



**BEFORE THE
U.S. PATENT AND TRADEMARK OFFICE**

**Development of a National Consumer Awareness
Campaign on Combating the Trafficking in
Counterfeit and Pirated Products**

Docket No. 2021-02724

COMMENTS OF THE COYPRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit the following comments to the U.S. Patent and Trademark Office (USPTO) in response to its [Notice of Inquiry](#) (NOI) seeking information from stakeholders on the “Development of a National Consumer Awareness Campaign on Combatting the Trafficking in Counterfeit and Pirated Goods” as a public-private partnership.

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.

One of the goals of the Copyright Alliance is to educate all stakeholders on the value of copyright and the risks associated with copyright infringement. Our website includes a wealth of background materials on copyright laws and regulations, resources for both copyright owners and users of copyrighted works, as well as videos and frequently asked question (FAQ) pages dedicated to cultivating a better understanding of copyright. Our policy team regularly blogs

about newsworthy copyright developments and speaks to audiences all over the country on a wide range of important issues. We constantly engage with creators, copyright owners, consumers, groups representing online service providers, libraries and users, and other stakeholders, as well as regulatory agencies, law enforcement agencies, and lawmakers to work towards solutions to enduring piracy threats. We have initiated ongoing social media messaging and communications campaigns geared toward educating the public on the dangers of piracy, as well as what to avoid online (and what to not purchase) to help consumers remain safe from malware, identify theft, fake goods, and pirated materials. While these efforts and resources go far to educate stakeholders and the public, we believe that more coordinated campaigns and partnerships led by federal, state and local governments under the guidance of the USPTO and U.S. Copyright Office would help to reach a broader audience and ensure all consumers are aware of the dangers and harms associated with copyright infringement and other forms of intellectual property theft.

At its core, copyright protection fuels the creation and distribution of books, music, movies, television shows, computer software, video games, newspapers and magazines, works of visual art, and countless other works of authorship that consumers enjoy on a daily basis. Not only does copyright incentivize the creation of these works and allow copyright owners to commercialize them in the market, it also ensures that works reach consumers through legitimate channels and in the manner and form intended by the copyright owner. While the growth of the internet over the last twenty-five years has revolutionized the way that creative works are legally made available and reach their intended audience, it has also facilitated massive amounts of copyright infringement that harms creators, copyright owners, and consumers. Global online piracy of copyright protected works results in billions of dollars of economic losses each year, hundreds of thousands of lost jobs, and immeasurable harm to the safety of consumers through the spread malware, phishing scams, and identity theft.¹ Piracy subsists in part due to the fact that many consumers simply don't understand the dos and don'ts of accessing copyrighted works online, and we firmly believe that online infringement and its related harms could be greatly reduced if consumers were better educated on the law and the harms caused when individuals flout the law.

As people around the world have been forced to quarantine at home for extended

¹ Impacts of Digital Video Piracy on the U.S. Economy, GLOBAL INNOVATION POLICY CENTER (June 2019), available at: <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>

periods in response to the COVID-19 pandemic, there's been an increased demand for easily accessible entertainment through streaming video and music services, eBook and audiobook platforms, video game portals, and many other digital resources, and the copyright industries have risen to the challenge. The Copyright Alliance website has a compilation of numerous educational materials and resources copyright owners have offered in response to the pandemic, as well as links to countless legal entertainment options for consumers.² But even with the myriad of legitimate content and services now available, the pandemic has resulted in more people turning to illicit services to access pirated content, and sharp increases in pirate site traffic have been reported around the world.³ With entire creative industries at a standstill due to covid-related restrictions, it is absolutely crucial that consumers are aware of the lasting harms caused by online infringement to creators and to themselves and the importance of copyright law and legitimate content to the resurgence of the U.S. economy and employment.

In recognition of this enduring threat to global creative ecosystems and the public, the Copyright Alliance supports the establishment of a national consumer awareness campaign in which stakeholders work together hand-in-hand with the federal, state and local governments to educate consumers on the importance of strong intellectual property protection, the direct and indirect costs and risks of counterfeit and pirated goods, and how to distinguish between legal and illegal activity online. Importantly, we urge the USPTO to engage with copyright owners and online service providers (OSPs), especially social media companies, which are often in the best position to engage with their users, to develop agreed-upon, straightforward, and uniform education materials. We offer the following information in response to the specific topics listed in the USPTO notice.

(1) Educational curricula identifying direct and indirect harms associated with sales of counterfeit and pirated products

Educating the public on the risks and harms associated with copyright infringement and the distribution of pirated works is critical to maintaining a vibrant creative ecosystem in which the

² *Resources from Creative Community to Ease Coronavirus Impact*, THE COPYRIGHT ALLIANCE, available at: <https://copyrightalliance.org/trending-topics/resources-from-creator-copyright-community-to-ease-coronavirus-impact/>

³ Thomas Pholnikorn, *Online movie piracy increases during pandemic*, THE SUFFOLK JOURNAL (Sept. 22, 2020) (citing data from MUSO, a digital piracy data collection company, that showed a 33% rise in online piracy worldwide and a 45% increase in the United States).

rights and interests of all stakeholders are protected. Unfortunately, online copyright infringement is still considered by some to be a “victimless” crime. While nothing could be further from the truth, the harmful repercussions of intellectual property theft are often difficult for consumers to comprehend because of a lack of awareness of how creative industries operate and how they rely on copyright protection to recoup losses and fund future endeavors.

