

Before the
Federal Trade Commission
Washington, D.C. 20580

In the Matter of)	
)	
Competition and Consumer Protection in the 21 st Century)	Project Number P181201
)	
Hearing 4: Oct. 23-24, 2018)	Docket ID: FTC-2018-0090
Innovation and Intellectual Property Policy)	



Comments of the Motion Picture Association of America, Inc.

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Overview

The U.S. movie and television market has never been more competitive, with the content community embracing both traditional and online means of distribution. A big factor in that success is our nation's respect for free expression and copyright, which together encourage the creation and wide dissemination of content. This benefits audiences and helps drive innovation, competition, and economic growth—as the FTC has long recognized.

Piracy remains a problem, nonetheless, as illicit enterprises enlist online tools to facilitate theft on a global scale. Compounding the problem is a lack of accountability on the part of some major online platforms for their failure to prevent use of their services for illegal conduct, including mass, unauthorized distribution of content. By creating a less hospitable environment for individuals and businesses to engage in commerce, and forcing legitimate firms to compete with unlawful actors, such lawlessness harms consumers, competition, and innovation in the entertainment industry designed to provide audiences new ways to access premium content when, where, and how they choose.

FTC efforts to crack down on unfair and deceptive trade practices surrounding piracy and other lawlessness online—as well as more proactive, voluntary measures by platforms to curb abuse of their services—could help protect consumers and promote a safer and more secure internet for communication, competitive commerce, and creativity.

I. Americans Are Continuing to Enjoy Another Golden Age of Movies and Television

American viewers are benefitting from unprecedented competition in the market for motion pictures and television programming—not only in theaters and over broadcast, cable, and satellite services, but also online, as the charts on the next page indicate. The MPAA's members¹ and others in the U.S. film and TV industry release more than 450 movies and nearly 500 scripted shows per year.² The industry makes that content available to American audiences through 140 lawful online film and TV services as of 2017, up from 80 in 2012.³ U.S. viewers used those services, many of which have become global powerhouses, to access 165.4 billion movies and TV episodes in 2017, up from 52.9 billion in 2012.⁴ The number of scripted shows reached 487 in 2017, up from 288 in 2012. Of those 487 shows, 117 were created for online outlets, compared to just 15 such shows five years earlier.⁵

¹The MPAA is the voice of the American motion picture, home entertainment, and television industries, and represents the six major U.S. studios: Walt Disney Studios Motion Pictures, Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., Universal City Studios L.L.C., and Warner Bros. Entertainment Inc.

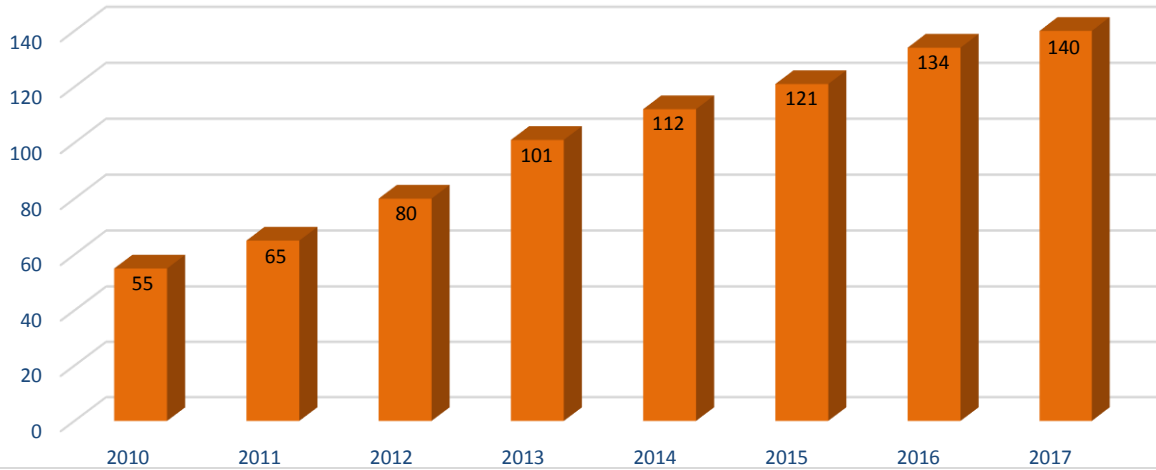
²MPAA, 2017 THEATRICAL HOME ENTERTAINMENT MARKET ENVIRONMENT REPORT (2018) (using data for U.S. country-of-origin movies only), <https://www.mpa.org/research-docs/2017-theatrical-home-entertainment-market-environment-theme-report/>; Joe Otterson, *487 Scripted Series Aired in 2017, FX Chief John Langford Says*, VARIETY, Jan. 5, 2018, <https://variety.com/2018/tv/news/2017-scripted-tv-series-fx-john-landgraf-1202653856/>.

