



**STATEMENT OF EXECUTIVE VICE PRESIDENT,
GOVERNMENT AFFAIRS, MICHAEL P. O'LEARY
ON BEHALF OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.**

**SUBMITTED TO THE HOUSE JUDICIARY
COMMITTEE'S INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET SUBCOMMITTEE
HEARING:**

**"PROMOTING INVESTMENT AND PROTECTING
COMMERCE ONLINE: THE ART ACT, THE NET ACT AND
ILLEGAL STREAMING"
RAYBURN HOUSE OFFICE BUILDING, ROOM 2141
WASHINGTON, D.C.
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A. Background and Introduction

I want to thank the Committee for holding this important hearing on protecting the legitimate online market and for addressing the increasing misuse of streaming technology to facilitate illicit online activity. I appreciate the opportunity to testify on behalf of the Motion Picture Association of America, Inc.¹ and its member companies regarding the role online streaming plays in the global theft and unauthorized dissemination of America's creative content, and the negative impact that theft has on the lives of our creative community.

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.

As the primary voice and advocate for the American motion picture, home video and television industries in the U.S. and around the world, we have witnessed the world-wide proliferation and increased sophistication of web-based enterprises dedicated to stealing the product of our workforce. We are gravely concerned about the detrimental impact that digital theft has on the millions of American men and women who work in our industry.

The U.S. motion picture and television industry plays a unique role in today's American economic infrastructure, providing high-paying jobs to workers in all 50 states; fueling small business growth; injecting capital into local, state, and national revenue pools and consistently generating a positive balance of trade. Of the over two million American workers who depend on the entertainment industry for their jobs, about 12 percent are directly employed in motion picture and television production and distribution—from behind-the-scenes production technicians to make-up artists and set-builders—across all 50 states. These jobs pay an average salary of nearly \$76,000, 72 percent higher than the average salary nationwide.

In addition, more than 95,000 small businesses—93 percent of which employ fewer than 10 people—are involved in the production and distribution of movies and television. On-location filmed productions infuse, on average, \$223,000 per day into a local economy. Nationwide, our industry generates more than \$15 billion in public revenue. As one of the few industries that return a positive balance of trade, our industry is critical to the U.S. export economy.

Every day we are pursuing new and innovative ways to deliver content to our consumers. In the last three years we have launched numerous on-line distribution models to make content available legally to consumers when they want it, where they want it, wherever they are.

B. Websites Trafficking in Stolen Digital Content Create Consumer Confusion, Harm the Online Marketplace and Damage the Motion Picture and Television Industry

High-speed broadband networks present tremendous opportunities for exchanging information and ideas; unfortunately, the laws and regulations put in place to protect consumers and innovation in the physical marketplace have not kept pace with the growth of illegal conduct online. The illicit use of online networks can facilitate the anonymous theft and rapid, ubiquitous, illegal distribution of copyrighted works. The key foundation of American industry—the

expectation that hard work and innovation is rewarded—is imperiled when thieves, whether online or on the street, are allowed to steal America’s creative products and enrich themselves along the way.

Rampant theft of American intellectual property puts at risk the livelihoods of the workers who invest time, energy and fortune to create the filmed entertainment enjoyed by millions. To these men, women, and their families, digital theft means declining incomes, lost jobs and reduced health and retirement benefits.

Currently, the most pernicious forms of digital theft occur through the use of so-called “rogue” websites. The sites, whose content is hosted and whose operators are located throughout the world, take many forms, including downloading and streaming, but all materially contribute to and facilitate the illegal distribution of copyrighted works, such as movies and television programming.

These websites weaken the film and TV industry by undercutting, eliminating or reducing the legitimate market for filmed entertainment, and thus the financial support for additional film and television production, which millions rely on for jobs and support for the U.S. economy as a whole. 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. 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.

C. Streaming Technology Makes Content Theft Quick, Easy and Virtually Risk-Free

In addressing the subject of illegal streaming, it is important to note what this debate is not about. It is not a debate between technology and innovation and the creation of content. That is a false choice raised by too many people. This issue is really about favoring legitimacy over theft – about promoting and preserving creativity and production and punishing people that seek to profit through stealing the hard work of others. Technology and content should agree on that point.

Streaming technology is an emerging way to deliver content and information to consumers the world over, and it is a technology being embraced by our industry - more than 35² legitimate business ventures such as Hulu, Crackle, Netflix and HBO GO use streaming to deliver their products today.

