



**STATEMENT OF MICHAEL P. O'LEARY,
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ON BEHALF OF
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

BEFORE THE HOUSE JUDICIARY COMMITTEE

**HEARING REGARDING
H.R. 3261, THE "STOP ONLINE PIRACY ACT"**

**RAYBURN HOUSE OFFICE BUILDING, ROOM 2141
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The Film and Television Industry and Its Contribution to the U.S. Economy

Chairman Smith, Ranking Member Conyers, and members of the Committee, thank you for holding this hearing regarding H.R. 3261, the Stop Online Piracy Act, an important new bill to protect jobs and the economy by taking action against foreign rogue websites and illegal cyberlockers that traffic in stolen creative works.

I appreciate the opportunity to testify on behalf of the Motion Picture Association of America, Inc.¹ and its member companies regarding the impact of this illicit activity on our business and the livelihoods of those who work in our industry, and how H.R. 3261 will help address this challenge.

¹ The Motion Picture Association of America and its international counterpart, the Motion Picture Association (MPA), serve as the voice and advocate of the American motion picture, home video and television industries, domestically through the MPAA and internationally through the MPA. MPAA members are Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

Fundamentally, this is about jobs. The motion picture and television industry supports more than two million American jobs in all 50 states. The 20 states and Puerto Rico represented by this Committee are home to 1.7 million American jobs supported by the motion picture and television industry, including more than 525,000 direct motion picture and television industry jobs. About 12 percent of those are directly employed in motion picture and television production and distribution, jobs paying an average annual salary of nearly \$79,000. Those are not just the people whose names you see on the marquee in front of the theater – they’re the hard-working people behind the scenes, from the carpenter who built the set, to the costumer and make-up artist who helped bring each character to life, to the Foley artist who created the sound effects. They are people like Dan Lemieux, a stunt coordinator in Michigan, who depends on the residual payments he earns to help support his wife and three children between productions. Dan was the stunt coordinator for the “Ides of March” and has done stunts for television programs like “Charmed”, “Nip/Tuck” and “the Shield.

Our industry also includes more than 95,000 small businesses across the country that are involved in the production and distribution of movies and television, the vast majority of which employ fewer than 10 people. These are businesses like Fletcher Camera & Lenses in Chicago, whose full-time staff of 25 employees works to provide equipment for film, television, and commercial productions in the Midwest.

And beyond even these are the hundreds of thousands of other businesses that every year provide services to productions, like the local drycleaner that served the cast and crew on location or the local hardware store that supplied paint and lumber. For example, Budecke’s Paints & Decorating of Baltimore, Maryland, a fifth-generation family-owned and-operated retailer, which has supplied paint for virtually every major production filmed in the area in recent years. The motion picture and television industry made \$38.9 billion in payments to more than 208,000 such businesses in 2009. On average, a major motion picture shooting on location contributes \$225,000 every day to the local economy.

Every day, these people go to work to create a product – one of our country’s most creative, most innovative, most widely-recognized and most beloved products. And every day, over and over, that product is stolen, sometimes with nothing more than the click of a mouse. To these men, women, and their families, online content theft means declining incomes, reduced health and retirement benefits, and lost jobs. This rampant theft cannot continue, and the Stop Online Piracy Act will help accomplish that goal.

Websites Trafficking in Stolen Digital Content Create Consumer Confusion, Harm the Legitimate Marketplace and Damage Our Industry

Let me make one thing very clear at the outset. In recent weeks, Mr. Chairman, you and your colleagues have heard a great deal from those who suggest this bill, and our efforts to fight online theft, will “break the Internet” or harm legitimate online social media platforms and Internet services. Nothing could be farther from the truth.

When someone turns on a cell phone or a computer or a gaming system, often their purpose is to watch a movie or a TV show. The Internet and related digital distribution systems are a critically important avenue for growth for our industry, and every day, we are pursuing even more new and innovative ways to deliver our content to our consumers. Compromising those opportunities would hurt us, our partners, and our customers. What you have understood so clearly, Mr. Chairman, and what the Stop Online Piracy Act reflects, is the very great difference between that legitimate marketplace and the illicit sites and services that are dedicated to the theft of copyrighted works.