³MPAA database.

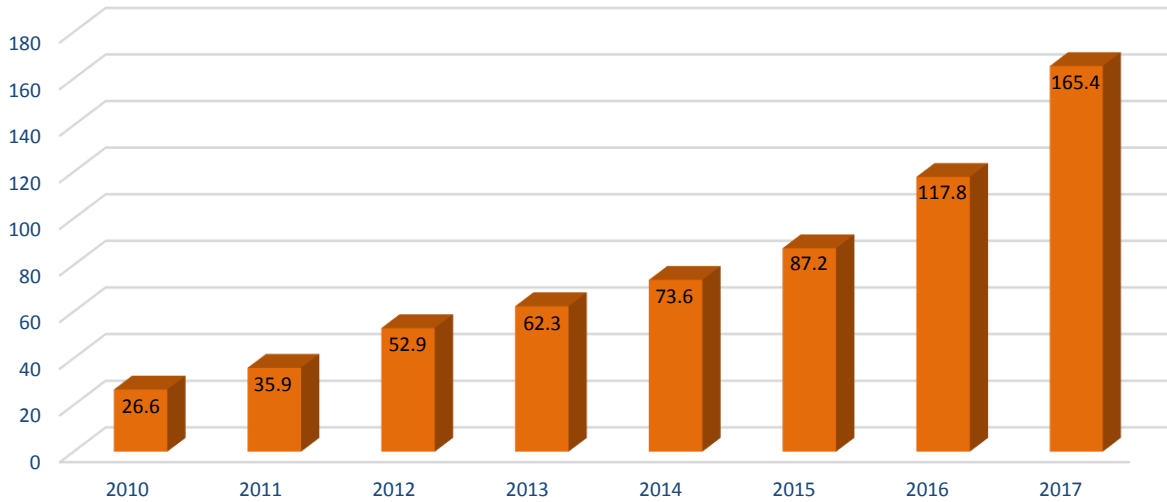
⁴IHS Markit. See www.IHS.com.

⁵FX Networks Research (2018).

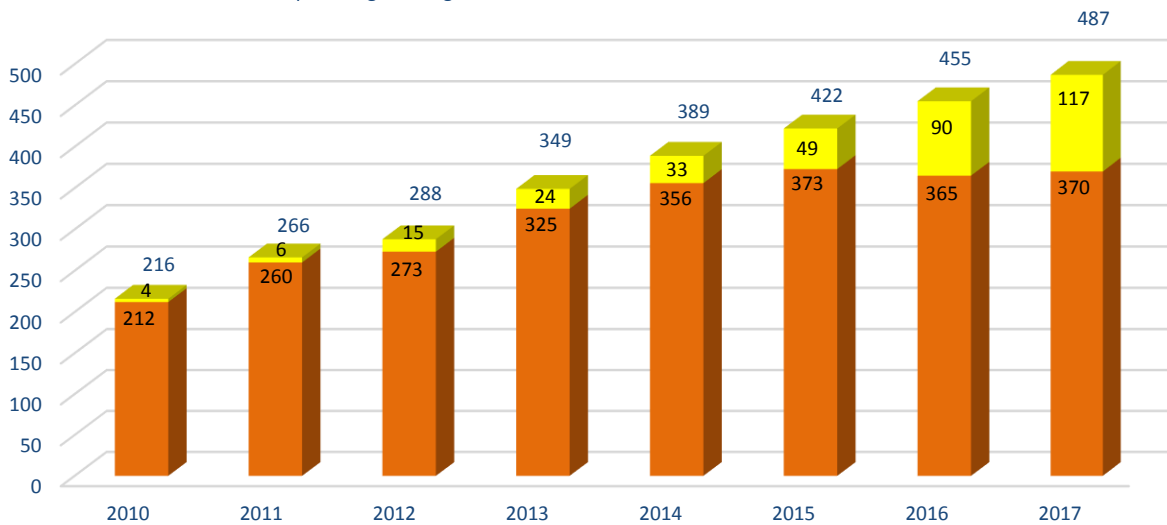
U.S. Cumulative Number of Still Active* Online Services for Full Length Film & TV, Source: MPAA Database
 (*does not include services that offered film/TV for time period within this range, but not at present)