When most people think of copyright, they conjure up images of Hollywood celebrities and large movie studios, but copyright protection is crucial to so many more organizations ranging from book, magazine, and newspaper publishers to software and video game companies. Then there are the host of organizations we represent on copyright issues whose reliance on copyright law may not be as apparent—whether it’s a sports league that energizes fans across the country, or an innovative software development company. And, of course, there are the millions of individual creators, throughout the United States who rely on copyright to make a living that enables them to pay their bills and put food on the table. Understanding how copyright supports livelihoods and creative endeavors, from the largest movie studio down to the individual artist, is imperative for consumers to truly appreciate the harms of piracy.

In addition to threats to the greater copyright community, consumers often do not appreciate the risks to their own personal safety and privacy that come with consuming pirated content over the internet until it is too late. The Copyright Alliance, along with its members, engages in continual efforts to educate the public on the risks and harms associated with copyright infringement and pirated material. Available on the Copyright Alliance website are numerous reports, articles, blogs, studies and other resources intended to educate stakeholders and the public on copyright law, the operation of the copyright industries, and the harms associated with piracy.⁴ Organizations like the [Digital Citizens Alliance \(DCA\)](#), which is a consumer-focused group dedicated to raising awareness about internet safety issues, regularly publish investigative reports and educational materials that should be included in any curricula developed by the USPTO. The DCA has conducted extensive studies on the security threats to consumers that accompany use of piracy apps and devices. According to a recent DCA report, of the millions of Americans who now conduct sensitive or confidential work from home as a result of the pandemic, those who have piracy devices and apps in the home are three times more likely to report an issue with malware than those

⁴ See generally, www.copyrightalliance.org.

who didn't have such apps or devices in the home.⁵ The report explains that the pandemic has presented hackers with a "golden opportunity" to mine personal computers and devices for sensitive information and that most Americans are unaware that accessing pirated material or using illicit devices greatly increases their exposure to serious security risks.

In light of increases in piracy and threats to consumers during the pandemic, we believe that more work must be done by internet platforms and service providers who earn massive profits through online commerce and content delivery and whose networks are exploited by those who traffic in pirated works. While there are ongoing efforts to update the Digital Millennium Copyright Act (DMCA), educational campaigns intended for users of online services and platforms would help increase awareness of copyright law and the harms associated with piracy. We urge the USPTO to engage directly with OSPs to establish awareness campaigns directed to users of their services, but it is essential that educational materials be developed with the assistance and approval of the copyright community. Educational campaigns are only effective when they incorporate accurate information. As such, the development of materials and messaging, as well as the establishment of a plan for implementation of the campaign, must be done with input and approval of all stakeholders and be subject to final approval by the USPTO.

(2) Strategies to ensure consumers make informed purchasing decisions

The covid-19 pandemic has seen more and more consumers turn to online markets for a wide variety of goods. Quarantining at home for extended periods of time has also meant more time spent streaming television shows, movies, and sporting events, reading books, playing video games, and consuming content of all kinds over the internet. As referenced above, in the midst of the pandemic the Copyright Alliance created a comprehensive webpage which directs consumers to dozens of legitimate entertainment options and provides a host of educational material on the value of copyright and the harms of piracy.⁶ But while there is a wide array of legitimate services available to consumers at competitive prices, illicit pirate services continue to saturate the market, devalue copyrighted works, and threaten consumer safety and privacy. Due to the sleek design and

⁵ COVID-19 Lockdown and Piracy: A Toxic Combination for Cybersecurity, Digital Citizens Alliance Research Finds, DIGITAL CITIZENS ALLIANCE (February 23, 2021); <https://www.digitalcitizensalliance.org/news/press-releases-2021/covid-19-lockdown-and-piracy-a-toxic-combination-for-cybersecurity-digital-citizens-alliance-research-finds/>

⁶ Copyright Alliance, *supra* note 2.

deceptive advertising of illicit content delivery services, many consumers don't realize they are fueling dangerous criminal operations and exposing themselves to a number of threats to personal privacy and sensitive information. It is therefore essential that consumers are educated and aware of the piracy landscape so that they can make informed decisions that result in access to safe and legitimate content.

