

**Before the U.S. House of Representatives  
Committee on Energy and Commerce**

**Subcommittee on Communications and Technology**

Hearing on “State of the Media Marketplace”

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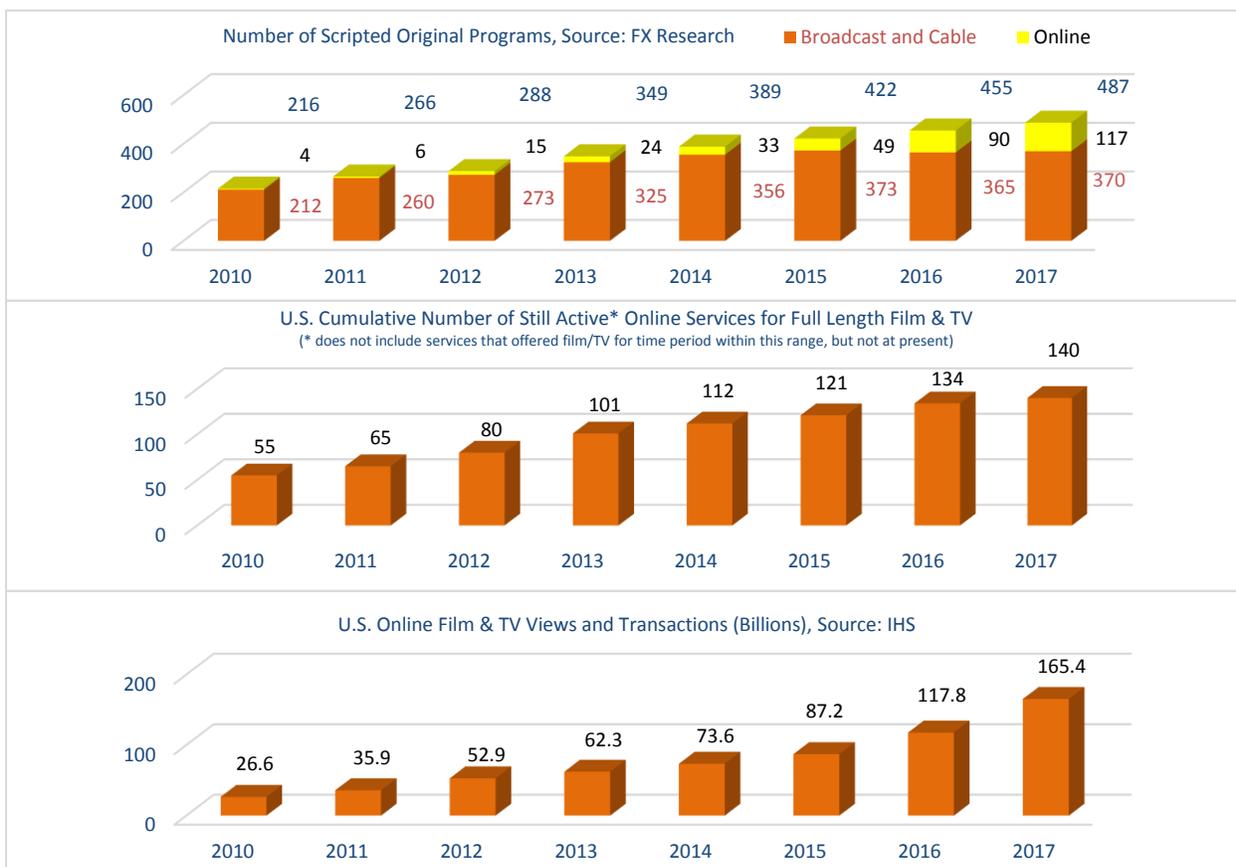


Statement for the Record  
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## I. Americans Are Continuing to Enjoy Another Golden Age of Movies and Television

American viewers are benefitting from unprecedented competition in the motion picture and television marketplace. The members of the Motion Picture Association of America, Inc.,<sup>1</sup> and others in the U.S. film and TV industry now release more than 450 movies and nearly 500 scripted shows per year.<sup>2</sup> The number of scripted shows is up from 288 in 2012 to 487 in 2017, with 117 of those shows originating online, compared to 15 five years ago.<sup>3</sup> The industry makes that content available not only in theaters and over broadcast, cable, and satellite services, but also through 140 lawful online film and TV services available to American audiences as of 2017, up from 80 in 2012.<sup>4</sup> American viewers used those online services to access 6.9 billion movies and 158.5 billion TV episodes in 2017 alone, up from 3.9 billion and 48.9 billion in 2012.<sup>5</sup>



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

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

<sup>3</sup>FX Networks Research (2018).