U.S. Online Film & TV Views and Transactions (Billions), Source: IHS



Number of Scripted Original Programs, Source: FX Research



As audiences benefit from this activity so, too, do America’s national and local economies. In the process of making content available online and off, the television and film industry supports 2.1 million jobs and \$139 billion in wages across all 50 states; enlists more than 93,000 businesses, 87 percent of which are small businesses employing fewer than 10 people; contributes \$134 billion in sales; registers a positive balance of trade in nearly every country in the world, with a 4-to-1 export-to-import ratio; and generates a positive services trade surplus of \$12.2 billion, larger than each of the surpluses in the advertising, mining, telecommunications, legal, information, and health related services sectors.⁶ In addition, the industry pays \$49 billion to 400,000 local businesses each year.⁷ A major motion picture filming on location contributes on average \$250,000 per day to the local community, and a one-hour television episode contributes \$150,000 per day. Notably, the local community enjoys that up-front financial injection regardless of whether the film or TV show becomes a hit or a flop.

II. Respect for the First Amendment and Copyright Drives Innovation and Competition

Respect for two fundamental and complementary American constitutional values—free speech and intellectual property—help drive this creative and economic activity, making the United States the global leader in the creation of content enjoyed worldwide. Under the First Amendment, the speaker and the audience acting in the marketplace—not the government—determine what is said and heard. And the Constitution’s Copyright Clause recognizes that honoring the rights of creators in the fruits of their creativity, including to determine how to disseminate their works, increases both the production and distribution of content, to the ultimate benefit of the public.⁸

The freedom of expression of artists and producers in the creation of content is what makes the marketplace so dynamic, while their exclusive rights for a limited time to protect, disseminate and license that content helps manage the economic risks in the ultra-competitive video marketplace. Producing and distributing a major motion picture costs on average \$100 million, and six out of ten *never* make back their initial investment. Major television productions now rival feature films not only in quality, but also cost, reaching millions of dollars *per episode*. Yet, according to an industry rule of thumb, 80 percent of scripts never become a pilot, 80 percent of pilots never become a series, and 80 percent of series never see a second season, reinforcing the high risk of this creative business.

⁶MPAA, THE ECONOMIC CONTRIBUTION OF THE MOTION PICTURE & TELEVISION INDUSTRY TO THE UNITED STATES (NOV. 2017), https://www.mpa.org/wp-content/uploads/2018/03/MPAA-Industry-Economic-ContributionFactsheet_2016-FINAL-2.pdf.

⁷*Id.*

⁸*See* U.S. CONST., art. I, § 8, cl. 8 (conferring upon the legislative branch the role “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”); *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985) (stating that “[b]y establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”).

The ability of content owners and distributors to use technological protection measures—sometimes referred to as digital rights management—enables them to offer a wide variety of innovative viewing options at different price points. Because of these technological measures, audiences can choose how to access programming, including by downloading content to a hard drive, streaming content for a limited time on a pay-per-view basis, enjoying content as part of a subscription service, watching content over TV Everywhere applications in different places across different devices, and accessing full seasons of a television series, either to catch up with past episodes or to watch them all at once when a content creator makes them available *en masse* from the start. Without technological protection measures to provide effective differentiation among offerings and to ensure viewers gain access to the programming on the terms authorized, content creators would not be able to offer all these choices through various outlets at various points in the distribution calendar.

The FTC has long recognized that copyright promotes innovation and competition, including in the joint FTC-DOJ *Antitrust Guidelines for the Licensing of Intellectual Property*.⁹ Furthermore, the *Guidelines* note that the ability to license content can have pro-competitive effects for both the copyright holder and the licensee by increasing the value or utility of the copyrighted content, and thereby encouraging the copyright holder’s investment in it, as well as by improving the product or service of the licensee.¹⁰ Courts long ago dismissed the notion that intellectual property in general, or copyright law in particular, automatically creates market power.¹¹ The FTC and DOJ continue to reject such a presumption, as well.¹²

III. Piracy Continues to Harm Consumers and Competition

Despite the motion picture and television industry’s embrace of the internet as a powerful way to reach audiences through lawful services, online piracy remains a substantial drag on content production and innovation globally. An estimated 542 million pirated movies and TV shows were downloaded in the United States in 2017 using peer-to-peer protocols alone.¹³ Moreover, streaming piracy has surpassed illicit downloading via peer-to-peer protocols. Streaming piracy sites now represent 37 percent of visits to sites with unauthorized content, with sites hosting

⁹U.S. DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION, ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY § 1-2, at 2-5 (Jan. 12, 2017), https://www.ftc.gov/system/files/documents/public_statements/1049793/ip_guidelines_2017.pdf.

¹⁰*Id.*, § 2.3 at 5.