The Copyright Alliance website features numerous resources that help consumers access content legally. Annually, the Copyright Alliance posts an article during the height of the holiday shopping season to spread awareness about piracy and counterfeit goods and to provide measures consumers should take to remain safe and healthy during a pandemic.⁷ Knowing the warning signs of pirated goods that masquerade as legitimate products is incredibly important for consumers to stay safe from malware attacks that can result in criminals gaining access to consumer financial information and engaging in identity theft. In addition to the many recommendations and resources provided, the article directs readers to another report by the DCA that includes examples of illicit online activities and the dangers they pose to consumers.⁸ We recommend that the USPTO consult these materials and work with members of the copyright community to establish strategies for educating consumers on safe and informed purchases.

(3) Public service announcements targeted to social media users

Social media platforms now dominate many internet users' entire online experience. Because of the reach of these social media platforms, it is imperative that they do more to educate their users on the harm and risks associated with online piracy through unambiguous and carefully developed messaging. But educating a user base shouldn't be something that only one type of online service provider does. Any platform or service that deals in the sale of products or consumption of content should make awareness of the risks and harms associated with piracy and counterfeit goods a priority. Whether it's a user generated content site like YouTube, e-commerce websites like eBay or Etsy, or a social media platform like Facebook, effective educational campaigns are critical to protecting consumers and copyright owners. Social media platforms and all OSPs should work with

⁷ *Copyright Alliance Offers Safe Holiday Shopping Tips for 2020 Gift-Giving Season*, THE COPYRIGHT ALLIANCE (Nov. 17, 2020), available at: <https://copyrightalliance.org/press-releases/copyright-alliance-offers-safe-holiday-shopping-tips-for-2020-gift-giving-season/>

⁸ *Digital Bait: How Content Theft Sites and Malware are Exploited by Cybercriminals to Hack into Internet Users' Computers and Personal Data*, DIGITAL CITIZENS ALLIANCE (Dec. 2015), available at: <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>

the USPTO and the copyright community to develop and implement meaningful educational measures and awareness campaigns. Even if an online service provider or social media platform doesn't engage directly in online commerce or content sharing, their services are often used by bad actors to advertise illicit services or counterfeit goods. Therefore, social media platforms and all online service providers should work with organizations such as the [Trustworthy Accountability Group \(TAG\)](#) to increase transparency in digital advertising and ensure that users are aware of the tactics used by piracy operations to advertise and promote their services.

(4) Methods to identify false and misleading information on e-commerce pages

Identifying false and misleading information on e-commerce services and online marketplaces like eBay and Etsy is critical to protect consumers and combat the sale and consumption of pirated and counterfeit goods. Simple measures can help consumers stay vigilant when visiting not just e-commerce websites, but any online service where products and services are offered or advertised, including social media platforms. To assist consumers in recognizing false and misleading information when making online purchases and consuming content online, the Copyright Alliance provides the following tips:

- If a product price seems too good to be true, it probably is. Be careful about extreme bargains on software, movies, music, etc.
- Beware of services, especially IPTV (internet protocol television) providers, that advertise by using slogans like “never pay for cable again” or “watch the latest movies for free”
- Only purchase products from [secure online sites](#) to protect your credit card information and identity.
- When reviewing product packaging, simple things like spelling errors, blurry text and images or poor print quality can help you identify illegal (or questionable) products.
- Purchase products from reputable stores (brick-and-mortar or online), or directly from the copyright owner's website.
- When downloading apps, it's safest to do so from vetted sources (such as iTunes or Google). But if you download an app through a third-party source, there's a good chance it may be infected with malware — particularly [video streaming apps](#).
- When in doubt about whether a product is legitimate, don't shop, click or give out your information. Instead, do further research before making your purchase.

In addition to these consumer tips, the Copyright Alliance website [provides links](#) to a number of resources and reports that can help consumers identify dangerous and illegal services and guide them towards safe and legal online markets. We recommend that the USPTO explore partnerships with the organizations that produce these materials, including the Digital Citizens Alliance, the

Chamber of Commerce’s Global Innovation Policy Center, the National Cybersecurity Alliance, and individual copyright industry companies in order to coordinate effective awareness campaigns.

(5) Alerts for high-risk products and automated warnings describing health impacts

While there have been documented instances of piracy devices and pirated material posing direct health risks to consumers, these occurrences are atypical. The risks to consumers associated with copyright infringement and online piracy mostly involve hacking and malware attacks, identity theft, and the compromise of personal and otherwise sensitive data and information.

(6) “Red flag” indicators for suspicious listings on e-commerce platforms

See response to topic (4)

(7) Incentives to empower consumers to participate in monitoring, detecting, and informing platforms and users of counterfeits

While this topic appears to be directed to counterfeits, we will answer from the copyright/piracy perspective. We do not believe that ordinary consumers should be incentivized or empowered to monitor for or detect infringement. That should be left up to those more skilled and who have the tools to detect infringement. However, we do support teaching consumers how to report instances of piracy to copyright owners. The Copyright Alliance [website](#) provides information on reporting piracy to a copyright owner, including links to copyright industry company webpages where anyone can report specific instances of piracy.

Respectfully submitted,

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