



14 October 2019

The Honorable Frank Pallone, Chairman
The Honorable Greg Walden, Ranking Member
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone, Ranking Member Walden, and Members of the Committee:

Thank you for holding the Oct. 16, 2019 hearing on the online liability protections in Section 230 of the Communications Decency Act. CreativeFuture is a nonprofit coalition of more than 550 companies and organizations and more than 230,000 individuals from film, television, music, book publishing, photography, and other creative industries. We respectfully request that you include in the record of the hearing this cover letter and the attached documents.

The internet is an extraordinary tool. It enables our members – as well as anyone and everyone around the world – to create content and reach audiences like never before.

Unfortunately, a lack of accountability on the part of social media companies and online intermediaries is also facilitating piracy of a scale and scope like never before. That piracy and lack of accountability is jeopardizing the ability of creatives to fund and produce their art, and to earn a living. It also jeopardizes the 5.7 million U.S. jobs and \$1.3 trillion in GDP that the core copyright industries bring to the U.S. economy.

We are therefore grateful to see that not just this Committee, but all of Congress, is carefully examining whether social media companies and online intermediaries are living up to Congress' expectations in exchange for the liability limitations they enjoy from Section 230, and in Section 512 of the Copyright Act. While the latter provision is most relevant to us, they share a common DNA: they were both intended to help then-nascent online platforms grow, as well as to encourage them to do what was necessary to keep their services free of illegal activity.

The attached filings with the FTC express our concern that social media platforms and online intermediaries are not holding up their end of the bargain. While they are enjoying the protections of the liability limitations, which has allowed them to generate immense profits, they are not taking adequate measures to rid their services of illicit conduct, including piracy.

We call your particular attention to Google and its YouTube service. The attached letter from Senators Tillis, Coons, Blackburn, and Feinstein, and Representatives Nadler, Collins, Schiff, and Roby encapsulates our concern that while YouTube is making its Content ID system available to the largest movie and television producers to help them curb piracy of their works, it does not make that system, or an effective alternative, available to many of the mid-sized and smaller creatives my organization speaks for, even though those creatives also produce significant amounts of content and suffer, often disproportionately, from piracy.

The attached filing with the U.S. International Trade Commission expresses support for the USMCA, since its copyright-related provisions are, on balance, a helpful update of NAFTA, which was adopted in the pre-digital era. The filing does ask, however, that future trade agreements not be used to export current online liability limitations from U.S. law. It is unwise to tie Congress' hands precisely at the time when it is debating whether these 20-year-old limitations need revision.

We thank you for considering our views, and we look forward to continued engagement with your committee on these issues.

Sincerely,

A handwritten signature in blue ink, reading "Ruth Vitale". The signature is fluid and cursive, with the first name "Ruth" and the last name "Vitale" clearly distinguishable.

Ruth Vitale
CEO, CreativeFuture

Congress of the United States
Washington, DC 20515

VIA ELECTRONIC TRANSMISSION

September 3, 2019

Mr. Sundar Pichai
Chief Executive Officer
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
USA

Dear Mr. Pichai:

We write today regarding Google's efforts related to platform responsibility in the digital environment. Over the last year, Google has appeared before multiple House and Senate committees to discuss this issue. In response to questions from our congressional colleagues regarding efforts Google is taking to stem widespread distribution of infringing content, you have routinely pointed to YouTube's "Content ID" system as an example.

YouTube Content ID is described as a "strong set of tools to prevent copyright infringing material from appearing."¹ We understand that Content ID is a technology developed by Google and voluntarily made available to creators. We appreciate Google's efforts to combat the illegal distribution of content on YouTube.

It has also come to our attention that access to the Content ID system is only granted to companies that "own exclusive rights to a *substantial body* of original material that is *frequently uploaded* by the YouTube user community."² We are concerned that copyright holders with smaller catalogs of works cannot utilize Content ID, making it more difficult or impossible for them to effectively protect their copyrighted works from infringement and, ultimately, impacting their livelihoods. We have heard from copyright holders who have been denied access to Content ID tools, and as a result, are at a significant disadvantage to prevent the repeated uploading of content that they have previously identified as infringing. They are left with the choice of spending hours each week seeking out and sending notices about the same copyrighted works, or allowing their intellectual property to be misappropriated.

The core copyright industries in the United States provide over 5.7 million jobs and generate \$1.3 trillion toward the country's gross domestic product, accounting for 6.85% of the U.S. economy.³

¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial & Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019), <https://judiciary.house.gov/legislation/hearings/online-platforms-and-market-power-part-2-innovation-and-entrepreneurship>.

² *Using Content ID*, YOUTUBE HELP, <https://support.google.com/youtube/answer/3244015> (last visited Aug. 15, 2019).

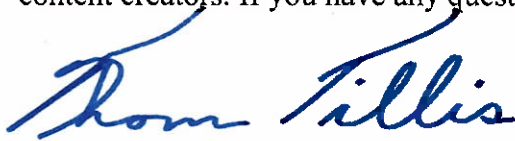
³ Stephen E. Siwek, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT 3, 6 (2018), <https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf>.

Congress of the United States
Washington, DC 20515

Preserving these industries is of great importance to our economy and to our nation's ability to compete internationally. Given the significant impact this technology could have on these industries and the creators that are at their heart, we respectfully request your participation in a roundtable with Congressional offices and members of the creative community to discuss the following questions and issues.

1. In general, how does the Content ID technology work? Compared to other available mechanisms for rights holders to identify potentially infringing works on Google's platforms, how much day-to-day involvement of rights holders is needed?
2. How do the user and Google work together to identify and block illegal material? To what extent is Content ID dependent upon user engagement and interaction?
3. Please describe generally which types of rights holders currently are permitted to use Content ID, including how Google assesses whether a rights holder owns a "substantial body of original material" and whether such material is "frequently uploaded."
 - a. How often does a piece of content need to appear on YouTube in order to be considered a "frequently uploaded" work?
 - b. Is "frequently uploaded" an absolute or relative measure?
4. Please describe any terms and conditions related to the use of Content ID.
5. Other than YouTube, on what Google platforms is Content ID used to identify and block infringing material? For example, do you use it to block the distribution of infringing material on Blogger, Google Photos, and Google Drive, among others? If not, do you plan to implement Content ID or similar safeguards on these platforms?
6. Does Google plan to provide access to Content ID to a larger number of rights holders? If so, when? If not, what challenges prevent you from doing so?

We ask that you reply by October 30, 2019 with a date for this roundtable, which will be no later than the end of the 2019 calendar year. Again, we appreciate the efforts that you have made to combat distribution of infringing content on YouTube. Given its apparent benefits to rights holders, we hope that you will consider making Content ID and the benefits it provides available to a larger category of content creators. If you have any questions, please do not hesitate to contact us.

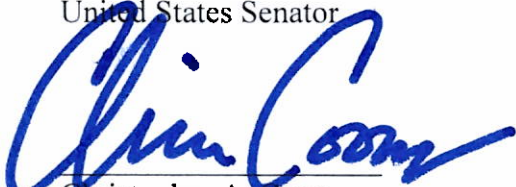


Thom Tillis
United States Senator

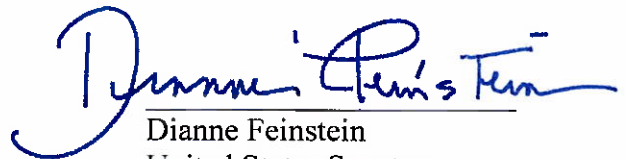
Sincerely,



Marsha Blackburn
United States Senator

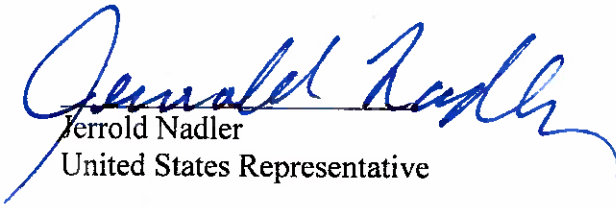


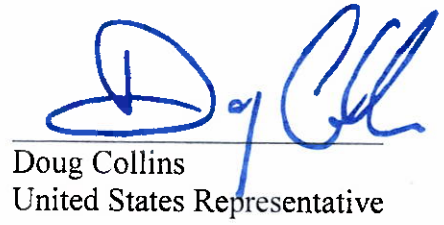
Christopher A. Coons
United States Senator



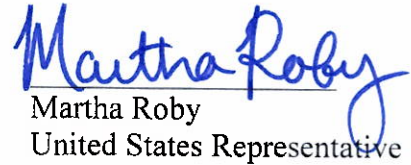
Dianne Feinstein
United States Senator

Congress of the United States
Washington, DC 20515


Ferrol Nadler
United States Representative


Doug Collins
United States Representative


Adam B. Schiff
United States Representative


Martha Roby
United States Representative

CreativeFuture

Creativity. Innovation. Tomorrow.

December 20, 2018

Ms. Lisa R. Barton
Secretary to the Commission
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

Submitted Electronically via EDIS and in Copies to the Commission, Investigation No. TPA-105-003

Dear Ms. Barton,

CreativeFuture appreciates the opportunity to respond to the U.S. International Trade Commission's (ITC) request for comments on "*United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*," as set forth in the Federal Register notice dated October 16, 2018.

CreativeFuture is a coalition of over 540 organizations and companies and over 220,000 individuals. Whether we work in film, television, publishing, music, or photography, our ability to engage in core expressive and culturally important activities in the digital environment is under siege from the rampant, illicit activity of digital piracy.

It is essential that the United States always seeks to achieve a gold standard for copyright and intellectual property protections in all free trade agreements (FTAs). Strong copyright protections are precisely what give our creative communities the freedom to pursue their art as a career, not just as a hobby. In today's borderless digital and global marketplace, copyright works stolen in one country have a ripple effect, causing harm across the globe.

Thus, foreign governments' protection of intellectual property is now more important to the American creative community than ever before. These protections ensure that the years of uncompensated work that creatives invest in the creation of songs, publications, films, or coding a program have a real opportunity of a meaningful return – a return that may then be used to pursue the next work, continuing to enrich our culture and economy.

America's creative industries are an important economic driver, contributing more than \$1.3 trillion to our nation's Gross Domestic Product and employing 5.7 million Americans. U.S. core copyright industries are leading exporters, with total foreign sales eclipsing those of other major U.S. industries – including aerospace, agriculture, and pharmaceuticals.¹ When consumers in other countries enjoy American-made creative products through legitimate distributors, job creation and economic growth occur here at home. But rampant online piracy diminishes the value of the creative economy around the world, adversely affecting our favorable trade balance and American jobs.

¹ International Intellectual Property Alliance, *Copyright Industries in the U.S. Economy*, 2018

For these reasons, strong copyright protections are always important in local laws around the world and, as such, must be a crucial part of any FTA. Our free trade agreements should *only* support the most effective policies for the digital age, embracing the best of copyright principles and practices from the United States and other nations. Unfortunately, powerful corporate interests in Silicon Valley are threatening decades of U.S. leadership and progress in negotiating trade agreements with strong copyright protections. These corporate interests seek to protect their business model and legal immunities at the expense of every American who relies on copyright to make an honest living. As a result of this, our creative economy is under siege from digital piracy, exacerbated by platforms like Facebook and Google that hide behind legal immunities and fall short in taking the responsibility necessary to stop criminals from depriving creatives of fair compensation.

New Attacks on Copyright in Trade Agreements

Until the negotiation of the Trans Pacific Partnership (TPP) by the previous Administration, the United States had been working toward the goal of constantly improving the intellectual property chapters of its trade agreements. Over several decades, the U.S. had steadily and sensibly increased the level of copyright protection in these chapters.

Unfortunately, during the TPP negotiations, this positive trend changed. Big Tech made an aggressive push to weaken the IP chapter of the agreement. They and their constellation of lobbyists and aligned interest groups launched an all-out assault on the agreement's copyright protections, using the tired and disproven argument that copyright "stifles innovation." For the first time, the United States Trade Representative (USTR) considered weakening what had been a hallmark of American trade agreements for two decades – strong copyright and IP protections. Due to the withdrawal of the US from the TPP, these provisions were never considered or ratified by Congress.

The U.S. – Mexico – Canada Agreement

CreativeFuture applauds the Administration for achieving high standards for copyright protection in the USMCA, reflecting or building upon provisions from the last U.S. treaty with strong copyright language – the U.S.-Korea FTA. Many of these provisions are notable and hold the promise of meaningful protections for our creative economy:

- The USMCA ensures protection for the full range of rights covered by copyright, including internet age distribution and public performance rights, and requires a term of protection consistent with the global norm.
- The USMCA ensures implementation of the World Intellectual Property Organization (WIPO) Internet Treaties, which included strong technological protection measures (TPMs). These protections against circumvention of "digital locks" are important because they allow U.S. copyright holders to distribute their works globally, while also protecting from infringement. For example, without TPMs, content owners would not be able to offer a lower priced digital "rental" for a fixed period of time alongside a digital purchase; nor would they have confidence in the security of their content on popular subscription video-on-demand (SVOD) services like Netflix.
- The USMCA provides a variety of strong criminal, civil, and customs remedies against copyright infringement, including liability language for aiding and abetting and legal remedies for digital piracy the same as for physical goods.