The activity that is the subject of today's hearing is not innovation, it is theft. Streaming technology is rapidly becoming the most popular mechanism for transmitting stolen content on rogue sites. Users have instant access to illegally distributed movies and television shows without the risk or inconvenience of sometimes lengthy downloads.

In December of 2009, the full Judiciary Committee held a hearing on this very issue in the context of live sporting events. In the year and a half since that hearing, the problem has gotten worse, and it is a problem that affects not just sports, but all forms of audiovisual entertainment from live retransmission of television programming to streaming of major motion pictures. Illegal sites such as quicksilverscreen.im, solarmovie.com and 10starmovies.com link U.S. consumers to illegally streamed content. Streaming cyberlockers, like videobb.com, novamov.com and Loomboo.com, offer illegal storage and streaming of copyrighted content and encourage the uploading of this content as the primary means of driving monetizable traffic to their sites. This is not innovation, its theft.

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. Similarly, the NET Act ensured the availability of criminal penalties against willful acts of infringement engaged in without profit motive but on a commercial scale, but defined those acts in terms of acts of unlawful reproduction and distribution. And the ART Act provided for felony penalties against those engaged in the unlawful electronic distribution of pre-release works. As these have historically been the dominant means of commercial-scale infringement, it is perhaps not surprising that the criminal code focuses on these acts in defining felony conduct. As technology has advanced since enactment of these penalty provisions, however, so too have the means of willful and commercially destructive infringement. While copyrighted content is increasingly illegally streamed, not just downloaded online,

² A list of legitimate sites for film and television can be found at <http://www.mpa.org/contentprotection/get-movies-tv-shows>

uncertainty remains whether Internet streaming can be prosecuted as a felony based on the distribution of copyrighted works. This results in a significant gap in the enforcement of this nation's intellectual property laws that must be addressed.

D. Legislative Action and Administration Enforcement Is Necessary to Clarify Consequences of Online Theft via Streaming Technology

Legislation is necessary to make it clear that criminal streaming is eligible for felony treatment under U.S. law. In fact, earlier this year, the U.S. Intellectual Property Enforcement Coordinator recommended that Congress clarify that infringement by streaming, or by means of other similar technology, is a felony in appropriate circumstances. The report transmitted to Congress in March 2011, entitled "White Paper on Intellectual Property Enforcement Legislative Recommendations" stated the following:

Ensure Felony Penalties for Infringement By Streaming and by Means of Other New Technology: It is imperative that our laws account for changes in technology used by infringers. One recent technological change is the illegal streaming of content. Existing law provides felony penalties for willful copyright infringement, but felony penalties are predicated on the defendant either illegally reproducing or distributing the copyrighted work. Questions have arisen about whether streaming constitutes the distribution of copyrighted works (and thereby is a felony) and/or performance of those works (and thereby is not a felony). These questions have impaired the criminal enforcement of copyright laws. To ensure that Federal copyright law keeps pace with infringers, and to ensure that DOJ and U.S. law enforcement agencies are able to effectively combat infringement involving new technology, the Administration recommends that Congress clarify that infringement by streaming, or by means of other similar new technology, is a felony in appropriate circumstances.

The failure to address this problem legislatively, in addition to leaving a sizeable gap in the U. S. law, will:

1. Promote additional theft of America's creative works by allowing an emerging means of illegal distribution to persist without adequate remedies.
2. Permit an unjustified, technology specific, disparity between forms of infringement that have increasingly similar commercially-destructive impacts.
3. Result in very few, if any, federal prosecutions, even for the most blatant and notorious global intellectual property criminals, as federal prosecutors and investigative agents will be unlikely to devote scarce resources to cases that will net, at most, misdemeanor penalties.

4. Harm America's long-held role as a world leader in the protection and promotion of creativity by signaling the rest of the world that our products are not protected in the online world in the same manner as they are in the physical world. The failure of the United States to move against criminals engaged in streaming will undoubtedly result in less enforcement around the world – particularly in cases where the victim is an American creator.
5. Stifle innovation and creativity by allowing thieves that utilize streaming to continue to have an advantage in the online marketplace. We must favor legitimate business models over theft.

We look forward to working with this Committee to craft comprehensive and focused legislation that will help address this growing threat. Again, I thank the Committee on behalf of our member companies for the opportunity to testify today. We look forward to working with you, Chairman Goodlatte, Ranking Member Watt, and other Members of the Subcommittee to ensure adequate remedies are available to deal with and deter this criminal activity.