¹¹*See, e.g., Mediacom Commc’ns Corp. v. Sinclair Broad. Grp.*, 460 F. Supp. 2d 1012, 1027-28 (S.D. Iowa 2006) (applying to copyright the Supreme Court’s ruling in *Ill. Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28, 45-46 (2006), that a patent does not necessarily confer market power). *See also Eldred v. Ashcroft*, 537 U.S. 186, 217 (2003) (stating that “copyright gives the holder no monopoly on any knowledge. A reader of an author’s writing may make full use of any fact or idea she acquires from her reading.”); *Mazer v. Stein*, 347 U.S. 201, 217 (1954) (stating that “[u]nlike a patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea—not the idea itself.”).

¹²*See Antitrust Guidelines*, § 2 at 2, § 2.2 at 4.

¹³MarkMonitor. *See* www.markmonitor.com.

infringing content representing 36 percent, and peer-to-peer sites representing 27 percent.¹⁴ Streaming device-based piracy has grown into a significant illicit business. The devices, often Android-based “set-top boxes,” are typically built around Kodi open-source media software, but modified with illegal “add-ons.” The add-ons connect users to streams of stored or “live” pirated movies and television programming, and enable “plug and play” connection to a standard television set. Six percent of North American broadband households—some 6.5 million homes—are accessing known subscription television piracy services, according to Sandvine.¹⁵ A rough estimate by Sandvine suggests the streaming device piracy ecosystem may be generating ill-gotten gains of \$840 million per year in North America, a number that may well be understated.¹⁶

All these forms of infringement harm a broad swath of the legitimate movie and television production and distribution sectors, including content creators, unions, large and independent movie and television studios, sports leagues, broadcast and pay-TV networks and distributors, and over-the-top video services. The illicit activity unlawfully competes with digital entrepreneurs and established players trying to grow lawful and innovative content and distribution businesses. The large-scale availability of free, pirated content makes it harder for legitimate content companies and distributors to earn a return on investment, and thus also discourages some of that investment in the first place. Moreover, by diverting subscribers from these legitimate services and siphoning financial returns that would otherwise be available to re-invest in creative content, piracy harms competition and limits the ability of content creators and distributors to offer innovative choices in movies, television programming, and other video services.

Such piracy also harms consumers, both because it interferes with the public benefits derived from copyright protection and because it directly imposes risks of a variety of consumer harms. For example, as companies have focused resources on ensuring their advertising does not appear on pirate sites, those sites have increasingly turned to identity theft and malware distribution as an alternative source of revenue. Because many pirate sites disseminate malware, the spread of piracy presents a growing threat to consumers and a new vulnerability to cybersecurity. One-third of pirate sites expose users to malware and pirate sites are 28 times more likely to infect users with malware than mainstream websites.¹⁷

¹⁴Analysis of SimilarWeb data, based on sites with at least 10,000 copyright removal requests in 2017 according to the Google Transparency Report.

¹⁵SANDVINE, SPOTLIGHT: SUBSCRIPTION TELEVISION PIRACY 2 (Nov. 2017), <https://www.sandvine.com/hubfs/downloads/archive/2017-global-internet-phenomena-spotlight-subscription-television-piracy.pdf>.

¹⁶*Id.*

¹⁷DIGITAL CITIZENS ALLIANCE, DIGITAL BAIT 2 (Dec. 2015), <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>. See also EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, IDENTIFICATION AND ANALYSIS OF MALWARE ON SELECTED SUSPECTED COPYRIGHT-INFRINGEMENT WEBSITES 3 (2018) (stating that copyright infringing websites “commonly distribute various kinds of malware and potentially unwanted programs (PUPs), luring users into downloading and launching these files”), https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Malware_Study/2018_Malware

During these FTC hearings, it is likely some witness will suggest there is tension between curbing illegal activity online and freedom of speech. The argument is made far too broadly. Combating unlawful conduct like fraud, identity theft, unauthorized distribution of entire copyrighted works, cyberattacks, and illicit sale of opioids is no more a threat to free expression on the internet than it is in the physical world. In fact, curbing illegal activity *promotes* free expression by creating a safer, virtual environment where individuals feel comfortable to communicate and engage in commerce, as well as to create and lawfully access content.

Given the harms of piracy to competition and consumer welfare, we ask the FTC to take affirmative steps to combat piracy. To date, FTC efforts appear to have been largely confined to a consumer advisory.¹⁸ Taking more affirmative steps would help prevent unlawful services from stifling investment in, and competition by, legitimate online content services; would help combat cybersecurity threats; and would help protect consumers from identity theft and fraud stemming from malware. For example, the FTC could consider an unfair and deceptive trade practices action against entities marketing streaming piracy devices and applications as “100 percent legal” and a way to “never pay for content again,” or for harm to consumers stemming from malware. In addition, an expanded effort to educate consumers and policymakers about the harms of piracy, the threat to the competitive market for American digital products and services, and the risks to cybersecurity could also pay dividends.