- The USMCA includes copyright exceptions such as fair use, but thankfully eliminated the harmful “balance” Trojan horse language inserted in the TPP by Big Tech’s lobbyists. That language alone could have undercut all of the other copyright provisions.
- The USMCA has a strong provision criminalizing the act of camcording in movie theaters, one of the most devastating methods of copyright infringement for U.S. creatives. Camcording has long been a method used by pirates to illegally obtain copies of new movies. This is normally done within the first few days of release – a time of maximum consumer appetite, as well as an important stage in the profitability of the film. This theatrical window is key to production companies, distributors, and financiers recouping their initial investments and is crucial to the long-term prospects for any film.

There are, however, key omissions and disheartening additions to the USMCA that can be tied to Big Tech’s continued assault on copyright protections. These include surprising efforts to extend safe harbor immunities in current U.S. law to foreign territories. At the same time, many policymakers are highlighting the role that these very immunities play in illegal activities being facilitated on these platforms – everything from child sex-trafficking to illegal opioid sales to massive copyright infringement.

We believe that the treaty falls short in dealing with the realities of intellectual property in the digital age. Specifically, we respectfully take issue with the following provisions:

- One key omission is the lack of a provision requiring secondary liability for copyright infringement. Such liability is a core aspect of American copyright law that has proven essential for policing infringement in a digital world. Most, if not all, of the major enforcement actions involving large-scale digital piracy operations have relied upon secondary liability.
- Additionally, the USMCA’s copyright safe harbor language has two large problems. First, it is less protective than U.S. law – a legal framework that we have argued above is terribly flawed already. To make matters worse, it is also less protective than many prior FTAs. How can we export legal concepts when the basic model on which they are based is flawed?

Painful experience has demonstrated that the U.S. Digital Millennium Copyright Act (DMCA; See Footnote #2) “notice and takedown” approach has become an ineffective “whack-a-mole” exercise, rather than an effective solution against digital piracy. As well, it is an exercise that has already (and only) benefitted internet platforms, making them some of the largest and most unregulated companies in the world. This language appears to be very similar to that negotiated during the TPP at the behest of Big Tech.

The DMCA’s “notice and takedown” regime is essentially useless for small and medium-sized creative companies, without the resources for this endless game. It is untenable for individual creatives battling a worldwide, illegal distribution network facilitated by American companies.

Moreover, as a result of the perplexing decision to use the TPP language as a starting point (after the President had withdrawn from the TPP, calling it a “terrible deal”), the new USMCA essentially grandfathers Canada’s utterly ineffective “notice and notice” system into the agreement. Any state-of-the-art agreement should have both a strong secondary liability obligation *and* an effective regime for dealing with innocent ISPs.

- The USMCA also allows Canada to continue its “cultural carve-out” that was created in the original NAFTA. As an organization representing the U.S. industries impacted by this carve-out, we must point out that this outcome is an unfortunate flaw in the new agreement. Canada maintains one of the most discriminatory sets of policies in the audiovisual sector in the world, and probably the most discriminatory among all developed countries. This would not be acceptable in any other arena. Canada should not be allowed to hide behind the dubious theory that Canadian consumers’ entertainment and artistic interests in American content are a threat to their culture.

We acknowledge that the new agreement does include the backstop of U.S. government retaliation for discriminatory actions taken by the Canadian government under this carve-out. While a threat of retaliation may be useful, the bottom line is that the carve-out creates uncertainty with no reliable promise of market access. Even if Canada never carries out or expands its discriminatory policies, the carve-out’s very presence creates precisely the instability that FTAs normally resolve.

Additionally, such a broad carve-out could have serious negative precedential effects. Audiovisual services are already an area with weak international market access commitments – a trend that began with Canada’s original cultural carve-out. We urge the Administration to publicly state its intent to never again accept an agreement with such a destructive provision.

- Finally, we have serious concerns about language that would create an almost wholesale export of the overbroad and outdated safe harbor immunities contained in the Communications Decency Act of 1996 (CDA; See Footnote #2). This statute is currently being debated domestically and is at the heart of many of the problems that currently plague the internet.

The bottom line is that the USMCA promotes a theory of “internet exceptionalism” that is two decades old and has allowed Big Tech to avoid accountability in the U.S. Just as the U.S. is grappling with the flaws in this system, it is difficult to understand why we would suddenly start exporting it through an FTA.

We very much appreciate the opportunity to share our comments and the perspective of our communities. America’s creative industries produce content that the world loves. All we ask is that our government ensure that we have the legal tools and market access to be compensated fairly for our work – wherever it is enjoyed. Every dollar spent abroad on our content supports an American industry that creates millions of jobs from coast to coast.

We respectfully ask the ITC to ensure that its analysis of the digital trade policies in the USMCA helps promote innovation and commerce online, including by recognizing the importance of strong copyright protections and enforcement tools here and abroad.

Sincerely,



Ruth Vitale

20 August 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

Dear Chairman Simons and Commissioners Ohlhausen, Phillips, Chopra, and Slaughter:

We submit this filing in response to the Federal Trade Commission’s request for comments in anticipation of the “Competition and Consumer Protection in the 21st Century Hearings” (Project Number P181201) later this year. In these comments, we are pleased to share our thoughts in response to the suggested topics related to competition and consumer protection issues in communication, information, and media technology networks, as well as the role of intellectual property and competition policy in promoting innovation.

CreativeFuture is a coalition of Americans who create – over 540 organizations and companies and over 190,000 individuals. We make our living creating in film, television, music, book publishing, and photography. Our nation’s creative economy, the world’s best, is under siege by digital piracy because ever-evolving technologies facilitate the unauthorized duplication and distribution of our valuable creative works – among them, internet platforms, that wittingly or unwittingly serve the interests of illegal enterprises around the world.

In short, our creative communities are victimized by the unfair, deceptive, and anticompetitive practices that continue to be rampant on the internet and are facilitated by a variety of large internet platforms. While the internet has undoubtedly had significant benefits for many creatives, ultimately the current situation has not only hurt the creative communities, but has also harmed consumers and the public good.

A large number of Americans agree that the government must act to keep Silicon Valley in check. CreativeFuture ran an online petition titled, “Tell Washington: Hold Silicon Valley Accountable for Their Actions,” which was signed by over 56,000 Americans.¹ These signatures can be found on Page 39 of this document.

Decades-old laws have largely immunized large internet platforms from accountability for the misuse of their platforms to facilitate theft. To a significant extent, they are able to hide behind flawed safe harbor provisions that pre-date the consumer internet as we know it. These overbroad safe harbors have been exploited not only by global criminal piracy operations but also by the internet platform providers themselves, which profit enormously from clicks and advertising by or for those seeking (and often steered by the platforms to) infringing content.

¹ *Tell Washington: Hold Silicon Valley Accountable for Their Actions*, CreativeFuture Petition

The legal framework that protects these platforms stems largely from two '90s-era statutes – the 1996 Communications Decency Act (CDA)² and the 1998 Digital Millennium Copyright Act (DMCA).³ These statutes were intended by Congress to promote the growth of the then-nascent internet by alleviating the burden of liability on the part of intermediaries for the unlawful acts occurring on their platforms, *while also encouraging those intermediaries to act responsibly in addressing abusive conduct.*

When the internet safe harbor laws were adopted by Congress some two decades ago, the internet was little known to most Americans. In contrast, today's internet is central to every aspect of our lives. It's the new Main Street – it's where we do our banking, where our medical records are accessed, and where unfathomable amounts of information about each of us resides. And significantly, unlike the '90s, when the internet was highly decentralized among a network of academics and government researchers, today the true power of the internet is concentrated in a handful of massive platform providers.

America's outdated, overbroad safe harbor protections hamper effective enforcement by or on behalf of rights holders in addressing the facilitation of piracy by the internet platform providers. This has had a negative impact on American creativity – the movies, music, television shows, books, photographs, video games, and other desirable products that make our creative economy the envy of the world. To cite just one example, in just a few seconds of searching on Google, its YouTube subsidiary, or Facebook, one can readily find thousands upon thousands of copyrighted works and the ability to access them *for free* without the permission of, or any compensation to, those who created, invested in, and marketed them.

Strong copyright protections are what give us the freedom to pursue our art as a career, not just as a hobby. Those protections ensure that the months and years of uncompensated work often invested in the creation of songs, crafting a film, or coding a program will be rewarded with a meaningful return.

The U.S. core copyright industries are a significant economic driver, contributing more than \$1.2 trillion to America's Gross Domestic Product and employing 5.5 million Americans. These industries are leading exporters, outselling other major U.S. industries – including aerospace, agriculture, and pharmaceuticals. When consumers in other countries enjoy American-made creative products legally, job creation and economic growth occur here.

We strongly believe, and respectfully submit, that because of the enormous harm to our society and our economy that it causes, the practices of large internet platform providers as well as other enterprises that use the internet to promote illegal streaming services should be included within the scope of issues that the FTC examines in connection with the "Competition and Consumer Protection in the 21st Century Hearings."

Harm to Creators and to Competition

Filmmaking is a difficult and demanding process – requiring years of hard work and often millions of dollars in investment. Even on a small independent film, dozens of people work for years to capture an idea and bring it to the screen for audiences. Many in the next generation of creative voices may never have that opportunity because of digital piracy.

Why do we say that?

² Telecommunications Act of 1996, tit. V, Pub. L. No. 104-104, 110 Stat. 56, 133.

³ Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860.

Moonlight, a small independent film, went on to win the Oscar® for Best Picture in 2017. It took Barry Jenkins, the director, eight years to get the movie financed. The film's team worked for little compensation. They signed on because they believed in it, with hope of financial gain if the film were successful. They worked for what is known as back-end participation, which is paid out from proceeds after production, marketing, and distribution costs are recouped.

Worldwide ticket sales totaled \$65 million, which translates to approximately 9 million tickets sold. But during the time that the film was in theaters, there were roughly 60 million piracy transactions – *over 650% higher than paid ticket sales.*

It can be argued that those 60 million transactions would not have necessarily translated 1:1 into 60 million legitimate ticket purchases. We agree. But even if *only* 5% of the pirated transactions had been paid theatrical ticket sales, at an average worldwide ticket price of \$7.00, the film would have earned an additional \$21 million. Or, alternatively, if just 5% of those pirated transactions had been paid downloads or rentals, and at a conservative price of \$3.99 per download or rental, the film would have earned an additional \$12 million.

This kind of sales displacement by piracy can be life or death for an independent film, and can justify the decision by any financier to no longer invest in up-and-coming filmmakers and their projects.

Not every example of losses to piracy is a matter of life-and-death. However, search and upload functions (such as those popularized by Google, YouTube, and Facebook) allow users to access illegitimate copies of creative content. This presents our creative communities with the constant challenge of trying to make a fair return on investments of time and talent. Services that offer that functionality point consumers to free copies of our creative works, being distributed without our permission, which creates traffic on internet platforms that generates advertising revenues.

In music, with the onset of its digital availability on both legitimate and piracy platforms, the industry essentially collapsed in the span of a decade. In the United States, revenues decreased by more than half – from \$14.6 billion in 1999 to \$6.3 billion in 2009. Meanwhile, the economy grew 20% and more music was being consumed than ever before. A huge percentage of that drop was clearly attributable to unfair competition from rampant music piracy services. While some musicians made the transition successfully – particularly the subset of artists who excel at live performances, merchandising, and endorsements – many could no longer make a living in music.

Today, the music industry has largely transitioned to digital distribution. Streaming services like Spotify and Apple Music have started to reverse the financial decline, with streaming revenues accounting for two-thirds of much smaller U.S. music industry revenue in 2016. But artists traded and continue to trade dollars for pennies as this digital takeover occurs, with proceeds continuing to be dragged down by piracy.

As recently as two years ago, YouTube, one of the largest music streaming destinations in the world, generated less revenue for the industry in royalties than the relatively niche market for vinyl records. Moreover, musical artists have little or no control over the upload of their music to YouTube. As a result, they can spend huge amounts of time trying to make YouTube take their recordings down (so they can make a fair return through other forms of digital distribution and negotiate market rates for the legal distribution of their music on YouTube), or they can take the fractions of a cent that YouTube may be willing to pay them.

The result is a distortive effect on the market for music, driven by the widespread availability of illegal content and the ineffective response of YouTube and other platforms to it. Thus, an artist whose song is streamed 1,000 times will make \$12 on Apple Music, \$7 on Spotify, and just \$1 on Google's YouTube.⁴

Similar stories can be told in the other creative content industries. The bottom line for all of these industries is that the unfair methods of competition often facilitated and sometimes practiced by the massive internet platform providers results in less creative content than otherwise would exist, fewer new voices, and harm to legitimate sources of distribution.

