



**BEFORE THE
FEDERAL TRADE COMMISSION**

**Competition and Consumer Protection in
the 21st Century Hearings**

Project No. P181201

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the Federal Trade Commission’s invitation for public comments regarding its hearings on competition and consumer protection in the 21st century. Our comments specifically address the topic of the role of intellectual property and competition policy in promoting innovation.

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.

The economic premise of copyright is that protecting property rights in creative and expressive works will promote innovation. This premise is reflected in the language of the Constitution itself, which provides Congress the authority “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” And it is the working premise of this Commission. In its *Antitrust Guidelines for the Licensing of Intellectual Property*, along with the Department of Justice, the FTC explained how intellectual property and antitrust law work toward the same goals:

The intellectual property laws provide incentives for innovation and its dissemination and commercialization by establishing enforceable property rights for the creators of new and useful products, more efficient processes, and original works of expression. In the absence of intellectual property rights, imitators could more rapidly exploit the efforts of innovators and investors without providing

compensation. Rapid imitation would reduce the commercial value of innovation and erode incentives to invest, ultimately to the detriment of consumers. The antitrust laws promote innovation and consumer welfare by prohibiting certain actions that may harm competition with respect to either existing or new ways of serving consumers.

All sectors that rely on copyright have seen—and continue to see—great transformations due to evolving business practices and new technologies. The one constant, however, is the importance of robust and meaningful copyright protections. Indeed, copyright protection becomes even more important as consumers shift from business models built around ownership of physical goods to business models built around access to copyrighted works in digital formats.

Piracy is the antithesis of competition, and it remains a persistent problem for most types of copyrighted works. Established channels of piracy, such as peer-to-peer and cyberlockers, remain popular,¹ while emerging threats such as illicit set top boxes and streamripping services gain ground. An estimated six percent of North American homes have a Kodi set top device configured to access pirated content,² and one consumer survey finds that over one third (35 percent) of all internet users accessed infringing music via stream-ripping in the past three months, which rises to 53 percent of internet users using such services among 16-24 year olds.³ Addressing piracy requires a combination of civil and criminal enforcement, cooperative voluntary measures between copyright owners and third parties, and providing attractive legal options for enjoying copyrighted works.

The harm piracy causes copyright owners and creators is well-established, but it causes harm to distributors of content and platforms as well.⁴ The availability of pirated works lowers the demand for legitimate services and unduly reduces the price they can set. The inability to continue to invest in the creation and distribution of the type of copyrighted works demanded by consumers ultimately harms consumers by reducing the supply of new works and impairing innovation in the distribution of works.⁵ In addition, there is a significant correlation between piracy channels and the spread of malware, scams, and other forms of fraudulent and harmful content.⁶ Finally, piracy removes the ability to produce high-quality and high-value content as a

¹ See, e.g., *Global Movie and TV Piracy on the Rise as Web Video Piracy Growth Adds to Peer-to-Peer Piracy*, Irdeto, August 7, 2018, <https://irdeto.com/news/global-movie-and-tv-piracy-on-the-rise-as-web-video-piracy-growth-adds-to-peer-to-peer-piracy.html>.

² Sandvine, *Spotlight: Subscription Television Piracy* (2017), <https://www.sandvine.com/hubfs/downloads/archive/2017-global-internet-phenomena-spotlight-subscription-television-piracy.pdf>.

³ IFPI, *Connecting With Music: Music Consumer Insight Report* (Sept. 2017), <http://www.ifpi.org/downloads/Music-Consumer-Insight-Report-2017.pdf>.

⁴ Brett Danaher, Michael D. Smith, Rahul Telang, *The Truth About Piracy*, Technology Policy Institute, Feb. 2, 2016, <https://techpolicyinstitute.org/2016/02/02/the-truth-about-piracy/>.

⁵ Brett Danaher, Michael D. Smith, Rahul Telang, *Piracy and the Supply of New Creative Works*, Technology Policy Institute, Feb. 16, 2016, <https://techpolicyinstitute.org/2016/02/16/piracy-and-the-supply-of-new-creative-works/>; Brett Danaher, Michael D. Smith, Rahul Telang, *How Piracy Can Hurt Consumers*, Technology Policy Institute, Dec. 6, 2017, <https://techpolicyinstitute.org/2017/12/06/how-piracy-can-hurt-consumers/>.

⁶ Michael D. Smith & Rahul Telang, *Piracy and Malware: There's No Free Lunch*, Technology Policy Institute, March 13, 2018, <https://techpolicyinstitute.org/2018/03/13/piracy-and-malware-theres-no-free-lunch/>; Digital Citizens Alliance, *Digital Bait: How Content Theft Sites and Malware are Exploited by Cybercriminals to Hack into*

competitive advantage. It also removes pricing as a competitive advantage, since the marginal cost of piracy approaches zero. The result is a “winner-takes-all” market.

Conclusion

We thank the Federal Trade Commission for the opportunity to comment on these issues, and we are happy to answer any further questions the Commission may have about our statement or provide any additional information it may find helpful and ask the FTC to please keep us apprised of upcoming activities relating to this. We look forward to submitting more detailed comments and participating in the hearing on this topic.

Respectfully submitted,

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