Of course, the MPAA, its member companies, and many others in the content community also engage in public education efforts, as well as in extensive civil litigation around the globe to combat the mass, unauthorized dissemination of copyrighted works. Another critical component in the battle against piracy is criminal action by government agencies, which has a material deterrent value. For example, the U.S. government’s criminal action against Megaupload, then the largest piracy “cyberlocker,” which, alone, accounted for 4 percent of all global internet traffic, prompted many other pirate operations to shutter. A peer-reviewed study of this reduction in piracy sources demonstrated a 6.5 to 8.5 percent increase in legitimate digital sales for three major studios in 12 countries.¹⁹ We would expect similar beneficial results for the studios and other content creators were the U.S. government to become more active in the fight against streaming devices.

To that end, a coalition of the content community has met with the National Intellectual Property Rights Coordination Center, which brings together 23 U.S. and foreign agencies under the stewardship of the U.S. Immigration and Customs Enforcement’s Homeland Security Investigations division, to urge the federal government to bring criminal actions. Vishal Amin, the

[Study_en.pdf](#); RAHUL TELANG, DOES ONLINE PIRACY MAKE COMPUTERS INSECURE? EVIDENCE FROM PANEL DATA (2018) (stating that doubling the time spent on infringing sites leads to 20 percent increase in total malware files and 20 percent increase in malware files after removing potential adware), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3139240.

¹⁸See Will Maxson, Assistant Director, Division of Marketing Practices, FTC, *Free movies, costly malware*, CONSUMER INFORMATION BLOG (April 12, 2017), <https://www.consumer.ftc.gov/blog/2017/04/free-movies-costly-malware>.

¹⁹BRETT DANAHER AND MICHAEL D. SMITH, GONE IN 60 SECONDS: THE IMPACT OF THE MEGAUPLOAD SHUTDOWN ON MOVIE SALES 4 (Sept. 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2229349.

Intellectual Property Rights Enforcement Coordinator, also convened stakeholders and federal agencies to discuss the issue. FTC Chairman Simons attended that meeting. To help mitigate the harm to consumers and competition that comes from piracy and the spread of malware, the MPAA would welcome the FTC's voice in urging its sister agencies to bring criminal actions, as well as its consulting with the Customs and Border Patrol about the possibility of interdiction of illicit streaming devices entering the country from abroad.

Critical to combatting piracy—and most any other illicit activity online—is public access to WHOIS data containing identifying information about domain name registrants. From the internet's founding, such data has been a cornerstone of online accountability, and supports the stability, safety, and security of the internet. Domain name registrants have long been on notice that they must provide certain identifying information that will be publicly disclosed, and that such information may be used for matters of public safety, consumer protection, law enforcement, dispute resolution, and enforcement of rights.

Unfortunately, the Internet Corporation for Assigned Names and Numbers has proposed, under the stated goal of complying with the European Union's General Data Protection Regulation, changes to the publication of WHOIS data that disrupts its essential and historical purpose. The MPAA does not suggest that registrars and registries should violate the GDPR, but the ICANN proposal permits registrars and registry operators to restrict access to information in a manner that goes well beyond what the GDPR requires. Now is the time to be increasing online transparency, not diminishing it. The implications of the proposed reduction in access to WHOIS data are very broad. Such overbroad application of the GDPR will hinder the ability of the FTC and other agencies and law enforcement authorities to investigate and curb many categories of unlawful online behavior, as many governmental, private sector, and public interest organizations have warned.²⁰ The MPAA therefore asks the FTC, in collaboration with other U.S. agencies, to: 1) urge European policymakers to clarify that the GDPR does not prevent access to WHOIS data in the European Economic Area for legitimate law enforcement, consumer protection, and enforcement of rights purposes, and also does not apply to information about non-natural persons; and 2) convey that it expects domain name registries and registrars to continue making WHOIS data publicly available outside the applicable reach of the GDPR.

IV. More Proactive Voluntary Initiatives by Online Platforms Could Help Protect Consumers and Competition

A significant factor contributing to the piracy problem is a lack of accountability on the part of some online platforms—a number of which are among the world's largest internet companies—for unlawful conduct occurring over their services. While online platforms play an active and crucial, global role in providing access to content, the relationship between the platforms and the content is often seen as less direct in light of certain platforms' predominately

²⁰For additional background, see *In re* International internet Policy Priorities, Docket No. 180124068-8068-01, *Notice of Inquiry* (NTIA June 4, 2018), MPAA Comments at 22-29 (July 17, 2018), available at <https://www.mpaa.org/policy-statement/mpaa-comments-to-the-ntia-on-internet-policy-priorities/>.

