

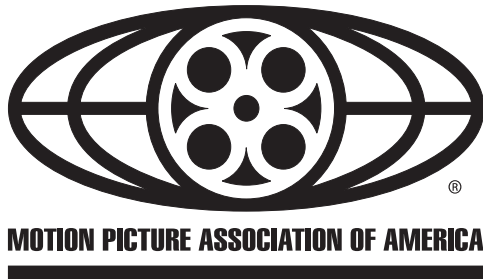
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Restoring Internet Freedom

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WC Docket No. 17-108



Reply Comments

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The Motion Picture Association of America appreciates the FCC’s willingness to avoid interfering with efforts to combat copyright infringement in any network neutrality regulations it maintains or adopts.¹

As the advocate for the American film, television, and home video industries, the MPAA submits these comments on behalf of its six members: Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox, Universal City Studios, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment. Our members are the leading producers of television and film content, and are committed to encouraging the creation and dissemination of a wide variety of motion pictures and television programs through a wide variety of platforms and distributors.

Indeed, the American film and television industry now releases more than 700 movies and 400 scripted television shows a year,² many of which are available online. Content providers offer their own applications to deliver current and back-catalog programming and films directly to viewers, as well as produce content for, or license content to, “over-the-top” services. All told, television and movie studios are now making their content available in the United States through

¹ See *In re Restoring Internet Freedom*, WC Docket No. 17-108, *Notice of Proposed Rulemaking*, FCC 17-60, at ¶ 93 & nn.201-02 (rel. May 23, 2017) (proposing, if the FCC “keep[s] any of the existing bright-line rules or the transparency rule, ... not to impact ISPs rights or obligations with respect to other laws or safety and security considerations,” including “to address legitimate needs such as avoiding network congestion and combating harmful or illegal content”) (internal quotations omitted) (citing, *inter alia*, *In re Protecting and Promoting the Open Internet*, WC Docket No 14-28, *Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd 5601, 5622 ¶ 69, 5648-49 ¶ 113, 5731-33 ¶¶ 299-305 (2015)), available at, https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf.

² See Lesley Goldberg, *Scripted Originals Hit Record 455 in 2016, FX Study Finds*, HOLLYWOOD REPORTER, Dec. 21, 2016, <http://www.hollywoodreporter.com/live-feed/scripted-originals-hit-record-455-2016-fx-study-finds-958337>; MPAA, THEATRICAL MARKET STATISTICS (2016), http://www.mpa.org/wp-content/uploads/2017/03/MPAA-Theatrical-Market-Statistics-2016_Final.pdf.

more than 130 lawful online sources,³ and U.S. audiences used those sources to access 8.4 billion movies and 76.1 billion television episodes in 2015, alone.⁴ Viewers can watch these movies and shows “live” or on demand, at home or at a place of their choosing, and over an ever-growing array of devices, from smartphones to tablets, gaming devices to dedicated online video systems, laptops to computers to smartTVs.

Online piracy remains a problem, nonetheless. There were approximately 21.4 billion visits in 2016 to streaming piracy sites globally using desktops and mobile devices.⁵ Cyberlockers offering stolen content make \$100 million per year in ill-gotten gains.⁶ Pirate sites in the aggregate generate more than \$200 million per year in advertising revenue, alone, according to a 2015 report on approximately 600 prominent sites.⁷ Profit margins range between 87 and 93 percent, even for small sites,⁸ since they bear none of the costs of content production. Six percent of North American households have a “set-top box” with “add-ons” configured to

³ See MPAA, *Legal Digital Marketplace*, <http://www.mpa.org/technology-and-innovation/#13>.

⁴ Underlying data available from IHS. See <https://www.ihs.com/>.

⁵ Alliance for Creativity and Entertainment, *The Threat of Online Piracy*, <http://alliance4creativity.com/mission/the-threat-of-online-piracy/> (visited Aug. 10, 2017) (citing analysis of SimilarWeb data, based on streaming sites with at least 10,000 copyright removal requests according to the Google Transparency Report).

