comscore.com/Insights/Blog/The-State-of-Mobile-News-Audiences-in-3-Charts>.

<sup>8</sup> Joshua P. Friedlander, *News and Notes on 2016 RIAA Shipment and Revenue Statistics*, Recording Industry Association of America, <http://www.riaa.com/wp-content/uploads/2017/03/RIAA-2016-Year-End-News-Notes.pdf>.

<sup>9</sup> Adam Mossoff, *How Copyright Drives Innovation: A Case Study of Scholarly Publishing in the Digital World*, <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1129&context=lr>.

<sup>10</sup> Olivier Laurent, *Getty Images Make 35 Million Images Free to Use*, *British Journal of Photography* (Mar. 5, 2014) <http://www.bjp-online.com/2014/03/getty-images-makes-35-million-images-free-in-fight-against-copyright-infringement/>.

content all increased significantly between 2010 and 2013.”<sup>11</sup> There is no reason to believe this trend has not continued since then.

### **The Policy Measures (or Lack of Policy Measures) that Impede the Digital Marketplace**

Copyright should protect creators from those who would use the internet to undermine creativity. The internet can be a great tool for creators just as it can be a tool for science, education, health care, and many other disciplines. However, when policy measures (or lack thereof) increase the threat of piracy and threaten legitimate channels of content, this can harm creativity, stifle freedom of expression, and impede growth in the digital marketplace.

The Copyright Alliance supports the inclusion of strong copyright protections in free trade agreements (FTAs). Such copyright provisions help to advance global norms that will hopefully expand economic and cultural opportunities in other countries and globally.

Effective copyright protections in conjunction with meaningful enforcement help protect creators and innovators from theft while incentivizing the creation of new creative works and stimulating the development of legitimate markets for creative works. The inclusion of such intellectual property standards in FTAs helps U.S. copyright industries participate and compete in foreign markets and spurs the growth of domestic creative industries in those markets. By helping the development of local creative industries in partner countries, the agreement opens opportunities for U.S. direct investment in those industries and benefits U.S. consumers by increasing cultural diversity.

Specifically, the Copyright Alliance supports building on the standards of existing U.S. FTAs that:

- Establish commitments for the protection and enforcement of copyrighted works.
- Include effective provisions on technological protection measures and rights management information.
- Clarify that the same rules for enforcement against physical goods apply online.

Private-sector voluntary agreements are also a critical tool for addressing online infringement. The Copyright Alliance has previously voiced support for the Intellectual Property Enforcement Coordinator to continue to facilitate, encourage and monitor these cooperative efforts to ensure effective approaches with timely follow-through.<sup>12</sup> Voluntary agreements are already in place to help prevent infringing sites from profiting off advertising revenues and using

---

<sup>11</sup> [Sizing the Piracy Universe: Summary](https://s3.amazonaws.com/www2.itif.org/panelists+powerpoints/2013-netnames-piracy-exec-summary.pdf), NetNames (Sept. 17, 2013), <https://s3.amazonaws.com/www2.itif.org/panelists+powerpoints/2013-netnames-piracy-exec-summary.pdf>.

<sup>12</sup> Comment from Copyright Alliance on the 2016 Joint Strategic Plan to the Intellectual Property Enforcement Coordinator, [http://copyrightalliance.org/wp-content/uploads/2016/08/draft\\_final\\_copyright\\_alliance\\_comments\\_-\\_ipeec\\_jsp.pdf](http://copyrightalliance.org/wp-content/uploads/2016/08/draft_final_copyright_alliance_comments_-_ipeec_jsp.pdf).

legitimate payment processors to process payments. In the past year, the Motion Picture Association of America announced partnerships with several domain name registries and registrars to identify large-scale pirate sites using those services and take appropriate action after investigation.<sup>13</sup> Given the success of these voluntary initiatives, we hope they can be built on and additional agreements can be reached with other vital stakeholders in the online ecosystem.

## **Conclusion**

We thank the International Trade Commission for the opportunity to comment and are happy to answer any further questions the Commission may have about our statement or provide any additional information it may find helpful.

Respectfully submitted,

Keith Kupferschmid  
Chief Executive Officer & President  
Copyright Alliance  
1331 H Street, NW, Suite 701  
Washington, D.C., 20005

---

<sup>13</sup> [Donuts and the MPAA Establish New Partnership to Reduce Online Piracy](http://www.donuts.domains/donuts-media/press-releases/donuts-and-the-mpaa-establish-new-partnership-to-reduce-online-piracy), Donuts (February 9, 2016) <http://www.donuts.domains/donuts-media/press-releases/donuts-and-the-mpaa-establish-new-partnership-to-reduce-online-piracy>; [Radix and the MPAA Establish New Partnership to Reduce Online Piracy](http://www.mpa.org/press/radix-and-the-mpaa-establish-new-partnership-to-reduce-online-piracy/), Motion Picture Association of America (May 13, 2016), <http://www.mpa.org/press/radix-and-the-mpaa-establish-new-partnership-to-reduce-online-piracy/>.