Currently, the most pernicious forms of digital theft occur through the use of so-called “rogue” websites or cyberlockers. These platforms – I will refer to them today as “rogue sites” for simplicity – facilitate the illegal distribution of copyrighted works through many different forms, including streaming, downloading, or linking to another site or service offering unauthorized content.

These rogue sites, whose content is hosted and whose operators hide around the world, are increasingly sophisticated in appearance and take on many attributes of legitimate content delivery sites, creating additional enforcement challenges and feeding consumer confusion. Many rogue sites accept credit cards or “e-wallet” alternatives to facilitate payments, display advertising for mainstream, blue-chip U.S. companies, and offer rewards programs for frequent purchasers. In addition, these often legitimate-looking websites expose consumers to criminals, who routinely collect personal and financial information from unsuspecting targets, subjecting those consumers not only to fraud and deceit, but also to identity theft and other harms.

The proliferation of these rogue sites undercuts the legitimate market for filmed entertainment and thus the financial support for future film and television

production, threatening earnings and jobs throughout the U.S. Even major motion pictures newly in theaters appear on these rogue sites just days, if not hours, after their theatrical release – exploited for profits by thieves who did not work, took no risk, and invested no resources in the production of those films.

Furthermore, legitimate companies that want to invest in and develop new and innovative business models centered around high-quality online content and greater consumer choice have a limited potential for growth when they are forced to compete with entities that are distributing the exact same content through illicit means. That is not innovation – it is theft.

Some who oppose this bill claim that the Digital Millennium Copyright Act (DMCA) is sufficient to combat online theft. As you know, Mr. Chairman, the DMCA created a model whereby rights holders may notify a website containing infringing content and ask that it be removed. And where these sites are legitimate and make good faith efforts to respond to our requests this model works with varying degrees of effectiveness. It does not, however, always work quickly, and it is not perfect, but it works.

But the rogue websites and cyberlockers I have just described are not legitimate. They do not act in good faith. They do not comply with DMCA requests, because their purpose is to traffic in stolen content. And when they are based overseas, they can simply thumb their noses at U.S. law.

Criminals are not standing still, and if our efforts to protect American creativity are to succeed, the law cannot stand still either. That is why we need this bill.

The Stop Online Piracy Act is a Smart, Reasonable Approach to Combat the Threat of Rogue Sites

The Stop Online Piracy Act recognizes that to effectively stop online theft, *every* member of the Internet ecosystem needs to play a role, including the rights holders who created the content, the Internet Service Providers and search engines that connect consumers to rogue sites, and the advertising networks and payment processors that provide those sites with financial support. There are three specific elements of this bill Mr. Chairman, that I want to address this morning.

Narrowly Defined to Target Only Rogue Sites

First, it is clear from the language of H.R. 3261 that it is meant to apply only to rogue websites, and not to legitimate platforms. The definitions in the bill are very narrow and rooted in longstanding Supreme Court precedent with which U.S. based sites must already comply. For the bill to apply, a site must be “otherwise subject to seizure if it were a U.S. site” or primarily designed or operated for the purpose of copyright infringement, or deliberately turning a blind eye to violations of U.S. law, or taking “affirmative steps” to “foster infringement” such as rewards programs and prizes for uploading stolen content. These narrow definitions would not apply to legitimate businesses, like Twitter or Facebook. Legitimate sites are not covered by this legislation.

Provides Rogue Sites with Robust Due Process

Second, the Stop Online Piracy Act provides very strong due process protections to alleged rogue sites – in fact, ***it provides foreign-based sites*** with exactly the same procedural protections afforded U.S. citizens under the Federal Rules of Civil Procedure. This includes requiring prosecutors to notify the site and its registrants or owners of their intent to act under the bill, and to notify any intermediary that may be ordered by the court to discontinue providing services to that site. As such, domain name owners or site operators would have every right to defend themselves in court should they choose to do so.