“user-generated content” business models. Providers of curated content, by contrast, are more closely associated with the content and service environment they offer. This has led to disparate incentives when it comes to the level of responsibility assumed by large internet platforms as compared to other businesses. The lack of platform accountability presents significant risk of consumer harm and restraint on competition by unfairly forcing legitimate content production and distribution businesses to compete with material that is stolen and free, generally impairing the legitimate online marketplace with lawlessness, and reducing innovation and consumer choice, as people across the political spectrum are observing.²¹

When then-FTC Chairman Robert Pitofsky held the Global Competition and Innovation Hearings in 1995,²² neither Google nor Facebook existed. AOL was the largest online service provider at the time, with only 3 million subscribers.²³ Even by 2000, 92 percent of U.S. adults online were still relying on dial-up modems, only 3 percent of the adult population had broadband, and 63 percent of the adult population was not online at all.²⁴

A lot has changed, with 224.3 million U.S. adults, representing 89 percent of the adult population, now using the internet.²⁵ Almost two-thirds of U.S. adults have broadband at home²⁶ and 20 percent access the internet exclusively over smartphones.²⁷ Social media is among the top

²¹See Letter from 17 conservative organizations to Senate and House Judiciary and Commerce Committee Chairmen Chuck Grassley, Bob Goodlatte, John Thune, and Greg Walden (April 17, 2018) (stating that “many of the internet’s problems result from a lack of accountability”), <https://conservative.org/article/coalition-letter-expressing-support-for-recent-hearings-on-internet-platforms>; Letter from 50 civil rights organizations to Senate and House Chairmen and Ranking Members John Thune, Bill Nelson, Greg Walden, and Frank Pallone (May 10, 2018) (stating that “[r]ecent events, from the ‘fake news’ crisis and attacks on our elections, to the widespread use of social media platforms by hate groups, have laid bare the extent of tech companies’ inability—or unwillingness—to police their own platforms”), <http://httponline.org/2018/05/http-joins-advocacy-groups-call-comprehensive-legislation-protect-americans-privacy-civil-rights/>; Letter from 17 multicultural content organizations to Reps. Judy Chu, Mario Diaz-Balart, Michelle Lujan Grisham, and Cedric Richmond (Sept. 4, 2018) (stating that “the lack of accountability for dominant internet platforms causes serious harms and undermines trust online”), <https://www.icontalks.com/wp-content/uploads/2018/09/Multicultural-Creators-Letter-9.4.18.pdf>.

²²See FTC, *Global and Innovation-Based Competition Hearings: Oct 12, 1995 to Nov 21, 1995*, <https://www.ftc.gov/news-events/events-calendar/1995/10/global-innovation-based-competition-hearings> (last visited Oct. 22, 2018).

²³See Mark Nollinger, *America, Online!*, WIRED, Sept. 1, 1995, <https://www.wired.com/1995/09/aol-2/>.

²⁴See JOANNA BRENNER, PEW RESEARCH CENTER, *FACTTANK: NEWS IN THE NUMBERS, 3% OF AMERICANS USE DIAL-UP AT HOME* (Aug. 21, 2013) (reporting that in June 2000, 34 percent of adults used dial-up and 3 percent used broadband), <http://www.pewresearch.org/fact-tank/2013/08/21/3-of-americans-use-dial-up-at-home/>; U.S. CENSUS, TOTAL POPULATION BY AGE, RACE AND HISPANIC OR LATINO ORIGIN FOR THE UNITED STATES: 2000 (2001) (reporting 209.1 million U.S. adults), <https://www.census.gov/population/www/cen2000/briefs/phc-t9/tables/tab01.pdf>.

²⁵PEW RESEARCH CENTER, INTERNET/BROADBAND FACT SHEET, *Internet Use Over Time* (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/internet-broadband/>; U.S. CENSUS, ESTIMATES OF THE TOTAL RESIDENT POPULATION AND RESIDENT POPULATION AGE 18 YEARS AND OLDER FOR THE UNITED STATES, STATES, AND PUERTO RICO: JULY 1, 2017, <https://www.census.gov/data/tables/2017/demo/popest/nation-detail.html>.

²⁶INTERNET/BROADBAND FACT SHEET, *Home Broadband Use Over Time*.