A piece written by CreativeFuture Member and Documentary Producer and Executive Producer Mitchell Block (Carrier, Vessel, The Testimony) that discusses how Google and YouTube's rampant piracy problem has affected his livelihood can be found on Page 10 of this document.

Additionally, 13 CreativeFuture Members, including filmmakers, musicians, photographers, and others, participated in writing "StandCreative Series One Stories." These short narratives explain how digital piracy has affected their livelihoods and careers. These stories can be found on Page 23 of this document.

Harm to American Consumers

Our copyright laws, as incorporated into the Constitution and as reflected in the Copyright Act, exist to benefit the public. As noted by the U.S. Supreme Court, "The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good."⁵

Copyright promotes creativity and, thereby, the general public good. But the lack of accountability and attendant inaction demonstrated throughout much of the internet ecosystem, including by massive internet platforms like Google and Facebook, leads to consumer harm by reducing investment that leads to further creative production.

In film and television, copyright provides investors an incentive to invest in creative works. Film and television production, in particular, are among the most expensive artistic endeavors. The process requires financial backers to believe in a project and see it through to its end – often requiring tens of millions of dollars to be spent before a final product is completed and ready for the marketplace.

Piracy can create enough harm and uncertainty to deter investors, especially for independently-financed films, documentaries, and other works with less than "blockbuster" financial potential – all films that meaningfully increase the variety of content available to consumers.

With less investment, there will be fewer new voices than otherwise would exist, fewer artistic endeavors, and ultimately less creative output, which adversely affects consumer choice.

⁴ See A. Abbott, et. al., "Creativity and Innovation Unchained: Why Copyright Law Must be Updated for the Digital Age by Simplifying It", released by the Regulatory Transparency Project of the Federalist Society, October 27, 2017 (<https://regproject.org/wp-content/uploads/RTP-Intellectual-Property-Working-Group-Paper-Copyright.pdf>).

⁵ Twentieth Century Music v. Aiken, 422 U.S. 151 (1975)

There is also a more direct effect on American consumers who are led to illegitimate content by large internet platforms. The threat of malware can be found in a large number of pirate websites and can result in identity theft, ransomware, and financial loss.

A report by the Digital Citizens Alliance⁶ found that at least one in three pirate websites expose consumers to malware. Additionally, malware can facilitate a nefarious practice known as “slaving,” which results in hackers having access to a computer’s camera. Due to these concerns, over 75% of respondents to the DCA’s survey believe that the major digital platforms need to do more to keep the internet safe. The FTC itself considered the malware threat serious enough to issue a consumer warning in 2017 and to investigate LimeWire for similar data security concerns in 2010.⁷

The FTC should keep firmly in mind that when the CDA and DMCA “safe harbors” were enacted, the now market-dominant platforms were either in their infancies or did not exist at all. However well-intentioned those “safe harbors” may have been for an industry in its infancy, they have led to a fundamental and unprecedented lack of accountability for the social and economic harm that has become pervasive as the internet has matured. That is how platforms can, without meaningful accountability, drive millions of eyeballs to their sites and monetize that traffic all on the strength of pirated content.

It’s not a coincidence that as recently as two years ago the content industry sent Google *over 900 million DMCA takedown notices*. Because of how the law is written, Google and YouTube can shrug their shoulders and reap advertising revenue while millions of views are racked up – in many cases from outright piracy, in others from videos that provide links to piracy, in many others from unlicensed uses of copyrighted works, etc.

Neither the entertainment industry, nor any legitimate business in the world, can “compete with free” when the “free” product is a perfect, stolen, endlessly replicable version of their own product. Nor can other streaming services like Apple Music or Spotify, which, unlike YouTube, do not attempt to leverage the availability of free, pirated content on their platforms to negotiate against musicians and their labels.

But these are certainly not the only ways in which large internet platforms lack, or try to avoid, accountability. In the past, Google agreed to a non-prosecution agreement with the Department of Justice over its role in accepting advertising dollars from unlicensed pharmacies. It was also forced to respond to statements by pirate site operators that came to light in litigation claiming that Google was actively assisting those sites to drive traffic to them by suggesting piracy-related keywords, with the majority of advertising revenue on those sites flowing back to Google.⁸

⁶ [Enabling Malware](#), July 2016

⁷ Google and Facebook both have a history of data privacy and data security violations: In 2011, each company entered into an FTC consent decree to settle serious allegations of consumer privacy violations, and both promised that they would protect consumer data going forward. Subsequently, in 2012, [Google agreed to pay \\$22.5 million to settle new FTC charges that it violated the FTC Order by misrepresenting privacy assurances to users](#). And in 2018, the [FTC announced that Facebook was under investigation for violating its 2011 Order through allegedly inadequate consumer data security in connection with the Cambridge Analytica scandal](#).

⁸ See [Media Firms Say Google Benefited From Film Piracy](#), Wall Street Journal, February 12, 2007 (available at <https://www.wsj.com/articles/SB117125197567105533>)

More recently, Google fought Congress in the passing of the Fight Online Sex Trafficking Act (FOSTA)⁹ because it would amend part of the Communications Decency Act and allow victims of sex trafficking to hold accountable websites that knowingly facilitate child sex trafficking, like Backpage.com.

Facebook claims to not be able to shut down groups that exist solely to share pirated content¹⁰ – even though they do manage to remove groups participating in other illicit activities. Of course, Facebook relies on a revenue model that prioritizes time spent on the service, so if the groups go away, so does the associated user time spent on Facebook.

This fundamental lack of accountability deserves to be addressed.

Between March and June of 2018, we ran a nine-question survey that polled the public on their feelings about platform responsibility. Over 2,000 Americans answered.

Here are some key findings:

- Over 80% of respondents believe that online platforms should take responsibility for the illegal actions taken on their networks.
- Just under 80% of respondents (79.85%) believe that given the tremendous growth of the internet over the last 20 years, it is time to reconsider the Digital Millennium Copyright Act (DMCA) and the Communications Decency Act (CDA).
- Over 77% of respondents believe Google, Facebook, and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of copyrighted movies, television shows, music, photography, and books.

You can read more about this survey, along with a question-by-question breakdown, on Page 13 of this document.

Lastly, like unlicensed pharmacies, sellers of streaming piracy devices, colloquially known as “Kodi Boxes,” use Google and Facebook, among a variety of other services, to find customers and sell them their illicit goods.

These devices are media players that use “Kodi” software, an open-source video platform that can be used to access and organize a user’s content – regardless of its legitimacy. In addition to organizing one’s media library, Kodi-enabled devices can also be loaded with applications known as “add-ons.”

These add-ons are similar to the Netflix app and other apps that operate on Roku, Firestick, Chromecast, or Apple TV devices. But there is *one big difference*: many add-ons for Kodi facilitate access to pirated content – everything from live television channels, limitless movies and television shows, and every premium broadcast available, from all around the globe. These apps may be pre-loaded onto Kodi boxes or may be downloaded after purchase.

⁹ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164.

¹⁰ See Facebook is Overflowing With Groups Offering Pirated Films — and Says it Won't Do Anything About It, July 13, 2018 (available at <https://www.businessinsider.com/facebook-groups-sharing-pirated-hollywood-movies-2018-7>)

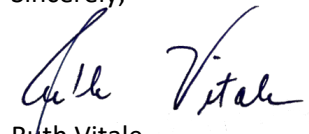
Advertisements for Kodi boxes, which typically sell for just a few hundred dollars, promise consumers “free television and hundreds of live channels” and advertise their services as “100% legal” – a blatant misrepresentation that lures unsuspecting consumers into commercial transactions with a business that appears to have the trappings of a legitimate commercial enterprise but is anything but.

An op-ed written by CreativeFuture Member and Producer Wendy Finerman (Forrest Gump, The Devil Wears Prada) that discusses the dangers of streaming piracy devices and apps can be found on Page 8 of this document.

Conclusion

We join other representatives of the creative industries in urging the Federal Trade Commission to consider these issues and their impact on competition and consumer protection, as it considers competition and consumer protection issues in communication, information, and media technology networks.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth Vitale". The signature is fluid and cursive, with the first name "Ruth" and last name "Vitale" clearly distinguishable.

Ruth Vitale
CEO, CreativeFuture

Will the Spirit of American Cinema Become Extinct?

By Wendy Finerman, *The Hill*

March 7, 2018

When I produced *Forrest Gump* and *The Devil Wears Prada*, it was astonishing to see each of them come together, from books to scripts to financing to shooting to the day they were in theaters. Amazingly, they both hold up beautifully years after they were released. The movies still inspire audiences, make them laugh, cry and think – all very true emotions that are at the heart of American filmmaking.

It took over 10 years to get *Forrest Gump* to the big screen. The film is a result of years of toil from hundreds of people to craft this singular experience.

Forrest Gump was released in theaters in 1994, a very different world of watching movies than we now inhabit. People didn't "stream" movies at home – they were still driving to and from Blockbuster with bulky tapes. We didn't give much thought to piracy back then.

Fast forward to 2018, and if that movie were released today, it would be available illegally online, from unauthorized sources, within hours. You don't need to be a tech genius to figure out how to see it. All you would need to do is get a "fully loaded" piracy device (sometimes referred to as a Kodi box) and you could be watching any movie *ever made* within seconds – all in the privacy of your own home and on your 60-inch flat screen TV – for free, with no compensation to anyone who helped make the film.

Kodi by itself is legal software that can be loaded onto any Android streaming device, creating a viewing interface on the television screen that functions similarly to the Apple TV. However, devices that use the Kodi platform can be easily misused. When they are loaded with third-party add-ons, the user can access a virtual treasure trove of pirated entertainment media from all over the world.

Unscrupulous companies are profiteering by buying massive numbers of empty set-top boxes, loading them with Kodi and illegal apps, then selling them at a high markup. One of the most notorious is "TickBox," which has been making headlines for its role in enabling piracy on the grandest of scales. That includes "Forrest Gump" and "The Devil Wears Prada", and as well as live streams of cable and pay TV channels from around the world. Don't believe me? Here's what TickBox's marketing pitch looked like (as it appeared on their website until they were ordered by a court to take it down):

"Simply plug the Tickbox TV into your current television, and enjoy unlimited access to all the hottest TV shows, Hollywood blockbusters and live sporting events in one convenient little device, absolutely free."

But entertainment *isn't* free – it costs money to develop an idea and then execute it. Whether it's a live event, or a film, or a television show, companies big and small spend millions of dollars to bring us the characters and stories we love.

Some piracy operators even have the gall to charge additional subscription fees for “services” that pipe in stolen content, usually for about [\\$10 a month](#). A recent study from the Internet research firm Sandvine found that an [estimated 7 million North American households](#) now have a piracy device, earning criminals about \$840 million per year. And this is nothing compared to the billions lost when the device users stop paying for legitimate access.

Because they look and work just like brand-name set top boxes, these streaming piracy devices normalize piracy, ushering content theft into the cheerful light of the living room. Now it may feel just like home, but you and your family are breaking the law from your couch.

Fortunately, the news about Kodi is not all bleak. TickBox has been called out for their blatant thievery, and the courts are listening. In January, a judge in California saw through TickBox's protestations of innocence and slapped the Georgia-based company with an injunction, ordering it to keep pirate add-ons off of its devices and halt all advertisements that encourage piracy.

But while the end may be near for TickBox, our fight is far from over. A recent study found more than 750 websites that sell infringing devices, which means that wherever a TickBox falls, another like-minded device will step in to take its place.

The battle against piracy will remain an endless game of Whack-A-Mole until we change the conversation at the federal level. In Europe, the highest court has ruled that fully-loaded piracy devices are illegal, and UK law enforcement have brought numerous criminal cases against box purveyors, obtaining jail sentences as long as four years. In our country, prosecutors, with the encouragement of Congress, should be working to deliver a similar knockout blow.

My fear is that the growth of streaming piracy will prevent films like mine from being made. Although “out of the box” films often reap a higher return on investment than franchise films, they have no built-in audiences and therefore are financially riskier than franchise films that do.

My hope is that services like Tickbox will be stopped so that the next generation of American writers, directors and producers have a chance to tell their stories. If the growth of streaming piracy devices continues, it will deprive audiences of the life long memories that come from watching classic American cinema.

Piracy must be stopped – for all of us.

Wendy Finerman is an Academy Award®, BAFTA®, and Golden Globe®-winning producer. She has produced films and television shows including Forrest Gump, The Devil Wears Prada, Drumline, and Stepmom, among others.

I am a Filmmaker and My Films Are Being Stolen on YouTube – this is My Story.

By Mitchell Block, *CreativeFuture Blog*, April 11, 2018

In 1973, fresh out of film school, I wrote and directed the dramatic short *No Lies*, an important film because of its open, and unfettered, discussion of sexual violence against women.

