



December 13, 2023

The Honorable Darrell Issa
Chair
Subcommittee on Courts, Intellectual
Property, and the Internet
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Henry Johnson
Ranking Member
Subcommittee on Courts, Intellectual
Property, and the Internet
U.S. House of Representatives
2240 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa, Ranking Member Johnson, and members of the Subcommittee,

We write today to thank you for holding the hearing on *Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators* and to submit for the record this letter outlining our positions on various issues related to copyright and digital piracy. We also thank the Subcommittee for its attention to the significant copyright implications surrounding piracy in the digital age. As the only organization in the United States representing the entire creative community on copyright law issues, we stand ready to assist your efforts to ensure the concerns of America's creators and copyright owners are effectively addressed.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 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.

Copyright antipiracy strategies over the last twenty-five years have been largely based on the provisions of the Digital Millennium Copyright Act (DMCA), which amended U.S. copyright law in 1998 to address the relationship between copyright, new digital technologies, and the internet. At the outset, section 512 seemed to have achieved Congress's purpose, but a quarter century later technological changes, court rulings, and other unanticipated changes in the online environment have rendered it less effective, creating an ecosystem where ongoing mass piracy is an unfortunate and regular occurrence, and online infringement has increased exponentially and grown in sophistication, causing widespread harm to the economic and creative vibrancy of the copyright community.

Illicit piratical websites remain a significant concern among copyright owners, as jurisdictional roadblocks that make it difficult to address pirate sites outside the United States, combined with section 512's shortcomings, continue to frustrate efforts to hold pirate site operators accountable. In response to the United States Trade Representative's (USTR) request for comments identifying online and physical markets to be included in the 2023 Review of Notorious Markets for Counterfeiting and Piracy, organizations representing copyright owners identified numerous online markets that engage in or facilitate substantial copyright piracy that infringes on U.S. intellectual property. In the music space, the Recording Industry Association of America (RIAA) identified stream-ripping sites like Ssyoutube and music download/streaming sites like Newalbumreleases that continue to damage the music industry.¹ The Motion Picture Association (MPA) detailed the growing threat of illegal internet protocol television (IPTV) services that provide on-demand infringing film and episodic content to a global audience via dedicated web portals, third-party applications, and piracy devices configured to access the service.² Finally, the Association of American Publishers (AAP) identified online sites that traffic in infringing copies of books and journal articles, including Sci-hub.se and Libgen.rs, which illegally target university websites in the US and elsewhere.³

The examples above are just a few of the many illicit websites and services identified by copyright owners during the latest USTR review of notorious markets. In addition to these forms of piracy, copyright owners are beginning to experience online infringement issues related to the unauthorized use of copyrighted works for the development of generative artificial intelligence (AI) systems. A number of recently filed lawsuits allege that leading AI developers use datasets to train their AI models that contain unauthorized versions of hundreds of thousands of literary works, many of which are scraped from notorious "shadow library" piracy websites like Library Genesis (aka LibGen), Z-Library (aka Bok), Sci-Hub, and Bibliotik.⁴ While these and similar large-scale rogue websites have harmed copyright owners for years, the problem is compounded by AI developers that scrape and ingest the stolen copyrighted materials to "train" generative AI models.

To ensure that copyright owners and creators are able to effectively address piracy in the digital age, we highlight five piracy related issues that need to be addressed by those responsible for making copyright laws and policies and those responsible for enforcing them.

¹ See Recording Industry Association of America (RIAA) Comments on USTR Request for Comments 2023 Special 301 Out-of-Cycle Review of Notorious Markets (Oct. 6, 2023), <https://www.regulations.gov/comment/USTR-2023-0009-0019>.

² See Motion Picture Association (MPA) Comments on USTR Request for Comments 2023 Special 301 Out-of-Cycle Review of Notorious Markets (Oct. 6, 2023), <https://www.regulations.gov/comment/USTR-2023-0009-0015>.

³ See Association of American Publishers (AAP) Comments on USTR Request for Comments 2023 Special 301 Out-of-Cycle Review of Notorious Markets (Oct. 6, 2023), <https://www.regulations.gov/comment/USTR-2023-0009-0020>.

⁴ Tremblay et al v. OpenAI, Inc. et al. (N.D. Ca.), Silverman v. OpenAI (N.D. Ca.), Silverman v. Meta (N.D. Ca.).

- To keep pace with the evolving challenges of piracy in the digital age, and the antipiracy strategies of a large and growing number of countries around the world, the United States should implement a no-fault injunction system to protect the rights of copyright owners by allowing for the suspension or elimination of access to large-scale commercial pirate sites in a manner that includes safeguards to protect the interests of consumers and the public.
- Although section 512(c) requires OSPs to remove content “expeditiously” upon receiving a takedown request, the statute does not set a floor for what constitutes “expeditious” and many online service providers (OSPs) take many days or weeks to remove an infringing piece of content from their platforms. At the very least, the term “expeditiously” should explicitly require immediate or “near instantaneous” takedowns for live, unpublished, pre-release and newly released content.
- Criminal penalties must reflect the realities of how piracy is occurring. The presence of meaningful criminal penalties plays a significant role in deterring willful and egregious infringement. The Copyright Alliance urges further utilization of the Protect Lawful Streaming Act, and as necessary, supports continued updates to the law to harmonize and strengthen copyright enforcement.
- The development and implementation of effective standard technical measures (STMs) for the protection and identification of copyrighted works online are critical components to combatting infringement in the digital age and realizing Congress’s intent in enacting section 512(i) of the Copyright Act.
- The indiscriminate mass scraping of the internet by AI developers and those creating datasets for the ingestion or “training” of AI systems inevitably involves both scraping copyrighted content from piratical websites and services and scraping content behind firewalls intended only for authorized consumers in a manner that violates section 1201.⁵

The copyright community stands ready to work with Congress, the Copyright Office, the Administration, and other stakeholders to address these five issues and others related to copyright and online piracy. We would like to once again thank the Subcommittee for holding this hearing and ask that as the Subcommittee ponder legislative or other actions, that you keep the creators whose work enriches our lives at the forefront of your minds.

Sincerely,



Keith Kupferschmid
CEO
Copyright Alliance

⁵ Kevin Schaul, Szu Yu Chen, and Nitasha Tiku, *Inside the Secret List of Websites that Make AI like ChatGPT Sound Smart*, WASHINGTON POST (April 19, 2023), <https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>.