²⁷*Id.*, *SmartPhone Dependency Over Time*.

uses, with 69 percent of U.S. adults frequenting at least one social media site.²⁸ About a quarter of U.S. adults say they are “almost constantly” online.²⁹

The web has certainly made it easier for individuals to access and create entertainment, gather and share information, start their own businesses, conduct commerce, and interact with their government. But over the course of the last decade, we have entered an always-on, broadband and mobile, micro-targeted world where a very few, largely unregulated social media and internet platforms have massive influence over how people communicate and engage in commerce.³⁰ Unfortunately, those platforms don’t amplify only the actions of well-meaning people using the internet for good. They also amplify the actions of bad actors who exploit the capabilities and reach of these platforms, often precisely as designed, as part of commercial-scale illicit enterprises.

Ordinarily, businesses are held legally accountable if they don’t take reasonable steps to combat illegal activity related to their services.³¹ Online platforms, however, are largely absolved from such accountability, stemming in large part from liability limits enacted by Congress two decades ago when the commercial internet was relatively nascent.³² The presumption underlying the liability limits was that the platforms would take voluntary steps to curb abuses, but that has not happened to a sufficient degree. While it is not the role of the FTC to legislate the contours of these statutory liability limitations, it is important for the FTC to understand how these contours and the incentives they create drive decisions in today’s internet marketplace, particularly as it

²⁸PEW RESEARCH CENTER, SOCIAL MEDIA FACT SHEET, *Social Media Use Over Time* (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/social-media/>.

²⁹ANDREW PERRIN AND JINGJING JIANG, PEW RESEARCH CENTER, FACTTANK: NEWS IN THE NUMBERS, ABOUT A QUARTER OF U.S. ADULTS SAY THEY ARE ‘ALMOST CONSTANTLY’ ONLINE (March 14, 2018), <http://www.pewresearch.org/fact-tank/2018/03/14/about-a-quarter-of-americans-report-going-online-almost-constantly/>.

³⁰See Zeynep Tufekci, *It’s the (Democracy-Poisoning) Golden Age of Free Speech*, WIRED, Jan. 16, 2018 (stating that “[i]n the 21st century, the capacity to spread ideas and reach an audience is no longer limited by access to expensive, centralized broadcasting infrastructure. It’s limited instead by one’s ability to garner and distribute attention. And right now, the flow of the world’s attention is structured, to a vast and overwhelming degree, by just a few digital platforms: Facebook, Google (which owns YouTube), and, to a lesser extent, Twitter.”), <https://www.wired.com/story/free-speech-issue-tech-turmoil-new-censorship>.

³¹See Chairman Bob Goodlatte, *Facebook, Google and Twitter: Examining the Content Filtering Practices of Social Media Giants*, BEFORE THE H. COMM. ON THE JUDICIARY, 115th Cong. (July 17, 2018) (observing that hotels can be held liable if they don’t do enough to curb sex trafficking in their rooms; nightclubs can be held liable if they don’t do enough to curb drug transactions on their dance floors; landowners can be held liable if they don’t do enough to protect people from hazards on their property; pawn shops can be held liable if they don’t do enough to curb fencing of stolen goods in their stores; and traditional media companies can be held liable if they disseminate defamatory material, even if produced by others), <https://judiciary.house.gov/hearing/facebook-google-and-twitter-examining-the-content-filtering-practices-of-social-media-giants/>.

³²See 47 U.S.C. § 230 (added to the Communications Act of 1934 by the Communications Decency Act, which was itself part of the Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 509, 110 Stat. 56, 133, 137, available at <https://www.gpo.gov/fdsys/pkg/PLAW-104publ104/pdf/PLAW-104publ104.pdf>); 17 U.S.C. § 512 (added to the Copyright Act in 1998 by the Digital Millennium Copyright Act, Pub. L. No. 105-304, sec. 202(a), 112 Stat. 2860, 2877, available at <https://www.copyright.gov/legislation/pl105-304.pdf>).

contemplates the state of competition and consumer protection in an age of online platforms. We also believe that the FTC can actively encourage more constructive collaboration among stakeholders to address illicit activity online that is harming competition and consumer protection.

As MPAA Chairman and CEO Charles Rivkin observed in recent letters to Congress and in remarks before the Technology Policy Institute, more effective voluntary efforts by online platforms to curb abuse of their services—in collaboration with those impacted by the abuses—could help preserve trust online and a healthy and vibrant internet ecosystem.³³ For example:

- Advertisers, advertising agencies, and online ad networks are working with stakeholders to combat fraudulent digital advertising traffic and to make sure internet ads don't inadvertently support web sites facilitating malware, piracy, and counterfeit goods.³⁴
- Payment processors such as MasterCard, Visa, and PayPal are working with content creators and others to prevent websites from using those companies' financial networks to collect subscription or other revenue from unlawful online activities.
- Donuts and Radix, major operators of new domain name extensions such as .movie and .online, have a streamlined process to respond to notices from content companies and, in some cases, suspend the domain names of large-scale pirate sites registered in their domain extensions for violating their anti-abuse policies.³⁵
- Amazon and eBay are working to prevent the sale over their online marketplaces of streaming devices and applications designed and marketed for piracy. Amazon has also been a strong partner in efforts to target such piracy at the source, including joint litigation and criminal referrals made against suppliers of piracy-targeted devices, and actions to significantly disrupt the unlawful applications underlying such devices.