Today, *No Lies* is included in the National Registry and in the curriculum for film theory, women's studies, and anthropology college courses across the country. However, due to its subject matter, it struggled to find distribution after its initial release. So, I elected to distribute it myself.

More than 40 years later, my company, Direct Cinema, has produced, marketed, or distributed works by some of the leading figures in filmmaking, including John Lasseter, George Lucas, Martin Scorsese, and Ken Burns, among others – their films have collectively won nearly 30 Oscars® and have garnered close to 100 nominations.

My business grew and flourished by providing copies of little seen, often underappreciated, frequently challenging works to institutions that could benefit most from seeing them, including colleges, universities, public libraries, senior centers, and prisons.

As I write this, however, our business model is over.

It started in the 1980s with the invention of VHS formats. Then came the rise of the MPEG format in the '90s and, with it, illegal file sharing of motion pictures. Then, in 2005, came the death knell – with the emergence of YouTube and similar video streaming companies.

There are currently hundreds of films from Direct Cinema's past and current catalog that have been uploaded to YouTube and other sites like it. Every single one of them, from the popular PBS series *Carrier* to Disney's Oscar®-winning animation short *Tin Toy*, is being streamed illegally.

One YouTube user called "2009dina" has had *Tin Toy* up and running since 2012. On that page alone, the film has received more than 1 million pirated views.

YouTube is fully aware that its site is rife with such content, which infringes on copyright and robs creatives of the earnings they deserve – even as the uploaders of the content make money from it via advertising. However, instead of actively seeking to curb piracy, YouTube puts the burden on copyright holders, like me, to flag videos for removal.

Needless to say, I spend a lot of time flagging our pirated videos on YouTube.

This task used to be much easier thanks to the Content Verification Program (CVP), a tool that allowed me to enter a Direct Cinema title into the YouTube search bar, and simply click a box next to each result that violated my copyright. I could then mass-submit a page of pirated uploads for one title, all at once, and then move on to the next page or the next title.

Even then, it was an endless game of Whack-A-Mole to keep on top of all the piracy, but the tool helped, allowing me to take down hundreds of infringing videos in a matter of minutes.

Until one day, when I logged onto my YouTube account and discovered that the Content Verification tool was gone. Vanished.

The tool was (and is) still a feature of the site, but my access to it had been removed.

Undeterred, I went through the rigmarole of applying to get the tool back, but my application was swiftly rejected, with the following note from the anonymous YouTube powers that be:

“We have decided that you are not an appropriate candidate for this tool. The CVP tool is designed for large copyright holders who expect to have an ongoing need to have content removed from YouTube.”

My company may not be publicly traded, but with a few hundred titles and decades of experience, we certainly have an “ongoing need to have content removed from YouTube.”

Having denied us the process that made it at least somewhat possible to protect ourselves from streaming piracy *en masse*, the YouTube rejection email proceeded to invite us to flag future infringing content on a case by case basis, by filling out a separate web form for each offending video.

Concerned, I wrote a message to YouTube’s help center:

“Our works are stolen in large numbers on your site and providing individual notices for each take down is time-consuming and ineffective. Historically, we had a way of ticking a box and signing off. We would like that method returned to us.”

Months later, I have yet to receive a response to this query from anyone at YouTube, or Google, its parent company. Instead, my requests to be reconsidered are just blocked automatically, with no email address to write to or phone number to call.

Being ignored when I’m trying to find a simple solution to the problem is infuriating, but more importantly, I simply don’t have time for this. I’m trying to run a business that supports independent filmmakers and provides high-quality cinematic offerings to community institutions worldwide.

I am far from a “studio fat cat,” not that the fat cats don’t have the same rights and also work their tails off. Creatives, big and small, are all in this together – piracy hurts us all, from the director of the next comic book blockbuster to a little-known animator trying to get a short into a festival.

Based on the above exchanges, it’s obvious that YouTube just doesn’t care. It’s not in their interest to change things because their business model depends on the monetization of content that they don’t create or own. Long-outdated exceptions in our country’s laws allow them to get away with it, evading accountability for illegal content that appears on their site.

Of course, when YouTube is selling video streams of its own licensed films, other pirated copies on the site have a way of quickly vanishing. (Try to find a free copy of the Warner classic, *Willy Wonka and the Chocolate Factory*, for instance.)

Apparently, someone at YouTube still has access to the CVP tool. I wish the same could be said for Direct Cinema and other indie film providers who have been deprived of this convenient method to limit the online infringement of their offerings.

Our legislators have the power to help. As I write this, NAFTA renegotiations continue to unfold. The new trade agreement could feature strong copyright protections and its “safe harbor” provisions could be eradicated, taking away the blanket immunity big tech companies like YouTube now enjoy from the innumerable acts of piracy occurring on their platforms.

It’s high time Congress forced these sites to own up to the stolen content that they inadvertently host, but openly use to turn a substantial profit. YouTube must be held responsible for the materials its users share, taking stronger measures to ensure that the person who uploads a video also owns its copyright.

In the meantime, I will keep removing pirated Direct Cinema movies from YouTube. It’s a lot harder to do than it used to be, but I have no choice. My livelihood, and the livelihoods of all the creative people whose work I support, depends on it.

Platform Responsibility Survey

Between March and June of this year, CreativeFuture ran a nine-question survey that polled the public on their feelings about platform responsibility. Over 2,000 Americans answered.

With a variety of scandals involving Big Tech coming to light over the last few months, our results demonstrate that the American public is ready for our government to take action by reining in Silicon Valley.

Here are some key findings:

- Over 80% of respondents believe that online platforms should take responsibility for the illegal actions taken on their networks.
- Just under 80% of respondents (79.85%) believe that given the tremendous growth of the internet over the last 20 years, it is time to reconsider the Digital Millennium Copyright Act (DMCA) and the Communications Decency Act (CDA).
- Over 77% of respondents believe Google, Facebook, and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of copyrighted movies, television shows, music, photography, and books.

CreativeFuture believes that the tide is turning – Americans are beginning to view Google and Facebook as entities that have existed outside the reach of our laws for too long. Through safe harbors that were created at a time when the internet was still in its infancy, these now large corporations act irresponsibly and in their own best interest, regardless of who or what gets hurt in the process.

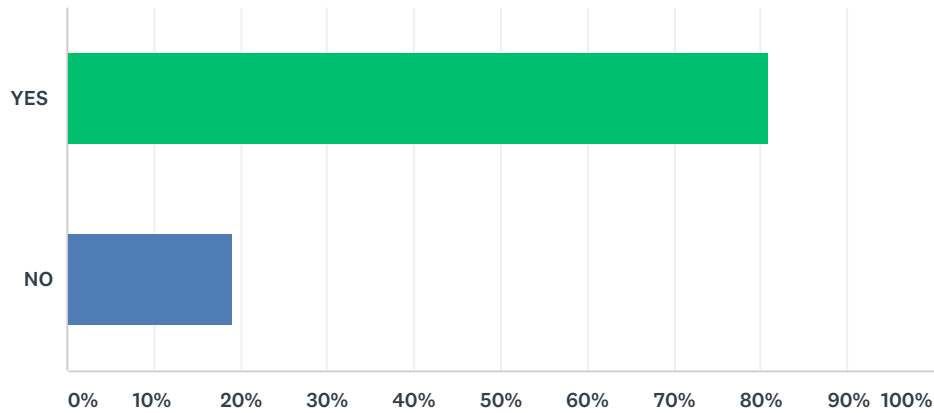
Due to the amount of money that is being made by Silicon Valley, only action by the government will compel these companies to begin acting responsibly and within the confines of the law.

The complete results of our survey can be found following this cover letter.

Should Google and Facebook Be More Responsible?

Q1 There is growing evidence that the major internet platforms are being used for purposes that may violate U.S. laws. Should the major internet platforms take responsibility for these uses of their services?

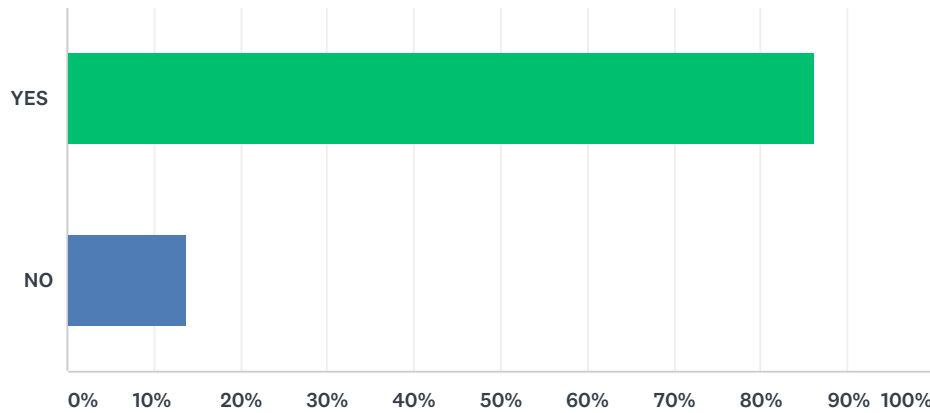
Answered: 2,071 Skipped: 6



ANSWER CHOICES	RESPONSES	
YES	80.98%	1,677
NO	19.02%	394
TOTAL		2,071

Q2 Recently, the major internet platforms opposed the Stop Enabling Sex Traffickers Act (SESTA) because they want to avoid responsibility or legal liability for such uses of their services. Do you believe that the major internet platforms need to do more to stop sex trafficking on their services?

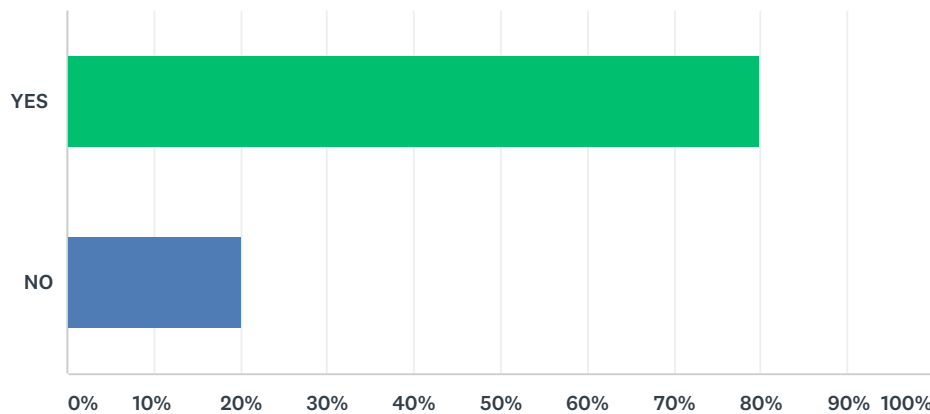
Answered: 2,064 Skipped: 13



ANSWER CHOICES	RESPONSES	
YES	86.19%	1,779
NO	13.81%	285
TOTAL		2,064

Q3 The major internet platforms benefit greatly from the Digital Millennium Copyright Act (DMCA) of 1998 and the Communications Decency Act (CDA) of 1996, two 20-year-old laws that were intended to give the then-fledgling internet the opportunity to grow. Today, the major global internet platforms – companies like Facebook, Google, and Twitter – use these laws to avoid taking responsibility for the content they deliver to consumers or help them find, and from which they make immense profits. Given the tremendous growth of the internet in the last 20 years, do you believe it is time to reconsider the DMCA and the CDA?

Answered: 2,060 Skipped: 17

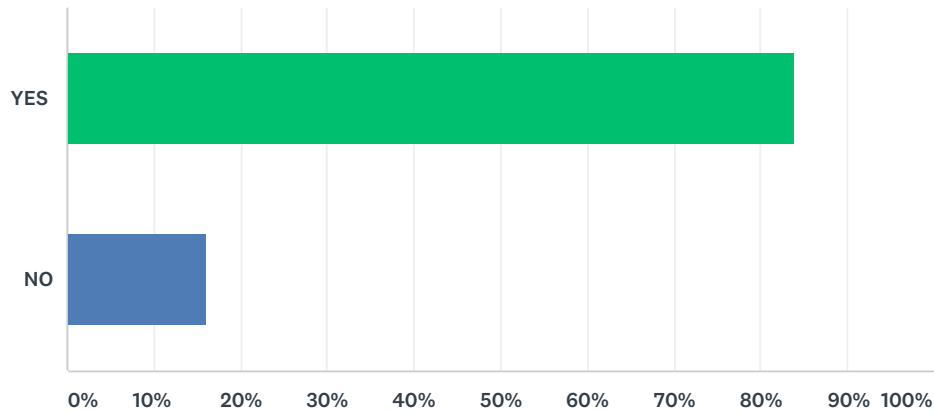


ANSWER CHOICES	RESPONSES
YES	79.85% 1,645
NO	20.15% 415
TOTAL	2,060

Should Google and Facebook Be More Responsible?

Q4 Do you believe that services like Facebook, Google, and Twitter should take greater responsibility for the use of their platforms to promote false and misleading news articles?