Equally strict standards would apply in cases where a content owner seeks to act to prevent online theft by a rogue site. Contrary to wild assertions bandied about by those who oppose this legislation, H.R. 3261 does not give content owners the power to shut down websites. The bill sets out a new voluntary notification process that encourages private, out-of-court solutions as the preferred means to efficiently and effectively protect against the enormous losses that result from content theft. Indeed, the bill contains provisions that will provide immunity for voluntary action against sites dedicated to the theft of U.S. property or sites that endanger public health.

At the same time, the bill preserves the ability of rights holders to seek limited injunctive relief in the courts against a rogue website if intermediaries choose not to take action against a website. Rights holders must clearly show, as they would under Federal Rule of Civil Procedure 65, that immediate and irreparable injury, loss, or damage will result in the absence of timely action. Content owners that file frivolous or unsupported claims could face damages, including costs and attorneys’ fees.

Takes a Comprehensive Approach that Closes a Loophole in Current Law

Third and finally, the Stop Online Piracy Act also includes other enhancements to current copyright law to prevent online content theft. One of these applies to the treatment of infringing content that is delivered using streaming technology.

While existing law makes an infringement of any of the copyright owner's exclusive rights a criminal act when done willfully and for commercial advantage or private financial gain, felony penalties only apply to defendants engaged in the illegal *reproduction* or *distribution* of copies of one or more copyrighted works meeting specified numerical and monetary value thresholds.

As technology has advanced since enactment of these provisions, however, so too have the means of willful and commercially destructive infringement.

Increasingly, copyrighted content is not only made available for unauthorized downloading, but now is frequently streamed illegally as well. But our laws have not caught up with the thieves, and as a result, uncertainty remains whether unauthorized Internet streaming of copyrighted works can be prosecuted as a felony, as other forms of piracy are. H.R. 3261 closes that loophole in our nation's intellectual property laws. In so doing, it eliminates an unjustified, technology-specific disparity between forms of infringement that have increasingly similar commercially-destructive impacts.

To be clear: making available and profiting from an illegal, unauthorized stream of copyrighted content is already a crime. Content thieves should not be able to escape tougher penalties simply by choosing a different technology to perpetrate their crime.

Critics' Arguments Ignore History of Copyright Legislation, Misread H.R. 3261

In recent weeks, as you know Mr. Chairman, there has been no shortage of critics attacking this legislation. Often, unfortunately, these are many of the same voices that claim to support the protection of intellectual property yet seem reflexively to oppose every effort to actually enact effective protections. I'd like to conclude my testimony by addressing the three main arguments on which these objections rest.

H.R. 3261 Will Not "Break the Internet"

Critics claim that requiring Internet intermediaries to take steps that would prevent links to rogue sites from functioning would "break the Internet" and jeopardize the

online security protocol known as Secure DNS, or DNSSEC. We see three problems with this claim.

First, technology like site blocking and filtering, is employed around the world today to deal with spam, malware, viruses and all manner of bad behavior, including for copyright protection with no adverse impact on the Internet. There is no reason to suggest that the use of this technology by intermediaries in the U.S. would lead to a different result.

Second, some have suggested the Internet would “break” because, they claim, huge numbers of U.S. consumers will rush to employ non-U.S. Internet services in order to access infringing content, driving traffic offshore and undermining Internet security. Yet, this is all based on one erroneous assumption: that all consumers who may now find themselves using rogue sites will keep doing so even in the face of a court order deeming those sites to be illegal. Consumers do not look for rogue sites when they search, they look for content – and the Stop Online Piracy Act will help ensure that the content they find is legitimate. The only people encouraging the use of an alternate domain system are thieves seeking to keep their lucrative black market alive and avoid detection.

