



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**DEC 27 2019**

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

The Honorable Christopher A. Coons  
United States Senate  
Washington, DC 20510

Dear Senator Tillis and Senator Coons:

This responds to your letter to the Attorney General dated June 18, 2019, regarding the issue of illicit streaming. Thank you for your continued efforts to ensure effective protections for intellectual property and to protect against counterfeit products, copyright piracy, and other forms of Intellectual Property (IP) crime.

The Department of Justice (Department) shares your concerns about the rapid growth of unauthorized streaming of copyrighted content and recognizes the significant economic implications illicit streaming has for content creators and copyright owners. As the Department noted in its most recent report to Congress pursuant to the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO IP Act), the Department continues to prioritize IP investigations and prosecutions that involve large scale commercial counterfeiting and online piracy, which includes a focus on significant online piracy committed by sites that offer and profit handsomely from illicit streaming, as well as the software applications and devices being sold to facilitate these pirate sites.

As you note in your letter, current criminal copyright laws provide felony penalties only for infringements involving the exclusive rights of "reproduction" and "distribution." Because the act of streaming implicates the "public performance" right, existing statutes provide at most misdemeanor penalties for illicit streaming, regardless of the volume or value of infringing content that is streamed or the economic damage that may result. Although many large commercial internet sites are engaging in illicit streaming that clearly constitutes copyright infringement, and thus would be actionable civilly, the lack of felony penalties for streaming makes it more difficult for the Department to combat the growth in illicit streaming sites through criminal prosecution.

The Department has sought to use all available legal tools to pursue the operators of illicit streaming operations where possible and appropriate. Some operators of illicit streaming sites engage in large-scale infringement involving making or distributing copies as well as streaming. In some such cases, the Department has been able to charge felony criminal copyright infringement on the basis of infringement reproduction and distribution rights, or pursue conspiracy charges related to a broader criminal infringement scheme. Some illicit streaming enterprises engage in other criminal activity such as money laundering and racketeering, for which the Department can bring additional criminal charges. Apart from criminal prosecutions, the Department may also pursue *in rem* actions against the proceeds of criminal infringement and the property used to commit it, including seizure and forfeiture of domain names. An example of these tools in action is the Department's ongoing case against Megavideo and its operators. At one time the Megavideo site was one of the largest providers of pirated video content via streaming. It also reproduced and distributed infringing copies of video content using its servers in the United States and elsewhere, thus providing a basis for charging felony copyright infringement and seizing and forfeiting Megavideo's domain names. The Megavideo defendants' conduct also included money laundering and racketeering activity, providing the basis for additional charges. The indictment of Megavideo's operators and seizure of its servers resulted in a significant, albeit temporary, drop in the volume of pirated video content on the internet.

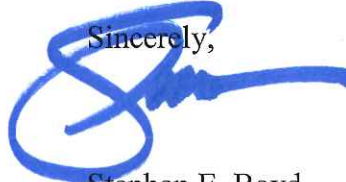
Unfortunately, under existing statutes it is not always possible to charge the operators of illicit streaming sites with felony copyright infringement even where the value of infringement and associated profits are enormous. In some such cases, where the conduct of defendants in providing or facilitating access to infringing content via streaming has been comparatively minor, the Department has charged misdemeanor copyright infringement. However, misdemeanor penalties may fail to reflect the seriousness of the illegal activity in such cases and may be insufficient to deter the operators of such sites, who can reap enormous profits from providing illicit streams of pirated content.

The current criminal copyright statute that limits felony penalties to infringements involving the "reproduction" and "distribution" rights was enacted almost 30 years ago, before the rise of commercial use of the internet, at a time when the most serious forms of copyright piracy involved physical copies of music, movies, and software on magnetic tapes, floppy discs, or the recent technology gaining in popularity at the time – the Compact Disc. Digital delivery has long since supplanted distribution of physical media as the dominant method of delivering copyrighted content, both for legitimate services and pirated ones, and the Department continues to monitor the development of new technologies as they arise.

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The Department appreciates your interest in this issue, and would welcome the opportunity to work with you on these and related matters moving forward. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Boyd", with a large, stylized initial "S" that loops around the first part of the name.

Stephen E. Boyd  
Assistant Attorney General