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Hearing on Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators
Before the United States House of Representatives Committee on the Judiciary, Subcommittee
on Courts, Intellectual Property, and the Internet

December 13, 2023

Chairman Issa, Ranking Member Johnson, distinguished Members of the Subcommittee, thank you for inviting me to testify today. My name is Riché McKnight. I am Executive Vice President and General Counsel of the Ultimate Fighting Championship, UFC, and Deputy General Counsel and Co-Head of Litigation at Endeavor, one of the world's largest sports, entertainment, and fashion companies. I am honored to testify before you about the internet piracy challenges that UFC faces as a provider of live sports content. UFC is proud of the work it has done and is doing with Congress on this issue, including with respect to the enactment of the Protecting Lawful Streaming Act back in 2020. Thank you for your efforts in passing that important reform, and for recognizing that additional legislative solutions to online piracy are needed.

UFC

UFC is a preeminent content creator that hosts and airs live mixed martial arts content, including through a pay-per-view option, in the United States in partnership with ESPN+. Earlier this year, UFC became part of TKO Group Holdings, a premium sports and entertainment company that houses both UFC and World Wrestling Entertainment, or WWE, an integrated media organization and the recognized global leader in sports entertainment. While WWE also faces many similar piracy issues, my testimony today will focus on UFC.

UFC “events” are beloved and highly anticipated by a large international fan base, and are broadcast in over 170 countries and in 50 languages. The core competitions, called UFC “numbered events,” feature UFC’s top talent. They occur approximately once a month and are available to watch in the United States on pay-per-view via ESPN+. UFC also offers additional live content in the form of “UFC Fight Night” competitions, which often feature up-and-coming talent and are broadcast on network television and streaming services. UFC fans are passionate, and communicate on forums dedicated to UFC in advance of and following events, attend UFC events in person, and even congregate for an annual “Fan Expo” where fans can meet top UFC athletes. Unfortunately, UFC’s popular content also attracts widespread piracy across a variety of online service providers (OSPs), diverting viewers that would otherwise pay for UFC’s content to places they can watch it for free.

Because piracy is such an important issue for UFC, we are proud to have played a leading role in many of the discussions and efforts surrounding piracy and potential legislative reform of antipiracy laws in recent years. For example, as already discussed, we were a leader in sharing our perspective with Congress as it considered and eventually passed the Protecting Lawful Streaming Act of 2020, which eliminated the “streaming loophole” and enabled federal felony penalties for large-scale commercial piracy. That legislation sent a signal to the rest of the world that the U.S. is prepared to rigorously enforce its anti-piracy laws. We encourage the Department of Justice to prioritize this important legislation. More recently, we shared our perspective and experiences with the United States Patent and Trademark Office as part of its solicitation of comments on topics involving piracy. We submitted comments on behalf of UFC and through a joint submission on behalf of UFC, the National Basketball Association’s marketing and licensing arm NBA Properties, Inc., and the NFL’s licensing arm NFL Productions LLC, focused on the

unique piracy challenges shared among providers of live sports content.¹ We have also engaged in various congressional efforts examining potential reform of the Digital Millenium Copyright Act.

The Impact of Piracy on UFC and Its Industry

A critical element of UFC's content is that the essence of the event often involves highly impactful but very brief moments in time, such as a knockout in a fight or a particularly well-executed move. Because UFC's content is so popular generally, and because people often desire to see the key moments at the same time as they occur live, UFC faces pervasive piracy of its live content. This piracy occurs both in the form of pirated livestreams and in the form of recorded, video-on-demand content that is posted during or shortly after a UFC event.

UFC estimates that within hours of a single UFC event, hundreds of thousands of viewers may have already seen infringing versions of the event, including those critical moments. UFC further estimates that due to piracy, multiple millions of dollars are diverted from legitimate purchases of UFC content each year. Pirates record the livestreams not just through holding their phone to record a television or other screen on which a UFC event is playing, but also through more sophisticated techniques like redistributing a source of UFC content the pirate has acquired on their own device from a legitimate purchase or unauthorized source, or tapping into ESPN's source signal. They also brazenly advertise on social media platforms to get viewers to come to their pirate websites, with slogans on social media sites such as "Watch UFC Free." In other words, enterprising pirates will often first advertise in advance of a UFC event where viewers can go to access illicit UFC content, they will then post those livestreams and recorded videos to those sites, and those videos will often collect hundreds of thousands or millions of views before they are

¹ The joint submission is appended to this submission as Appendix A.

taken down (with the caveat that some videos are actually never taken down despite UFC's requests). In turn, would-be viewers have no reason to purchase UFC content via pay-per-view because they know they will be able to access it for free, contemporaneously with the event.