<sup>4</sup>MPAA database.

<sup>5</sup>IHS Markit. See [www.IHS.com](http://www.IHS.com).

Technological protection measures—also known as digital rights management—help make all this possible by enabling content creators and distributors to offer a wide variety of viewing options at different prices. Because of digital rights management, audiences can choose how to access programming, including by downloading content to a hard drive, streaming content for a limited time on a pay-per-view basis, enjoying content as part of a subscription service, watching content over TV Everywhere applications in different places across different devices, and accessing full seasons of a television series, either to catch up with past episodes or to watch them all at once when a content creator makes them available *en masse* from the start. Without technological protection measures to ensure only authorized viewers gain access to the programming, and only as authorized, content creators would not be able to offer these choices, resulting in one-size-and-price-fits-all offerings and fewer options for viewers. Laws such as 17 U.S.C. §1201 that protect against the circumvention of technological protection measures remain as vital as ever.

Audiences are not the only beneficiaries of this activity. So, too, are the national and local economies. In the process of making content available online and off, the television and film industry supports 2.1 million jobs and \$139 billion in wages across all 50 states; enlists more than 93,000 businesses, 87 percent of which are small businesses employing fewer than 10 people; contributes \$134 billion in sales; registers a positive balance of trade in nearly every country in the world, with a 4-to-1 export-to-import ratio; and generates a positive services trade surplus of \$12.2 billion, larger than each of the surpluses in the advertising, mining, telecommunications, legal, information, and health related services sectors.<sup>6</sup> In addition, the industry pays \$49 billion to 400,000 local businesses each year.<sup>7</sup> A major motion picture filming on location contributes on average \$250,000 per day to the local community, and a one-hour television episode contributes \$150,000 per day. Notably, the local community sees that up-front investment regardless of whether the film or TV show becomes a hit or a flop.

Underlying this activity is America’s respect for two fundamental and complementary values: free speech and intellectual property. Under the First Amendment, the speaker and the audience acting in the marketplace—not the government—determines what is said and heard. And the Constitution’s Copyright Clause recognizes that honoring the right of creators to determine how to disseminate their works increases both the production and distribution of content, to the ultimate public benefit.<sup>8</sup> The ability of content producers and distributors to decide what programming to create, disseminate, and license is what makes the online marketplace so dynamic.

This respect for the First Amendment and copyright law also enables companies to manage the economic risks in the ultra-competitive video marketplace, allowing them to continue investing

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<sup>6</sup>MPAA, THE ECONOMIC CONTRIBUTION OF THE MOTION PICTURE & TELEVISION INDUSTRY TO THE UNITED STATES (NOV. 2017), [https://www.mpa.org/wp-content/uploads/2018/03/MPAA-Industry-Economic-ContributionFactsheet\\_2016-FINAL-2.pdf](https://www.mpa.org/wp-content/uploads/2018/03/MPAA-Industry-Economic-ContributionFactsheet_2016-FINAL-2.pdf).

<sup>7</sup>*Id.*

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

and innovating to deliver high-quality and diverse content to viewers. Producing and distributing a major motion picture costs on average \$100 million, and six out of ten never make back their initial investment. Major television productions now rival feature films not only in quality, but also cost, reaching millions of dollars *per episode*. Yet according to one rule of thumb, 80 percent of scripts never become a pilot, 80 percent of pilots never become a series, and 80 percent of series never see a second season. Our nation's respect for the First Amendment and intellectual property rights are very significant contributors to making America the global leader in the creation of premium content that is enjoyed by audiences worldwide.

## II. Piracy, However, Continues to Present Challenges

While the motion picture and television industry has unquestionably embraced the internet as a powerful means of reaching audiences through lawful services, online piracy remains a problem. In 2017, an estimated 542 million pirated movies and TV shows were downloaded in the United States using peer-to-peer protocols alone.<sup>9</sup> Streaming piracy has now surpassed illicit downloading via peer-to-peer protocols, with streaming piracy sites representing 37 percent of visits to sites with unauthorized content, host sites representing 36 percent, and peer-to-peer representing 27 percent.<sup>10</sup> Streaming device-based piracy is a growing issue. The devices, often Android-based “set-top boxes,” are typically built around the Kodi open-source media software, but are modified with illegal “add-ons.” The add-ons connect users to stored or “live” streams of pirated movies and television programming, and enable “plug and play” connection to a television. Six percent of North American broadband households—some 6.5 million homes—are accessing known subscription television piracy services, according to one source.<sup>11</sup> One rough estimate by that same source suggests the streaming device piracy ecosystem may already be generating ill-gotten gains of \$840 million per year in North America, a number that may well be understated.<sup>12</sup>