These are all positive developments. Other platforms and internet intermediaries would do well to better emulate these types of voluntary, collaborative initiatives to combat copyright infringement and other unlawful online behavior. Unfortunately, many continue to fall short. The FTC, in furtherance of its role to protect consumers and promote lawful competition, could do much to promote greater collaboration aimed at reducing these harms.

³³See Letter from MPAA CEO Charles Rivkin to House Energy and Commerce Committee Chairman Greg Walden and Ranking Member Frank Pallone (April 10, 2018), <https://www.mpaa.org/policy-statement/mpaa-house-letter-online-accountability/>; Letter from MPAA CEO Charles Rivkin to Senate Judiciary and Commerce Committee Chairmen and Ranking Members Chuck Grassley, John Thune, Dianne Feinstein and Bill Nelson (April 10, 2018), <https://www.mpaa.org/wp-content/uploads/2018/04/180410-MPAA-FB-hearing-Senate-letter.pdf>; Charles Rivkin, Chairman and CEO, MPAA, *A Declaration of Accountability for Cyberspace*, Keynote Address at the Technology Policy Institute Aspen Forum (Aug. 20, 2018), https://www.mpaa.org/speeches_and_op_ed/a-declaration-of-accountability-for-cyberspace/.

³⁴See Trustworthy Accountability Group, <https://www.tagtoday.net/>.

³⁵See Donuts and MPAA establish new partnership to reduce online piracy (Feb. 9, 2016), <https://www.mpaa.org/press/donuts-and-mpaa-establish-new-partnership-to-reduce-online-piracy/>; Radix and the MPAA Establish New Partnership to Reduce Online Piracy (May 13, 2016), <https://www.mpaa.org/wp-content/uploads/2016/05/Radix-and-the-MPAA-Establish-New-Partnership-to-Reduce-Online-Piracy.pdf>.

Conclusion

Respect for copyright is a key driver not just of creativity, but also of competition, innovation, and economic growth. Piracy—and online lawlessness generally—undermine the ability of audiences, businesses, and our nation to reap the full benefits of the internet for commerce and communication, as well as put consumers at risk. The power of the internet is that it enables anyone, anywhere on the planet to contribute to its architecture and content. But that also means no one party can solve all the problems that arise. Everyone has a role to play in maintaining a healthy internet ecosystem. The MPAA therefore asks that the FTC, as part of its role to protect consumers and promote lawful competition, take affirmative steps to help combat illicit activity associated with online piracy. Such steps could include:

- bringing unfair and deceptive trade practices actions against entities marketing streaming piracy devices and applications;
- encouraging U.S. agencies to bring criminal actions against entities engaged in widespread, unauthorized dissemination of copyrighted content, and encouraging U.S. Customs and Border Patrol to interdict illicit streaming devices entering the country from abroad;
- educating consumers and policymakers about the harms of piracy, including the threats to consumers and cybersecurity stemming from malware, as well as the risk to the competitive market for American products and service; and
- preserving transparency and security on the internet by joining other U.S. agencies in urging European policymakers to clarify that the GDPR does not prevent access to WHOIS data for legitimate purposes, as well as urging domain name registrars and registry operators to ensure such data remains available outside the applicable reach of the GDPR.

The MPAA also asks that online platforms take more proactive, collaborative steps to combat abuse of their services, and that the FTC encourage them to do so. What the dominant online platforms do or don't do—whether algorithmically or under human direction, and whether as an intentional part of their business models or as an unanticipated side effect—has great impact on others in the internet ecosystem. Platforms with influence and control over consumers' online activity should better acknowledge their role and responsibilities in combating lawlessness. They should take proactive steps to better curb abuse of their services, and to do so in collaboration with others in the ecosystem. Only then will we realize the shared vision of the internet as a place where people and businesses can communicate, create, innovate, and conduct commerce in a safe, secure, and supportive environment.

These are important considerations to keep in mind as the FTC reviews the state of competition and consumer protection in the age of an internet dominated by internet platforms. The MPAA and its member companies stand ready to discuss shared responsibility with all interested parties, and strongly endorse efforts by the FTC to curb online lawlessness.