UFC is not alone in facing significant harm due to online piracy. Because of the time-sensitive nature of live sports content, other sports content providers face similar issues where potential viewers of legitimate live content are diverted to free, pirated content instead. By one 2021 estimate, the global sports industry loses up to \$28 billion in additional potential annual revenue due to online piracy.² This estimate is conservative and is based on the sports fans who would be likely to "convert" from pirated content to paid content, while excluding the impact of viewers who are least likely to pay for sports content even if pirated content were unavailable. Piracy does not just harm content creators like UFC; it also results in a substantial loss of tax revenue and impacts sporting event providers' ability and willingness to host events that in turn benefit local communities and businesses. For an additional discussion of the harms of piracy on live sporting event providers, UFC respectfully refers the Subcommittee to the appended joint comment submitted by UFC, NBA Properties, Inc., and NFL Productions LLC to the United States Patent and Trademark Office on August 23, 2023.

Pressing Challenges and Proposed Solutions

UFC has worked with its enforcement partners to implement a robust takedown strategy during and immediately following live events, and to engage in a concerted effort to identify and reach out to platforms that, notwithstanding UFC's takedown efforts, allow rampant pirated UFC content to remain on the platform and do not terminate repeat infringers. Although these efforts have had some traction, they are still not enough, particularly given an influx of commercial-scale

² Synamedia & Ampere Analysis, Pricing Piracy: The Value of Action 4 (2021).

and non-domestic piracy in recent years. A common thread is that, although the Digital Millennium Copyright Act was an important solution to the new problem of digital copyright infringement at the turn of the millennium, it is twenty-five years old, and does not fully address the particular issues that arise due to the widespread and increasingly sophisticated piracy of live content. Legislative reform is sorely needed, particularly in the following areas.

Expeditious Removal: Although Section 512(c)(1) of the Copyright Act is intended to provide platforms a safe harbor from liability for their users' infringing material if these platforms "expeditiously" remove a user's infringing material, among other things, UFC's experience is that many OSPs frequently take hours or even days to remove pirated content posted during or immediately after UFC's live sporting events. This is likely because OSPs have exploited the lack of a definition of "expeditiously" in the statute, and thus can claim a lack of clarity over what "expeditious removal" actually involves. They often will claim to us that they are removing content expeditiously even when they allow a livestream to stay up for the entirety of a UFC event or remove recorded content days later. Of course, this is problematic. Given the time-sensitive nature of UFC's live sports content, the value of the content is at its highest during this critical period, and then sharply diminishes.

To put matters concretely, for *each* UFC pay-per-view event between January 2022 and the end of November 2023, UFC sent, on average, 1,173 takedown requests for infringing livestreams to all OSPs, and 2,246 takedown requests for infringing recorded content to all OSPs. For livestreamed content, 26% of infringing UFC content was permitted to stay up for longer than 1 hour after a request (a significant portion of a live UFC event), and approximately 6% of content was even permitted to stay up for longer than 5 hours. For recorded content, 74% of infringing UFC content was permitted to stay up for longer than 1 hour, and 57% of content was permitted

to stay up for longer than 5 hours. Some recorded content even remains online for days following a UFC event, despite prompt UFC takedown requests. It is not uncommon for these streams to collect hundreds of thousands or even millions of views while they are available online.

This issue can be easily remedied by adding a statutory definition to clarify what “expeditiously” means for the purposes of determining whether OSPs are eligible for a safe harbor from liability based on the infringing conduct of their users. Specifically, we believe the law should be clear that, for live events specifically, “expeditiously” means “instantaneously” or “near instantaneously.” Importantly, this would also deter further piracy by making pirate accounts unsuccessful, because viewing pirated content is less enticing if pirated livestreams and other time-sensitive content typically come down shortly after they begin airing. This simple measure of creating a definition of expeditious removal—or otherwise ensuring that OSPs understand they need to remove infringing livestreams and otherwise time-sensitive content expeditiously—will be a critical way to address the harm caused to UFC and other live content providers by widespread internet piracy. Moreover, this is a feasible requirement: UFC’s experience is that certain OSPs already remove live content essentially instantaneously in response to UFC’s requests, or at least in a matter of minutes.