⁶ Digital Citizens Alliance, *Behind the Cyberlocker Door: A Report on How Shadowy Cyberlocker Businesses Use Credit Card Companies to Make Millions*, at 1 (2014), <https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/7843c97d-fd81-4597-a5d9-b1f5866b0833.pdf>.

⁷ Digital Citizens Alliance, *Good Money Still Going Bad: Digital Thieves and the Hijacking of the Online Ad Business*, at 3 (2015), <https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/66692a61-cd18-4c14-bede-f09ce3d84b53.pdf>.

⁸ *Id.*

access pirated content.⁹

Piracy threatens not just the two million people whose jobs depend on the motion picture and television business. It jeopardizes the ability of that industry to create diverse, compelling content for audiences by depriving creators of revenue, as well as forcing legal services, sites, and applications to compete with unlawful ones. And it puts the viewers themselves at risk. One-third of pirate sites link to malware;¹⁰ pirate sites are 28 times more likely to infect their users with malware than similar mainstream websites and licensed providers;¹¹ and video streaming “has become the number one method to propagate highly dangerous malware on the Internet.”¹²

For these reasons and others, the FCC has crafted every incarnation of its network neutrality policies to avoid hindering anti-piracy efforts.¹³ Copyright owners and content

⁹ Sandvine, 2017 Global Internet Phenomena, *Spotlight: The “Fully Loaded” Kodi Ecosystem*, at 5, <https://www.sandvine.com/downloads/general/global-internet-phenomena/2017/global-internet-phenomena-spotlight-kodi.pdf>.

¹⁰ *Good Money Still Going Bad*, *supra* note 7, at 2.

¹¹ Digital Citizens Alliance, *Digital Bait*, at 1 (2015), <http://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>.

¹² Association of Internet Security Professionals, Working Paper, *Illegal Streaming and Cyber Security Risks: A dangerous status quo?*, at 22 (2014), <https://cryptome.org/2014/09/illegal-streaming-malware-epoch-times-full-14-0923.pdf>.

¹³ See *In re* Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, CS Docket No. 02-52, *Policy Statement*, FCC 05-151, at 3 (rel. Sept. 23, 2005) (stating that “consumers are entitled to access the *lawful* Internet content of their choice”) (emphasis added), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf; *In re* Preserving the Open Internet, GN Docket No. 09-191, *Report and Order*, FCC 10-201, at ¶¶ 107-111 (rel. Dec. 23, 2010) (stating that nothing in the order “prohibits reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity”), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf; *In re* Protecting and Promoting the Open Internet, WC Docket No 14-28, *Report and Order on Remand, Declaratory Ruling, and Order*, FCC 15-24, at ¶ 114 (rel. Mar. 12, 2015) (stating that the rule “does not prevent or restrict a broadband provider from refusing to transmit

providers have a right under the Copyright and Communications acts to combat theft of their content,¹⁴ and the law encourages internet intermediaries to collaborate with content creators to do so.¹⁵ Indeed, Congress has created “strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment.”¹⁶ The MPAA therefore asks that any network neutrality rules the FCC maintains or adopts make explicit that such rules do not limit the ability of copyright owners and their licensees to combat copyright infringement.

Respectfully Submitted,

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unlawful material, such as child pornography or copyright infringing materials”), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf.

¹⁴ See, e.g., 17 U.S.C. § 106 (granting copyright holders the exclusive right to engage in or authorize the reproduction, distribution, public performance, and public display of a work, or to prepare a derivative work); *id.* § 1201 (prohibiting circumvention of technological protection measures that prevent unauthorized access to copyrighted works); 47 U.S.C. § 549(b) (prohibiting the FCC from prescribing navigation device regulations that would jeopardize security of multichannel video programming or other services, or impede the legal rights of a provider of such services to prevent theft).

¹⁵ See 17 U.S.C. § 512 (limiting remedies against online service providers for infringement claims based on third-party provided content, where service providers take steps to address infringement).

¹⁶ H.R. REP. 105-551, part 2, at 49 (1998); S. REP. 105-190, at 20 (1998).