



POSITION PAPER

Harmonizing Penalties for Criminal Copyright Infringement

More and more, viewers and listening are switching to streaming audio and video rather than downloading files. But currently, criminal penalties for copyright infringement distinguish between offering a work for downloading and offering a work for streaming.

Criminal penalties for copyright infringement should be harmonized to remain technologically neutral

The Copyright Alliance supports aligning criminal penalties for infringement of the public performance right, currently at most a misdemeanor, with those for infringement of the reproduction and distribution, which can result in felony charges for willful and egregious infringement.

In just the last several years, streaming has become an even more vital business model for creative works. According to Recording Industry Association of America (RIAA), streaming services account for 27% of all U.S. music revenue. And streaming video subscriptions such as Netflix are projected to reach revenues of \$10 billion annually by 2018.

Given the increasing popularity of streaming, “misdemeanor penalties are simply not sufficient to deter large-scale infringers,” said Acting Deputy Assistant Attorney General David Bitkower on behalf of the Department of Justice in 2014. Other government officials have reiterated support for aligning criminal penalties in this fashion. In 2015, Register of Copyrights Maria Pallante told the House Judiciary Committee, “[w]hile Congress should carefully consider the operation of this amendment to ensure appropriate legal processes, there is no question that the change is warranted and overdue.” And in its 2013 Green Paper on copyright policy, the Department of Commerce’s Internet Policy Task Force said, “The lack of potential felony penalties for criminal acts of streaming disincentivizes prosecution and undermines deterrence.”

Although criminal enforcement of copyright infringement is a small portion of federal law enforcement overall, the presence of criminal penalties plays a significant role in deterring willful and egregious infringement. Those criminal penalties should thus reflect the realities of how that infringing conduct is occurring.