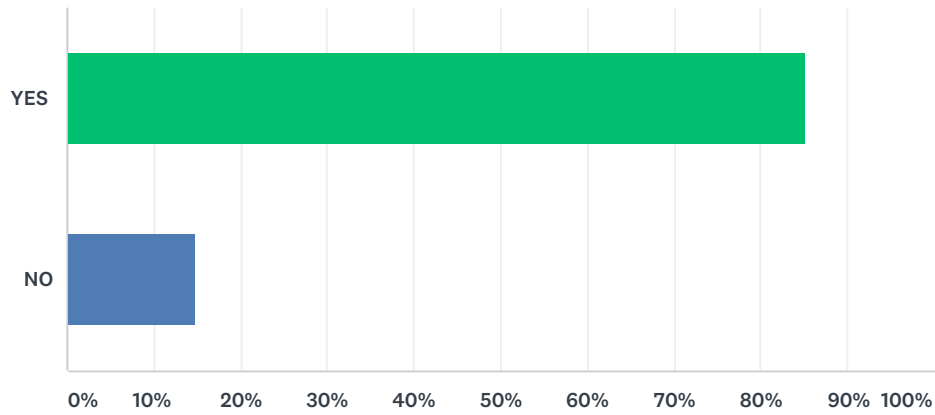
Answered: 2,069 Skipped: 8



ANSWER CHOICES	RESPONSES	
YES	83.95%	1,737
NO	16.05%	332
TOTAL		2,069

Q5 Do you believe that services like Facebook, Google, and Twitter should take greater responsibility to ensure that foreign agents cannot use their platforms for political advertising or influence?

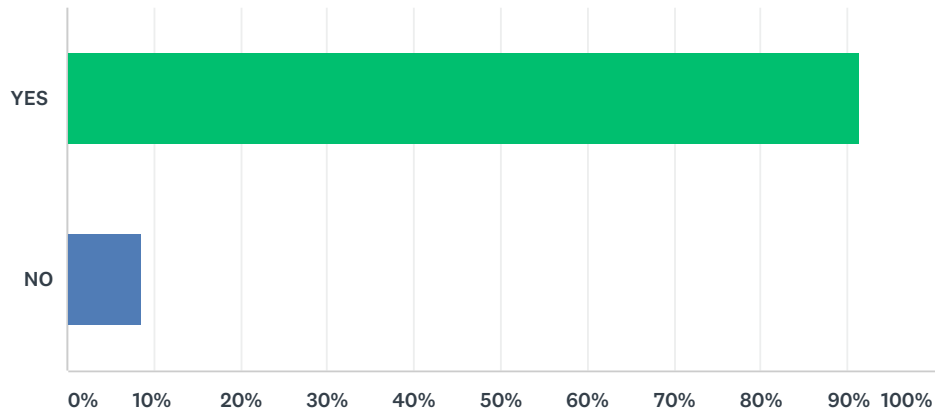
Answered: 2,072 Skipped: 5



ANSWER CHOICES	RESPONSES	
YES	85.14%	1,764
NO	14.86%	308
TOTAL		2,072

Q6 Do you believe that services like Facebook, Google, Twitter, and others should take greater responsibility for protecting the privacy of their users?

Answered: 2,070 Skipped: 7

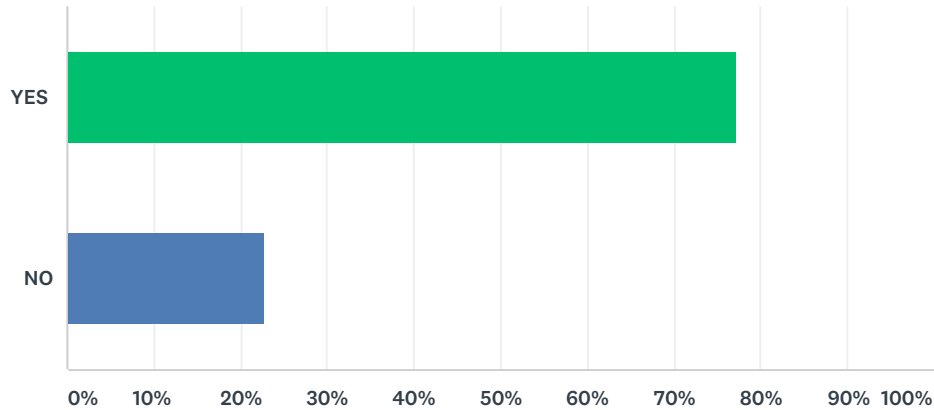


ANSWER CHOICES	RESPONSES	
YES	91.50%	1,894
NO	8.50%	176
TOTAL		2,070

Should Google and Facebook Be More Responsible?

Q7 Do you believe that services like Google, Facebook and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of creative copyrighted movies, television shows, music, photography, and books?

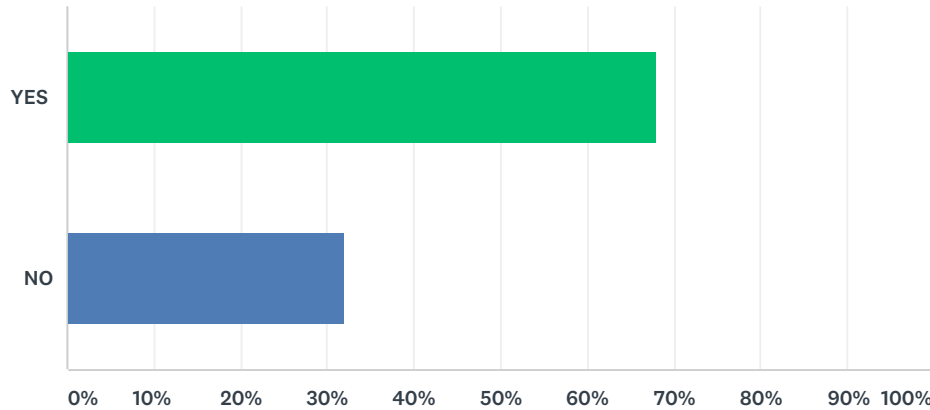
Answered: 2,064 Skipped: 13



ANSWER CHOICES		RESPONSES	
YES		77.18%	1,593
NO		22.82%	471
TOTAL			2,064

Q8 Has the growing public attention to the failure of giant internet platforms like Facebook, Google, and Twitter to take responsibility for their role in facilitating illegal activities changed your opinion of the companies?

Answered: 2,069 Skipped: 8

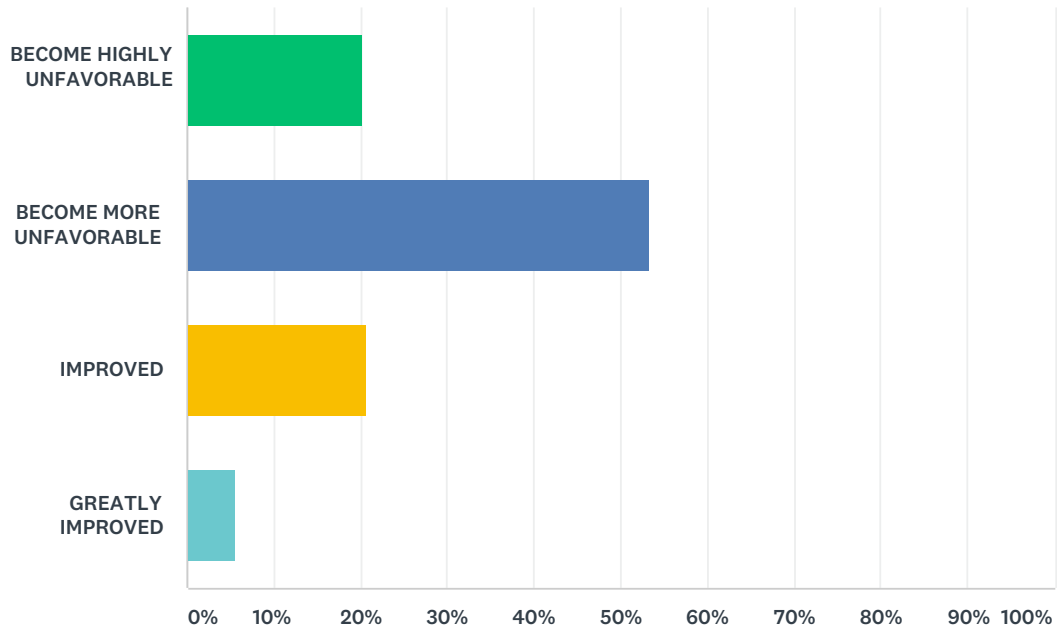


ANSWER CHOICES		RESPONSES	
YES		68.05%	1,408
NO		31.95%	661
TOTAL			2,069

Should Google and Facebook Be More Responsible?

Q9 If your opinion has changed, has it ...

Answered: 1,962 Skipped: 115



ANSWER CHOICES	RESPONSES	
BECOME HIGHLY UNFAVORABLE	20.29%	398
BECOME MORE UNFAVORABLE	53.31%	1,046
IMPROVED	20.80%	408
GREATLY IMPROVED	5.61%	110
TOTAL		1,962

StandCreative Series One: Lisa Hammer

February 22, 2016

I have been an artist my whole life.

I spent thousands of hours and dollars studying film-making, music, and acting. I have been creating my own work since the 80s and for many, many years I was able to make a good living as a filmmaker/musician. I was able to live well, perform and record with the band, create and screen my films, and reinvest my earnings back into my work.

This, unfortunately, has dried up in recent years due to piracy. A few years ago, I made the mistake of Googling my bands. To my horror, I was easily able to find dozens of sites giving my songs away or charging for them, selling ads, etc. I had never heard of these companies and they were not sending royalties to me or to my record label. My label went to battle daily to bring these sites down, but every time they cut one head off, two more would grow in its place.

It is now impossible for me to continue with my band.

The same has happened with my films. I used to make money through distribution on tapes and DVDs, and even a few VOD. But now, as soon as I release a film through an online distributor, or submit it to a film festival, I see links to the film on a YouTube channel.

I ask Google to take it down. They do. Two days later, my partner emails in a panic. Three more links for our film have been put up on YouTube. This goes on every week now and we only just finished post production on our most recent feature. The film hasn't even been screened at a festival yet or considered by a distribution company. My last feature has only made about \$100 on a legitimate VOD site because it's being given away for free all over the internet.

I am not a huge, greedy studio as the pirates and fans might imagine. I am a small, indie filmmaker creating content with my own pocket money and fan-funding. For the first time in my career, my bills are piling up and I can't keep up. I have no idea how to monetize my work or continue to afford making my films and music.

StandCreative Series One: Valerie McCaffrey

February 23, 2016

I thought that being part of a film that could reach out across borders both in America and Armenia and could make people laugh would be a perfect venue for the film audience both here in the US and the world.

Lost and Found in Armenia was made for a price, starred American and Armenian actors, and it seemed like it was the beginning of great relationship with the Armenian investors who were interested in continuing to make films for their community.

We had screenings in the US and the film was well-received. But, unfortunately, right when the film was going to be released theatrically in the US, the film was also available, for free, on YouTube.

How did this happen? Evidently, the film was stolen from where the Russian version of the film was going to be processed. But by the time I could stop it, it was seen thousands of times and several others like it came popping up. I was mortified. YouTube was being difficult. Every time I would take one down, two others would appear. And then YouTube refused to take down the links because the email address from which we were sending the requests was not associated with a website – even though it was the same address we had been using all along! At one point, there were eight separate links!

The task of reporting this infringement to YouTube was a full-time job. And since our distributor had made a flat deal with the Russian distributor, I was not given any recourse. The distributor collected their money and that was that. “It happens,” a representative of our distributor told me. As a matter of fact, they sent me a standard reply that they had cut and pasted – I knew it was standard because they sent it to me twice and it was exactly the same wording! So I guess this was the norm — to make a film and for it to get stolen.

Our investors, whose money was hard earned, are still wondering what happened to their investment. Just recently, I took down a site that had over 55,000 downloads even though the movie was released in 2012!

We all worked hard on this film and wanted it to succeed financially so we could make more films. In my opinion, YouTube needs to be held accountable for money lost. They also need to be more responsible in protecting not just my film but also all creative works, especially in foreign territories. It’s terrible that this happens and it has got to stop.

StandCreative Series One: Allison Burnett

March 2, 2016

These days, when only a tiny fraction of indie films are released theatrically, a small film's primary hope of financial recoupment is through Pay Per View.

My film's producers and I were filled with optimism when the date of our film's release arrived. Imagine, then, our horror when within 24 hours of the film appearing on iTunes, Amazon, Direct TV, and a host of other platforms, we discovered that it was also available on YouTube. One click and the film almost instantly streamed in perfect high definition *for free*. We reported the crime to our distributor who immediately reported it to Google. But no sooner would a link come down and then two more would appear.