Repeat Infringers: UFC has also learned that a significant amount of pirated UFC content is posted by the same set of repeat infringers, notwithstanding UFC’s diligent submission of takedown requests. To be eligible for a safe harbor under existing law, OSPs must also adopt and reasonably implement policies that provide “for the termination in appropriate circumstances of . . . repeat infringers.” 17 U.S.C. § 512(i)(1)(A). However, again, the law does not define what it means for someone to be a “repeat infringer” or what constitutes “termination in appropriate circumstances” of such users. UFC has observed a set of interrelated problems.

First, the same accounts will often post multiple infringing streams during the same event, even after content posted by an account is removed in response to a UFC takedown request. One straightforward way of addressing this would be to require OSPs to freeze the ability of an account to post new content in the period immediately following a takedown for copyright infringement, for several hours or until a specific event is over.

Second, although it should be obvious that an account that received numerous copyright takedowns should not be permitted to keep posting new infringing content, UFC has found that certain OSPs are delayed in terminating these accounts or never terminate them at all. Legislation on this issue should make clear that accounts that have amassed a certain number of copyright takedowns (such as three takedowns) should be immediately disabled, which is a policy that some OSPs already have.

Third, UFC has observed that, for a number of OSPs, the same users will create new accounts with very similar usernames after being suspended, and will continue infringing UFC's contents from these new accounts—which are obviously connected to the prior ones. Even where an OSP promptly disables one of these “related” accounts upon notification from UFC—and not all OSPs do this—UFC must play a game of whack-a-mole to identify new infringing accounts and make sure that they are disabled. OSPs do not do enough to address this problem.

To be eligible for any sort of safe harbor under the Copyright Act, OSPs must take reasonable actions to prevent the creation of new accounts by users who have previously been terminated for repeat infringement. This could involve more stringent account verification measures, which some OSPs have already successfully implemented to reduce the prevalence of spam accounts. These include requiring a working phone number in order to verify an account and implementing tools to prevent the creation of new accounts from the same IP address and

machine identifier. In addition, and at minimum, OSPs should be required to implement measures to proactively prevent previously suspended users from posting new infringing content—such as through limiting the ability of newly created accounts to stream live content or limiting the number of simultaneous views of live content posted by a newly created account. Future legislation could make clear that it is not enough to simply terminate a specific account and then turn a blind eye when the same user creates one or more additional accounts.

Recalcitrant platforms: In addition, UFC has found that a significant number of OSPs simply do not respond to takedown requests at all, and that this number has been growing over time. UFC’s investigation has revealed that these OSPs are generally based outside the United States, obscure their contact information, and frequently have a reputation for hosting pirated content. UFC, like other copyright owners, must then make the decision as to whether to proceed with potentially costly litigation against any individual OSP, many of whom may be likely to claim that U.S. courts lack jurisdiction or otherwise evade the judicial process.

UFC supports efforts to address this problem by, for example, enacting legislation that would implement the ability to obtain a no-fault injunction process (with corresponding safeguards) similar to that adopted by many other jurisdictions around the world. The jurisdictions that have already implemented site-blocking regimes have demonstrated not only that this method significantly curbs the spread of piracy, but also that, with appropriate safeguards, this is an effective tool to combat piracy on websites that simply refuse to address pirated content.³ Under this sort of “site-blocking” framework, copyright owners like UFC could address the harm caused

³ See Nigel Cory, *A Decade After SOPA/PIPA, It’s Time to Revisit Website Blocking*, ITIF (Jan. 26, 2022), <https://itif.org/publications/2022/01/26/decade-after-sopa-pipa-time-to-revisit-website-blocking/>.

by these websites—enabling U.S.-based users to easily view pirated content—without the existing hurdles to effective enforcement actions against such sites.

Conclusion

The very purpose of copyright law is to incentivize the creation and distribution of new works and content, and the harms from piracy threaten that purpose, particularly when pirates divert countless potential legitimate viewers away from copyrighted content to unlawful pirated content. The solutions above reflect targeted remedies to the ongoing problems that UFC and other copyright owners—particularly owners of time-sensitive content like live sports content—face on a regular basis. UFC recognizes that this continues to be an ongoing conversation that requires input from all stakeholders, and we hope to be able to work with you and the Members of this Subcommittee going forward.

I want to thank the Subcommittee again for giving UFC the opportunity to testify today. I'd be happy to answer any questions you may have. Thank you.