Third, opponents point to the DNSSEC code and claim that it is not compatible with the site blocking or filtering technology envisioned by H.R. 3261. This argument conveniently ignores not only the history of the creation of DNSSEC but also the very nature of Internet protocols, which is simply this: when new developments or circumstances require changes to these codes, *the codes change*. Any software engineer will tell you that no development process stops at version 1.0. Today is no different. As Daniel Castro of the Information Technology and Innovation Foundation wrote earlier this year, the issue with DNSSEC “appears to be the result of a deficiency in the current DNS protocol (perhaps a result of the ideological stance of its authors) rather than any true technical limitation.”²

H.R. 3261 Does Not Undermine Free Expression – It Protects It

Critics also claim that the Stop Online Piracy Act would violate the First Amendment or threaten the freedom of expression. This, too, is inaccurate. The motion picture and television industry depends on the First Amendment to protect our ability to freely create the very content that rogue sites are stealing. As noted First Amendment scholar Floyd Abrams wrote just last week regarding H.R. 3261: “Copyright violations have never been protected by the First Amendment and have

² Daniel Castro, “No, COICA Will Not Break the Internet, Innovation Policy Blog, [1/18/11](#)

been routinely punished wherever they occur, including the Internet. This proposed legislation is not inconsistent with the First Amendment; it would protect creators of speech, as Congress has done since this Nation was founded, by combating its theft.” The Stop Online Piracy Act imposes no prior restraint on speech and its underlying principle is well established in U.S. law.

Further, it is absurd to suggest that passing legislation to take action against rogue sites would provide shelter to repressive regimes that wish to censor political speech. There is a key distinction between protecting property versus restricting speech. That distinction is enshrined in the U.S. Constitution and in the International Declaration of Human Rights. Indeed, the enactment of the Stop Online Piracy Act would instead be a strong signal to other nations of America’s commitment to protecting speech and preventing theft.

H.R. 3261 Will in No Way “Stifle Innovation” and Investment in Technology

Lastly, opponents of this legislation threaten that passing H.R. 3261 will lead to the curtailment of investment in new technology ventures and will even “stifle innovation” online. We have heard this argument before. Many of the loudest voices opposing rogue sites legislation are the same critics who predicted disaster in the wake of the DMCA, the Net Act and the unanimous Supreme Court decision in Grokster. Yet, since those events occurred, the Internet has grown by leaps and bounds, innovation is off the charts and access to technology is at an all time high.

Take a look at venture capital. In 2005, the National Venture Capital Association warned that a Supreme Court ruling holding Grokster liable would “have a chilling effect on innovation.” They could not have been more wrong. Since that decision, venture capital investment in media and entertainment has been one of the fastest growing sectors of the venture capital market. Contrary to naysayers’ claims, strong copyright law promotes innovation. The MPAA studios are engaged in multiple new on-line businesses, there are more than 350 legal online services around the world that provide high-quality video on demand, including more than 60 services in the United States. Disney announced Disney Studio All Access in February which provides consumers with easier access to Disney content, Time Warner announced a partnership with Facebook in March to distribute film and television shows through Warner Brothers Entertainment’s Facebook fan page, and the list goes on. Additionally, many of these services are free unlike rogue websites. Those who say otherwise have been wrong again and again, and are wrong today.

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Mr. Chairman, Ranking Member Conyers, again I thank you and this Committee on behalf of our member companies for the opportunity to testify today.

As you know very well, this legislation is ultimately not about technology. This is, fundamentally, about the foundation on which American industry has rested for over two hundred years: the expectation that someone who creates a great product, a product consumers want, will be able to reap the rewards of his or her creative work.

Intellectual property theft – online or on the street – subverts that promise. In doing so, it steals from people who deserve better: in the case of film and television, from over two million Americans, some of the hardest-working, most imaginative, most creative and innovative people in our country, who invest their time, energy and resources to create extraordinary filmed entertainment enjoyed by millions around the world.

We cannot simply stand by and let this theft go unchecked. For that reason, we urge the speedy approval of the Stop Online Piracy Act, and we pledge to do all we can to support your efforts to bring rogue sites legislation to the President's desk.

Again, thank you for holding this important hearing and I'd be happy to answer any questions you may have.