By the end of two weeks, there were half a dozen sites streaming it for free. I got so disgusted with it that I even contacted one of the sites myself. A young Palestinian out of his West Bank apartment ran the site – he was so mortified to be contacted by the filmmaker himself that he apologized and took down the film.

However, we eventually just surrendered. We were fighting a losing battle. The only way to combat the anxiety and pain of our little film losing thousands and thousands of badly needed dollars was to stop checking YouTube altogether. Call it the ostrich approach to emotional and psychological self-preservation. The only interruptions to this self-imposed blackout were the daily tweets in my Twitter feed from young fans offering their friends free links to stream the movie.

I would tweet back a simple message – “THIEF!”

StandCreative Series One: Jane Clark and Bob Tourtellotte

March 7, 2016

We are independent filmmakers who thought we knew about piracy and its full impact until, of course, we didn't. We had raised money, made movies on a budget, screened at festivals, marketed online, and purposefully released our films in the new world of electronic sales. With *Crazy Bitches* we were a Top 10 download our opening weekend with a "box office" trumpeted by my cousin, who called to say we were No. 9 against *Fifty Shades of Grey* and the chat room buzz was strong – all on torrent sites.

Piracy was out there in cyberspace – not in our garage office. Our opening weekend was Valentine's Day 2015. More than 650 links to illegal copies landed on a range of sites including "legit" ones like YouTube.

They all made money – we didn't. Why? Why is piracy acceptable? Is it legal to walk into Walmart, take a DVD, and leave without paying? Absent a digital box office return, we cannot make another movie. Our indie voice will go silent. A crew of about 50 will not be paid. A good story won't reach you.

It doesn't have to be that way.

All us creative folks earn a living by trading our goods or services for cash. Pirates make money too, but they do it by exchanging a "free" product – "free" to them because someone stole it – for advertising revenue or from selling your private info or email or pushing malware onto your laptop or mobile device.

They profit by doing harm, but I bet you don't. I bet you work for your money – like we do. Please think about that before downloading your next "free" movie.

Paying benefits all of us – we make more movies, and you get to watch them – and puts the pirates out of business.

StandCreative Series One: Wayne Kramer

March 9, 2016

The day my most recent film, *Pawn Shop Chronicles* debuted on Video-On-Demand (which was on the same date as its theatrical release), the film was recorded in a perfect HD quality copy from one of its VOD rentals and illegally uploaded to the web. By the end of the first day of its availability on VOD, I could download the film for free from one of several thousand illegal links. I'm not exaggerating when I say **several thousand** links. Page after page of illegal download sites (torrents, streaming sites, and file lockers) were popping up one after the other. The film was also uploaded to YouTube multiple times and fake versions can still be found that redirect you to a site where you can illegally download or stream the actual film. A Twitter search of the title revealed that fans of the late Paul Walker (the star of the film) were brazenly posting torrent links for all interested parties. One fan posted on my Facebook page to tell me how much he enjoyed the film, while at the same time admitting to having illegally downloaded it. Even as I write this, if you enter "Pawn Shop Chronicles download" into Google, you'll get 114,000 results, the second choice listed being for an illegal torrent site (as are most of the links).

Now here's the thing: to this day I have never received any money for directing "Pawn Shop." Both Paul Walker and myself deferred our fees to put the money back into a financially strapped production. The film has not made back its five-million-dollar budget and the financiers of the film have not come close to recouping their original investment. About two months ago when I made my most recent inquiry, I was told "Pawn Shop" is still several million dollars in the red, translated as: I will never see a dime for all the work I put into the film. The Directors Guild of America even commissioned my salary on the film – money which I was never actually paid since my fee was deferred – and thankfully the producer covered my DGA costs or I'd personally be way into the red on the film.

I'm just bringing up the case of **one** low budget film here. ALL of the films I've directed have been pirated with a loss in residuals to myself that is likely in the hundreds of thousands of dollars. For each one of them you can find hundreds if not thousands of illegal links with a simple Google search of the title. Shortly after Paul Walker's death, a guy named Brandon Donovan uploaded "Running Scared" (a film that I wrote and directed, which also starred Paul Walker) in its entirety on YouTube in HD quality. His supposed reason for posting the film was to 'honor Paul Walker.' By the time I became aware of it, the film had been viewed over 200,000 times (with another copy having been viewed 260,000 times and being up on YouTube for more than a year). I identified myself as the writer and director of "Running Scared," to Brandon and politely asked him to take down the film. His response was that "[I] should go f*** [my]self." I tried reporting Brandon's upload of "Running Scared" to YouTube as copyright infringement, but because I'm simply the writer and director of the film and not the copyright holder they would not take any action to remove it. Now it would be obvious to most Google/YouTube employees that "Running Scared" is the property of New Line/Warner Bros./Media 8, etc., simply from the logos featured on the front of the film or a quick IMDB search. But Google has chosen to wrap themselves up in red tape and a labyrinth bureaucracy when it comes to acting on reports of piracy. I had to waste a whole lot of time tracking down someone in Warner's legal department to get YouTube to take action. And when they finally did remove the film, another copy took its place within days. Let's also keep in mind that the entire time the film was illegally available on YouTube, Google was monetizing it through advertising. I don't believe Warner Bros. or anyone involved in the making and financing of the film saw any of that money.

I'm not a rich guy. I work hard like everyone else to provide for my family. For the most part, I work in the low budget arena. If I'm lucky, I get to direct a film once every four or five years! And when I do direct a film, half of my fee typically goes to my agent, manager, and guild commissions, as well as legal fees and

taxes. With the down-sizing taking place in our industry over the last few years, budgets have become significantly smaller along with talent fees. This is happening in no small part due to piracy. A film that I directed ten years ago, which had a budget of fifteen million dollars, is expected to be made today for five million and under. And, yet, the producers and audiences demand the same level of production value as the fifteen-million-dollar film. I can tell you that is simply not possible. I'm required to do in 20 or 25 days now what I had previously been given 45 to 50 days to achieve – and even that was tight given the ambition of the material. You also have less money to spend on production design, set dressings, costumes, props, visual effects, music, etc. The whole thing becomes a downward spiral because budgets have been squeezed so much due to the losses incurred by most lower budget films – and, again, a huge part of this comes back to piracy.

Our children are growing up in a culture today where music and movies are free for the taking. They see nothing wrong in illegally downloading entertainment and swapping torrent links on social media. If anything, their popularity is reinforced by making as much free content available for downloading among their peers. The films that are getting hurt the most are the latest independent films that ten years ago were given the chance to thrive in theaters with limited releases and a healthy DVD afterlife. The future doesn't look good for the next "Pulp Fiction" or "Memento" or "Boogie Nights." I remember spending a hundred dollars to buy a laser disc of a film I loved back in the nineties—and that's when I could barely afford to feed myself. Today, that would be unheard of. High Definition content on Blu Ray typically sells for under \$20 and often times for as low as \$5 or \$6 after a year or two. And still these films are ripped-off online. How is this a sustainable model for any business?

The sky is indeed falling and we need many hands to help prop it up. Please join us in getting the message out: if you enjoy our work and wish to see more of it in the future, please don't steal it.

StandCreative Series One: Cassian Elwes

March 11, 2016

I cut my teeth in the film business in the mid-80s, before the internet or even piracy was even a thing. Piracy back then was the guy on the street corner selling bootleg copies or the guy sitting in the back of the theater recording the movie directly onto a VHS tape. Not to minimize the criminality of these acts, but piracy has grown up right alongside the internet like a little brother who won't stop stealing candy bars no matter how many times he gets his hand slapped.

Well it's high time we move from hand slaps to something a bit harsher.

As a producer, and particularly as an executive producer, my job is to understand the finances of a film – what is it going to cost us, versus what we are going to make on it. In 2013, I was the executive producer on *Dallas Buyers Club*, a critically-acclaimed film that had strong Oscar® buzz. Even with this popularity surrounding our film, I was amazed to see the millions of illegal transactions from all over the world pour in. People all over the world downloaded or streamed my movie illegally without paying a dime. This wasn't the aforementioned guy on a New York street corner with DVD boxes lying on a picnic blanket. This wasn't the guy filming from the back row of a seedy multiplex. These are millionaires hosting our film on their site as they reap the benefits of ad-revenue from legitimate brands that have no idea where their logo is appearing. This is not a petty thief or your garden-variety shoplifter – this is a well-oiled criminal enterprise putting dollars in their bank accounts that rightfully belonged to our crew, our actors, our distributors, and myself.

I felt helpless – but I simply had to chase them. And I did, but in the end, after years of running after them, I threw in the towel.

With the tools we have in place and the lack of help we're getting from companies like Google, who facilitate the flow of traffic to these pirate hosting sites, we're fighting a losing battle. As soon as we celebrate a hard-fought but minor victory, new sources would surface almost instantly, providing new links, new hosting sites, and new avenues for people to watch *Dallas Buyers Club* without paying the talented people who made it a reality a single cent. It's not right.

The truth is that if this continues, independent cinema has its days numbered. We need to fix this and we need to fix it soon.

StandCreative Series One: Kari Tieger

March 18, 2016

My name is Kari Tieger and I'm a bilingual singer/songwriter and composer registered with the American Society of Composers, Authors, and Publishers (ASCAP).

I have written and performed in English since the age of 15 and, in French, since my mid-20s. I duly obtain copyrights for all my work. To date, I've released five full-length albums, two of which are entirely in French, with another that is half in each language.

With each passing year, I seem to earn increasingly LESS in performance royalties despite continuing to add to my musical catalog. In 2013, I earned more than \$500 in royalties, followed by \$163.84 in 2014, and then only \$134.86 in 2015. I have seen streaming payouts decrease in recent years from 99¢ per song to only one or two cents per stream.

Last year, it came to my attention that some of my French songs were being used and released, but that because I am an independent publisher not registered with a major label there was no advocate to obtain me the royalties I was due. I became so disheartened by this downward trend that I took steps to assure that I will earn any and all royalties due to me. It is mildly encouraging to note that as of the end of February I have earned \$13.87 in royalties (up from \$5.83 by February 2015), which reflects that effort. I can only hope that the pendulum has begun to swing back in my favor.

It is simply not possible at this point to make a living creating music as an indie artist.

StandCreative Series One: Mark Leibowitz

March 22, 2016

I love taking photographs. It's one way I relate to the world – capturing the beauty of life in an image.

After 13 years as a professional photographer and filmmaker, I still take pictures non-stop for personal enjoyment. My personal images, however, are very different from the images I create as a professional photographer and director of photography. My professional work requires considerably more planning, creative thought, and effort – which is how my employees, crew, and I all make our livelihood from this work.

So, what's the difference between walking outside to shoot a nice personal photo and putting together a professional shoot?

There's a big difference. For fun, it's just a vacation photo to share with friends and family where I point and shoot. For work, I'm creating a meticulously crafted message that provides substantial good to many people. A professional shoot involves steps that start months before photographs are actually taken:

- The process actually starts with my team and I editing through my 15-year+ archive of photos to create a portfolio and/or reel to show to a client.
- My employees retouch, print, and design every image to a high level of technical and creative excellence. We spend months sending out these materials to potential clients and repeatedly following up with them to stay top of mind.
- If we do a good job at staying top of mind, they contact us when they have a project and ask us to prepare an estimate. This takes numerous hours or, more often, multiple days depending upon the complexity and scope of the job.
- Once awarded the job, we start pre-production, which involves the following: days of creative research, client meetings and conference calls, prepping expensive gear, booking crew (including camera assistants, hair and makeup artists, grips, gaffers, prop and wardrobe stylists, and producers), looking at locations, getting permits for the locations we select, and having more calls with clients to go over all of the details above.
- Then it's shoot day and a team of 5 to 50+ all wake up, often before sunrise, drive to the location, and do the job they are trained to do. People set up lights, lift sandbags, lay down cables, arrange sets and scenery, bring in the talent, put makeup on them, dress them, and place them in the scene. My crew and I check that the lighting is perfect and then everyone takes a deep breath as I finally...
- ... take the first photo.

What started many months earlier with weeks of editing has finally culminated in a professional photo shoot that yields a remarkably polished and focused product. We then choose the best images, process them, and make any edits or touch ups that we agree on with the client.

And everyone along every step of this process is a professional who pays for their healthcare, their children's school, their food, rent, gas, and everything else in their life with the money they make from this shoot and others like it.

My employees are real people – people you know. They are parents of teenagers applying to college, volunteers and donors to charity organizations, and supporters of their own parents and siblings. They are real people, with real needs, and very real obligations.

When our work is downloaded illegally, reposted without proper credit, or stolen in any form, my ability to keep these employees on my payroll and to support their lives and their loved ones is stolen as well. Please consider this before using anyone’s creative work without permission.

StandCreative Series One: Doug Maddox

March 28, 2016

I produced *The Bill Collector* with actor Danny Trejo from *Machete* and *Undaunted* starring Allen Williamson from *Abduction* with Taylor Lautner.