All this infringement harms a broad swath of the legitimate movie and television production and distribution sectors, including content creators, unions, large and independent movie and television studios, sports leagues, broadcast and pay-TV networks and distributors, and over-the-top services. The illicit activity unlawfully competes with digital entrepreneurs and established players trying to grow lawful and innovative streaming content and distribution businesses to meet evolving consumer demands. To the extent streaming piracy diverts subscribers from legitimate services and siphons money otherwise available to re-invest, it harms competition and limits the ability of content creators and distributors to offer audiences choices in movies, television programming, and services.

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<sup>9</sup>MarkMonitor. *See* [www.markmonitor.com](http://www.markmonitor.com).

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

<sup>11</sup>SANDVINE, SPOTLIGHT: SUBSCRIPTION TELEVISION PIRACY 2 (Nov. 2017), <https://www.sandvine.com/hubfs/downloads/archive/2017-global-internet-phenomena-spotlight-subscription-television-piracy.pdf>.

<sup>12</sup>*Id.*

Because many pirate sites disseminate malware, the spread of streaming piracy devices and applications into living rooms presents a growing threat to consumers and a new vulnerability to cybersecurity. One-third of pirate sites expose users to malware,<sup>13</sup> pirate sites are 28 times more likely to infect users with malware than mainstream websites,<sup>14</sup> and video streaming “has become the number one method to propagate highly dangerous malware on the Internet.”<sup>15</sup>

Further compounding matters is a lack of responsibility exhibited by some online platforms, stemming in part from liability limits enacted when the commercial internet was relatively nascent.<sup>16</sup> The presumption was that the platforms would take voluntary steps to curb abuses, but that has not happened to a sufficient degree. While online platforms play an active and crucial role in providing access to content, and seek to optimize user engagement, the relationship between the platforms, the consumer, and the content is often seen as less direct in light of certain platforms’ predominately “user-generated content” business models. Providers of curated content, by contrast, are more closely associated with the content and service environment they offer, creating a greater sense of accountability on their own part as well as in the eyes of others. Both the lack of accountability and the indirect relationship of platforms are presenting significant risk of consumer harm and restraint on competition by unfairly forcing legitimate businesses to compete with material that is stolen and free, generally impairing the legitimate online marketplace with lawlessness, and reducing innovation and consumer choice, as people across the political spectrum are observing.<sup>17</sup>

Curbing clearly unlawful conduct (such as illicit sale of opioids and unauthorized dissemination of entire movies still in theaters) is entirely consistent with protecting free expression. Misplaced concerns over chilling speech should not be used as an excuse to avoid combating such behavior. Combating phishing and fraud, malware and botnets, identity theft, theft of entire movies and television shows, counterfeiting, cyber-espionage, and unlawful sale of drugs is no more a threat to free expression on the internet than it is in the physical world. In fact, curbing illicit activity online promotes free expression by fostering a safer environment where individuals

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<sup>13</sup>DIGITAL CITIZENS ALLIANCE, DIGITAL BAIT 2 (Dec. 2015), <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>.

<sup>14</sup>*Id.*

<sup>15</sup>ASSOCIATION OF INTERNET SECURITY PROFESSIONALS, ILLEGAL STREAMING AND CYBER SECURITY RISKS (2014).

<sup>16</sup>*See* 47 U.S.C. § 230; 17 U.S.C. § 512.

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

feel comfortable exchanging ideas, engaging in commerce, and lawfully accessing the content that MPAA members and others make available.

Our community—the MPAA studios and many thousands of others who create and make available great movies and television shows—is committed to innovating to keep meeting audiences’ expectations. As the Committee considers the appropriate policies for the future of video, we hope it will recognize that as wondrous as the new forms of distribution are, they rely on the production of content to deliver value to consumers. Producers and creators take financial risks to make that content available. As they continue to explore ways to distribute content, protections are necessary to help safeguard those investments from theft and wholesale distribution in a lawless marketplace, especially as access to stolen content becomes easier.