The Bill Collector had great success with its theatrical worldwide release. After some time, I got a call from the FBI stating that the film had been pirated by a professional who was selling not just our film, but many other studio films out of Washington, DC. After the man was arrested, I was invited into the court process and was asked how much I wanted in compensation. I stated that a part of the \$250,000 fine shown at the front of every film would be fair. I have received no compensation to date and do not expect to be paid. After all, the man has been fined and is in jail.

On *Undaunted*, I was recently told by our Spanish distributor that there have been approximately five different pirated versions of the film in Spanish. I went on YouTube to do a search for the Spanish version and English version and found *Undaunted* twice. On the Spanish YouTube page alone, the film has been viewed by more than two million people. Two million people equal a lot of money and lost revenue even at fifty cents coming back to the filmmaker.

Piracy is real and it's a real problem. I find it troubling that I find our movies and other movies up on YouTube. Pirating takes away from the incredible amount of work and artistry performed by not just myself as producer/director of films but crews that we hire. We have employees – many above and below-the-line filmmakers on the set. Since the money doesn't come back to the producers, it is harder to make more films to hire more crews to keep this industry rolling. I want to see piracy stopped and see money come back to the filmmakers so we can create more of the films that audiences love.

Let's stop piracy today.

StandCreative Series One: Dan Selakovich

April 18, 2016

Some years ago, I wrote and self-published a book for filmmakers called “Killer Camera Rigs That You Can Build.” As I was the publisher, I was neck deep in the sales and distribution of the book.

The first edition sold extremely well (this was the only book of its kind and apparently much desired). The second edition was even beating first edition sales. Then sales dropped substantially. Within 3 weeks, I saw a 90% drop in sales. I couldn’t figure it out until I did a Google search of my book. At the time, the first four pages of Google listed where you could get the book for free – one pirate site after another. I should point out that this book was not available in digital form at the time. Somehow, a PDF version had made its way onto the internet.

I started sending out DMCA notices. Most sites would take down the book, but it would mostly be back up by the next day. Some of the larger sites refused outright. ThePirateBay, for example, bragged: “We have never removed anything, and never would.” I would spend a couple of hours every morning sending out these notices, but it was futile. For every site that took it down, five more would pop up. It was a never-ending, pointless task.

I begged Google to at least list legitimate sources where you could buy the book first on any search, but the reply was “that’s not how search algorithms work.” To me, Google was no better than a fence selling stolen goods. After all, they make money selling advertising to pirate sites, so I don’t see any distinction.

It was much more profitable for them to send web searchers to pirate sites that they had sold ads to.

The DMCA couldn’t help me. Websites should have to ask permission of the copyright holder before offering up any intellectual property — at the very least.

To fight piracy of my book, I wrote a much-expanded third edition and let Focal Press take over as publisher. Now I make a small royalty.

StandCreative Series One: Christian Keller

May 31, 2016

When I was 19 years old and just out of high school, I read about Gloria Trevi, the controversial “Mexican Madonna.” This would be the beginning of an epic 10-year journey for me to get the film on the big screen.

Being Swiss, I had never heard of Gloria, but I was immediately captivated by her story and thought it needed to be told, so I got to working on a biopic of the controversial figure. Never having even made a short, I naïvely thought I could put the project together in a year – but it would take ten years to collect the rights, script, financing, and Academy Award®-winning team to make the film. In the meantime, Universal Pictures came on board and put forward a big release and marketing plan for *Gloria*. This was a dream come true for a small independent filmmaker like myself. Having a powerhouse behind me gave me confidence that I was on the right track.

A month before *Gloria* was set to be released on over 1,300 screens across Mexico, I saw copies of the film that took me ten years to complete, and involved the lives of hundreds of people to execute correctly, being sold for a few pesos on the streets of Mexico City – the primary market for my film.

Some people told me not to worry – that it wasn’t a big deal, that piracy was just going to create more “buzz” for my film – and I believed them, but they couldn’t have been more wrong. Millions of people saw the film in Mexico before its release, and millions more across the globe saw the film on YouTube and Facebook. It would show up on YouTube and receive 100,000 views night after night. The DVDs spread throughout Latin America, the US, and Europe overnight. Universal’s anti-piracy team and I tried to take down illegitimate links across all websites and the few times we were successful in bringing down a stream, another five would pop up. The task was impossible.

The pirates were smart – they waited until all of the marketing dollars, which go into the millions, had been spent before the pirated versions of the movie hit the streets. You could see a billboard for *Gloria* and then either buy it on the same corner or go home and watch it for free on YouTube.

The piracy numbers continued to grow, and the biggest blow to our aspirations for *Gloria* hit – we lost US distribution for the film. Before the piracy numbers skyrocketed, we had a US distributor commit to spending \$2M on advertising and get the film into 350 screens. After we felt the full effect of piracy, our distributor dropped out and *Gloria* was only seen on THREE screens in the US.

Making this film was a labor of love for a lot of us and we worked for next-to-nothing. We put our blood, sweat, and tears into this, and, at the end of the experience, I was saddled with a lot of debt. As a filmmaker, it grieves me tremendously that the film received less attention than it could have had because of piracy. The same goes for the actors and entire crew who devoted their time to the success of this film and that success was stolen from under them. None of us got paid, and none of us got what we deserved for making a film that was critically acclaimed across Mexico and received similar praise across other markets.

Piracy is a problem the same way that theft is a problem. Millions of people put food on the table by making what you watch on TV or in the theatre – and stealing that content robs them of their ability to continue to do their jobs. I am one of those people, but so are my actors, producers, editors, sound designers, composers, make-up artists, lighting technicians, camera operators, carpenters, designers,

costumers, set designers, VFX artists, production coordinators, and others. We all deserve to have our labor recognized and validated and protected from theft.

Creatives need to stand together and tell our detractors that stealing our content is not only illegal, but it is also just wrong. People, like me and my crew, work hard to make ideas a reality and to bring emotion to the viewing public. It's time that creatives take a stand and tell pirates that we will not be quiet any longer. We must, for our own livelihoods and the sustainability of our chosen careers, put an end to piracy.

I ask that you stand with us in the face of this threat and make the future of creativity a certainty.

StandCreative Series One: Shane Ryan

September 1, 2016

Growing up with a film editor as a father, I fell in love with all kinds of cinema at a young age. He taught me how to edit film when I was five, and I've been making movies ever since. Despite achieving some success and recognition in my 31 years of filmmaking, online piracy has left me struggling and reeling for ways to protect my work online.

My first major break as an independent filmmaker came in 2007, when I made the exploitation horror film *Amateur Pornstar Killer* in one night on a \$45 budget. It quickly became a smash hit, spawning two sequels and receiving critical acclaim from MTV and the Theater for Living Arts (TLA).

Due to the controversial nature of *Amateur Pornstar Killer*, it was hard to distribute overseas and many countries banned the film. Consequently, the second film became one of the 25 most-pirated films across all torrent sites for around six years. My film was on the same list as some of Hollywood's biggest hits, yet I failed to profit from its success. I also learned from a friend who visited China that street vendors were illegally selling my movies as part of a bundle with Academy Award®-winning films. It was even for sale on Blu-ray, even though we never released it on Blu-ray!

With fewer distributors willing to take on edgy and controversial films like mine, pirates are inevitably becoming our main audience. One of the most frustrating things for me as a filmmaker was reading reviews on torrent websites from people who clearly didn't watch the film in its entirety. Many of the reviews for the second film complained about its lack of nudity, despite it being well known for its graphic ending. Unfortunately, I let this influence how I made the third film. I opened with more graphic scenes, which led my DVD manufacturer to refuse to make the DVDs for my distributor. I let pirates change the way I made my film, and it ended up hurting me as a filmmaker.

Despite *Amateur Pornstar Killer's* success and notoriety, I haven't made a dime from any of my films. The trilogy was the only work I've done that earned me a paycheck, but I actually lost money on the films due to advertising and festival costs. On any given day, there is a new, illegal upload of one of my movies on YouTube. It's disturbingly easy for users to upload stolen copyrighted material. It's up to copyright owners to alert YouTube of any instances of infringement, but it's impossible to police the internet when I'm working 15-hour days making movies.

When I completed *My Name is 'A' by Anonymous* in 2014, which took a year to make and four years to find a distributor, I was happy to send a copy to a young film critic for review. When his readers begged him to illegally upload the film, they claimed an "unknown" filmmaker like myself would be happy to receive the buzz. This is simply not true. Studies have shown that the promotional impact of piracy doesn't outweigh the harms caused by violating copyrights. My new film *Faces of Snuff*, which is being released in November 2016, is already being advertised on pirate sites in Thailand. What can I do to stop it?

Why is it that people will spend \$6 on a latte and wait five minutes for it to be made, but they won't spend \$6 on a movie that takes a cast and crew years to make? It's simply not right.

StandCreative Series One: Bret Hampton

September 13, 2016

When Hollywood legend Paul Newman spoke at my film school, he remarked that only three of the 200 students in the audience would likely go on to work in the entertainment industry. Maybe it was a slight exaggeration back then, but in today's digital world where piracy has devalued creativity, it couldn't be more spot on.

When I first started, establishing myself as an editor often meant working for free and accepting any job that came my way. I first edited actors' demo reels before moving on to commercials, trailers, features and tv. I finally stopped working for free once I learned my craft well enough to charge for it and made a decent living. Eventually I worked my way up to Senior Video Editor at Image Entertainment, an independent video distributor. There, I worked on special features for the original *Star Wars* trilogy, *Toy Story*, *Mary Poppins*, *The Sound of Music* and others.

While fortunate to have beaten Paul Newman's odds, young editors face greater challenges establishing themselves in an age of rampant piracy.

Traditionally film school graduates launch their careers working in independent cinema. With this part of the industry suffering due to piracy, up-and-coming editors are paid less. Many of the major studios' independent art house divisions have shut down as it becomes more difficult to raise money for small and mid-budget movies. Budgets become smaller and filmmakers must find ways to make the same movies for less money, leading to less pay for editors like me.

It also means less money to pay writers, directors, set designers, costume designers, and the hundreds of other professionals who work on a movie set – they're all careers that take a keen imagination to do well. Creative jobs, including editing don't pay like they used to. You don't have to think too hard about the reason why – their capacity to make money will continue to be severely handicapped by piracy.

Piracy not only hurts up-and-coming artists; it hurts established ones like me. Many independent filmmakers offer less money for jobs that used to pay very well. For most of Hollywood's existence, the editing rooms I worked in cost hundreds of thousands of dollars to build and using them to their full potential required a vast education. And because of the sophistication inherent in the process, it was better to pay more for an experienced editor. Now, the money simply isn't there to pay people with experience – so if producers can get a film off the ground at all, they have to try to cut corners.

Unfortunately the future isn't looking very bright. Piracy continues growing and creativity continues to be devalued. If Paul Newman were to say the same thing at a film school today it'd be no exaggeration – and if anything, an understatement.

21 December 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

RE: *FTC Hearing #4: Competition and Consumer Protection in the 21st Century*

Dear Chairman Simons and Commissioners Phillips, Chopra, Slaughter, and Wilson:

We submit these comments in response to the Federal Trade Commission's request for feedback following *FTC Hearing #4: Competition and Consumer Protection in the 21st Century* on October 23rd and 24th. Specifically, we directly address arguments made during the panel discussion on October 23 – entitled *Competition Policy and Copyright Law* moderated by Suzanne Munck and Elizabeth Gillen from the FTC's Office of Policy Planning.

We want to thank Ms. Munck and Ms. Gillen for arranging a thoughtful panel and guiding the conversation on such a complicated subject matter. As you know, the panel was composed of experts with diverse opinions and perspectives on the current state of copyright law and competition policy:

1. Eric Cady, *Independent Film & Television Alliance*
2. Peter Jaszi, *American University, Washington College of Law*
3. Keith Kupferschmid, *Copyright Alliance*
4. Peter Menell, *University of California, Berkeley School of Law*
5. Tyler Ochoa, *Santa Clara University School of Law*
6. Sean O'Connor, *University of Washington School of Law*
7. Meredith Rose, *Public Knowledge*

Following the October 23rd hearing, the FTC requested additional comments on six issues. We offer our thoughts on three of these questions (in bold below), all of which are very important to CreativeFuture and the creative communities:

1. **Is there a role for the government in advancing or supporting innovation?**
2. **What is the importance of intellectual property – all forms – in advancing, protecting, and supporting innovation?** Does it differ because of industry-specific or other market-based factors, or because of the form of intellectual property?
3. How does modern economic analysis and empirical literature view the relationship between intellectual property and innovation, and the role of government in advancing and supporting innovation? Are there differences that depend on the type of intellectual property, and the protections offered for that intellectual property?
4. How can the FTC use its enforcement and policy authority to advance innovation? What factors should the FTC consider in attempting to achieve this objective?

5. What are emerging trends in patent quality and litigation issues? Should these trends influence the FTC's enforcement and policy agenda?
6. **How should the current status of copyright law and current business practices influence the FTC's enforcement and policy agenda?**

CreativeFuture, Copyright, and Creativity

CreativeFuture is a coalition of American creatives that includes over 540 organizations and companies and over 220,000 individuals. We make our living creating in film, television, music, book publishing, and photography.

We have been active in filing comments on these FTC proceedings because our nation's creative economy is under siege by a global digital piracy ecosystem that directly competes with our legitimate marketplaces. Ever-evolving technologies facilitate the unauthorized duplication and distribution of our valuable creative works worldwide – among them, internet platforms, that wittingly or unwittingly serve the interests of illegal enterprises.

In August, we submitted comments to the FTC in anticipation of these hearings on your suggested topics related to competition and consumer protection issues in communication, information, and media technology networks, as well as the role of intellectual property and competition policy in promoting innovation.

Today, we share our thoughts about the current state of copyright law, the state of competition for creatives, and our hope for FTC action to improve the economic outlook for America's creative communities.

Question #1: Is there a role for the government in advancing or supporting innovation?

We believe that the government has a crucial role to play in establishing and enforcing copyright protections that advance innovation by allowing creative individuals to be fairly compensated for their work. Were it not for copyright, creatives could simply not make a living.

The Constitution vests in Congress the explicit authority to promote the progress of science and the useful arts by securing the exclusive rights afforded to creators by copyright. Various government agencies play the critical role of ensuring the effectiveness of those protections, including through enforcement activities like those entrusted to the FTC. Strong copyright protections in U.S. law enable our creative communities to pursue their art as a career. These protections ensure that the years of uncompensated work that are invested in the creation of songs, publications, or films are rewarded with a meaningful return – a return that may then be used to pursue the next work, driving innovation and further enriching our culture and society.

Protecting intellectual property and copyright are crucial to an innovation economy. In fact, they are synonymous with each other. Our opponents would argue that copyright stifles innovation. But without copyright, there would be no financial incentive for creative individuals to dedicate their lives to new and exciting innovations.

Question #2: What is the importance of intellectual property – all forms – in advancing, protecting, and supporting innovation?

Copyright is the core of our creative industries, which are a significant economic driver, contributing more than \$1.2 trillion to America's Gross Domestic Product and employing 5.5 million Americans. The U.S.

core copyright industries are leading exporters, with total foreign sales eclipsing other major U.S. industries – including aerospace, agriculture, and pharmaceuticals.¹ When consumers in other countries enjoy American-made creative products through legitimate platforms properly protected by local laws, job creation and economic growth occur here at home.

Copyright was enshrined in the U.S. Constitution precisely to promote innovation and creativity. The Supreme Court has said that copyright acts as an “engine of free expression.”² The Court has further noted, “The immediate effect of our copyright law is to secure a fair return for an author’s creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.”³ We believe that intellectual property and copyright are essential elements of future innovation and creative expression.

Copyright is no less an engine of innovation and economic growth than are patents and other property rights. Nor are they less important to economic growth and prosperity than is innovation in communications technologies, including the internet. Creative content and innovative distribution technologies are interdependent.

Question #6: How should the current status of copyright law and current business practices influence the FTC’s enforcement and policy agenda?

For some time, U.S. policy has prioritized the growth of the internet over meaningful accountability, paying little attention to the resulting harms, including to our content industries, through the abuse of the tools provided by large internet platforms. Having been largely immunized from responsibility for this abuse, large internet platforms have had little incentive to combat it, with some even seeking to grow their business through infringing content.

During the past two decades, our copyright-based industries have adapted rapidly to changing markets and consumer demand worldwide, working against the continuing challenge of the global theft of our creative works. But, for many creatives, it feels as if the policy deck is stacked against them, particularly as powerful interests spend unmatched sums of money lobbying the Federal Government to weaken copyright and protect their special immunities at all costs.

The legal framework that protects these platforms stems largely from two ‘90s-era statutes – the 1996 Communications Decency Act (CDA)⁴ and the 1998 Digital Millennium Copyright Act (DMCA).⁵ These statutes were intended by Congress to promote the growth of the then-nascent internet by alleviating the burden of liability on the part of intermediaries for the unlawful acts occurring on their platforms, while also encouraging those intermediaries to act responsibly in addressing abusive conduct. When the internet safe harbor laws were adopted by Congress some two decades ago, the internet was little known to most Americans. These laws contributed to the unprecedented growth of this new industry, producing some of the largest and most powerful companies the world has ever seen.

But, at some point, growth without responsibility becomes a cancer. It is time that the government paid equal attention to harms resulting from the lack of accountability as it does to the benefits of the hands-

¹ International Intellectual Property Alliance, *Copyright Industries in the U.S. Economies*, 2016

² Supreme Court Majority Opinion in *Harper & Row v. The Nation*, delivered by Sandra Day O’Connor

³ *Twentieth Century Music v. Aiken*, 422 U.S. 151 (1975)

⁴ Telecommunications Act of 1996, tit. V, Pub. L. No. 104-104, 110 Stat. 56, 133.

⁵ Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860.

off approach of these 1990s-era policies. Today, the overbroad immunities that the large internet platforms enjoy not only harm innovation in creative fields, but they are likely chilling innovation in Silicon Valley itself. How can start-ups compete with the tiny number of behemoths that have come to dominate the internet?

From the creators' perspective, these outdated, overbroad safe harbor protections hamper effective enforcement by or on behalf of rights holders as they seek to address the facilitation of piracy by the internet platform providers. To cite just one example: in just a few seconds of searching on Google, its YouTube subsidiary, or Facebook, one can readily find thousands upon thousands of copyrighted works and the ability to access them *for free* without the permission of, or any compensation to, those who created, invested in, and marketed them.

In short, our creative communities are victimized by the unfair, deceptive, and anticompetitive practices that continue to be rampant on the internet and that are facilitated by a variety of large internet platforms. There is no doubt that the internet has ushered in a new era of innovation with significant benefits for consumers and many creatives. But ultimately, the current environment of near-zero accountability has not only hurt the creative communities, but also harmed consumers and the public good.

We urge the FTC to continue examining the practices of large internet platform providers, as well as other enterprises, that use the internet to promote all forms of piracy, including illegal streaming services. We believe these practices are rightly within the scope of your "Competition and Consumer Protection in the 21st Century Hearings." It is long past time for the government to address the harms to consumers and to competition by copyright theft in this modern internet environment. It is an environment dominated by the world's most powerful companies that enjoy a legal framework that holds them largely unaccountable for the harms perpetuated through the use of their platforms.

We appeal to the FTC to conduct more urgent scrutiny of consumer protection and competition policy in the modern internet environment, including as it relates to Silicon Valley's largest companies and the ways in which their business practices can adversely impact the interests both of consumers and of the creative industries. Global piracy continues to grow unchecked, facilitated by illegal distribution channels that can immediately deliver our community's content to audiences for free – using legitimate American platforms – without any compensation to artists and creatives. No other industry in the world is forced to compete with an illegal marketplace of goods that is identical to the original and that obtains (and often provides) their product for *free*.

We need look no further than the music industry for an example of the toll piracy can take. With the onset of digital music piracy in the late '90s, the business essentially collapsed in the span of a decade. In the United States, revenues decreased by more than half – from \$14.6 billion in 1999 to \$6.3 billion in 2009. Meanwhile, the economy grew 20% and more music was being consumed than ever before. A huge percentage of that drop was clearly attributable to unfair competition from rampant music piracy services. While some musicians made the transition to the digital age successfully – particularly the subset of artists who excel at live performances, merchandising, and endorsements – many could no longer make a living in music.

Despite this debilitating attack facilitated by the internet, the music business has survived and largely transitioned to digital distribution. Streaming services have started to reverse the financial decline, with streaming revenues accounting for two-thirds of a much smaller U.S. music industry revenue in 2016.

But artists continue to trade dollars for pennies as this digital takeover occurs, with proceeds continuing to be dragged down by piracy. As recently as two years ago, YouTube, one of the largest music streaming destinations in the world, generated less revenue for the industry than the niche market for vinyl records.

In film and television, piracy can create enough harm and uncertainty to deter investors, especially for independently financed films, documentaries, and other works with less than “blockbuster” financial potential – all films that meaningfully increase the variety of content available to consumers. The film and TV industries send almost one billion takedown notices each year to just one company – Alphabet – to flag copyright-infringing links or files on Google and YouTube.

There is another way that piracy directly impacts consumers. The threat of malware can be found in a large number of pirate websites and can result in identity theft, ransomware, and financial loss. A report by the Digital Citizens Alliance⁶ found that at least one in three pirate websites expose consumers to malware. Additionally, malware can facilitate a nefarious practice known as “slaving,” which results in hackers having access to a computer’s camera. The FTC itself considered the malware threat serious enough to issue a consumer warning in 2017.⁷

Finally, there is a new kind of consumer fraud within the piracy ecosystem. Like unlicensed pharmacies, sellers of “streaming piracy devices,” colloquially known as “Kodi Boxes,” use Google and Facebook, among a variety of other services, to find customers and sell them their illicit goods.

These devices are media players that use “Kodi” software, an open-source video platform that can be used to access and organize a user’s content – regardless of its legitimacy. In addition to organizing one’s media library, Kodi-enabled devices can also be loaded with applications known as “add-ons.” These programs facilitate access to pirated content – including live television channels, limitless movies and television shows, and every existing premium broadcast channel from all around the globe.

Advertisements for Kodi boxes, which typically sell for just a few hundred dollars, promise consumers “free television and hundreds of live channels” and advertise their services as “100% legal” – a blatant misrepresentation that lures unsuspecting consumers into commercial transactions with a business that appears to have the trappings of a legitimate commercial enterprise but is anything but.

It is for all of these reasons that we urge the FTC to consider the status of copyright law and the current business practices impacting the creative industries when setting your enforcement and policy agenda. We can think of few undertakings that are more urgent to American commerce, creativity, and innovation.

Responding to the October 23 Panel Discussion: Competition Policy and Copyright Law

Without relitigating the arguments made on October 23 by the various panelists, we would like to make a broad and important point about the proceedings. With the exception of Eric Cady, who spoke on behalf of the independent film and television industry, and Keith Kupferschmid, who represents thousands of

⁶ [Enabling Malware](#), July 2016

⁷ Google and Facebook both have a history of data privacy and data security violations: In 2011, each company entered into an FTC consent decree to settle serious allegations of consumer privacy violations, and both promised that they would protect consumer data going forward. Subsequently, in 2012, [Google agreed to pay \\$22.5 million to settle new FTC charges that it violated the FTC Order by misrepresenting privacy assurances to users](#). And in 2018, the [FTC announced that Facebook was under investigation for violating its 2011 Order through allegedly inadequate consumer data security in connection with the Cambridge Analytica scandal](#).

individual creatives who rely upon copyright, the majority of the panelists were academics or policy experts who argued against what they perceived as the *problems* with copyright law.

It was quite extraordinary to watch, given our expertise in the *importance* of copyright. After all, our organizations are comprised of people who have worked in the creative fields for decades and know exactly why copyright protections are so vital. In this context, hearing panelists who have very little on-the-ground experience talk about the problems with copyright would be like CreativeFuture telling Google or Facebook how to more effectively use the private data of millions to turn a profit. They're already the experts!

Despite the view of this handful of academics, it is not the existence of copyright that creates a *problem* for the 5.5 million Americans who rely upon it to make a living – it is the *lack of adequate enforcement and respect* for copyright that is the problem. Copyright is often rendered meaningless in a Wild West internet ecosystem where platforms are not held accountable for infringement on their sites and instead have built immense businesses made possible in large part by that rampant infringement.

Mr. Cady captured the reality in his opening remarks: “While the internet creates important opportunities for expanded distribution, new audiences, and new revenue streams for independents, it also presents the biggest threat to our industry as online infringement is allowed to flourish without any effective way under current law to prevent or stop the introduction and rapid proliferation of infringing copies across the internet. The result is a distorted marketplace where rightsholders are forced to compete with pirated content made available for free.”

This was a polite way of saying: “*We have an existential threat that we are battling every day.*”

The panelists that followed Mr. Cady responded by talking not about piracy, not about massive destructive infringement of creative content, but rather about *tractors* – and their view that technological protection measures (TPMs) can be an unnecessary burden to consumers. This is a popular anti-copyright argument that academics enjoy using to show that copyright is a problem. But the argument has no relevance to commercial content piracy and is an obvious effort to brush past the real harms. The problems raised by Mr. Cady are those of a global epidemic that is crippling the ability of creatives to be fairly compensated.

We believe these arguments are used primarily to distract from the urgency of the piracy problem to the core copyright industries and the larger problem of zero platform accountability.

We join many others in the creative industries in urging you to address these alarming issues as you consider future enforcement actions. We hope the FTC will take a leadership role in addressing the competitive imbalance threatening the core copyright industries.

Sincerely,



Ruth Vitale
CEO, CreativeFuture