



Testimony of Sandra Aistars, Executive Director, Copyright Alliance

Committee on the Judiciary

Subcommittee on Intellectual Property, Competition, and the Internet

U.S. House of Representatives

“Protecting Legitimate Commerce Online: The ART Act, the NET Act and Illegal Streaming”

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Chairman Goodlatte, Ranking Member Watt and Members of the Subcommittee, it is an honor to appear before you today on behalf of the Copyright Alliance to discuss the important issue of illegal streaming and its impact on the creative community.

The Copyright Alliance is a public interest and educational organization supported by more than 40 entities comprised of individual artists and creators, as well as the associations, guilds and corporations that support and invest in them. Besides these institutional members, we have more than 7,000 individual “One Voice Artist Advocates” who give their personal time and creativity to support our work.

We applaud the Chairman and Subcommittee members for holding this hearing on the important topic of protecting legitimate online commerce from illegal streaming. This is an issue of great importance to many of our members, including independent filmmakers, videographers, and those individuals who work on their projects; sports leagues and creators of live events; motion picture studios; sound recording artists, songwriters and record labels, and unions and guilds of creators, film artists and workers in the creative community.

At a narrow level, the issue of making illegal streaming a felony crime is simply a technical clarification. Illegally disseminating other people's works without their permission should be punished the same way under law regardless of the technology used to accomplish such dissemination.

On a grander scale, this issue is another phase in the battle between creators and lawful distributors of copyrighted works on one hand, and on the other parasitic websites that expropriate their property, diminish the compensation and pension and health benefits of creators and workers, and harm communities across the United States by depriving them of jobs and diminishing their tax revenues.

The Copyright Alliance quite literally represents the copyright holder next door. Our members are living and working in all 50 states and include, among others,

- The independent filmmakers who borrow against their retirement income to finance films that capture unique voices, tell untold stories and contribute to our understanding of ideas and communities often not adequately reflected by mainstream media;

- The “below the line” workers – that army of talented craftspeople who are behind every television show and motion picture you enjoy – whose health insurance and retirement benefits are typically determined by credits earned on legitimate sales of works to which they have contributed;
- The tens of thousands of professional photographers and videographers across the country who run their own studios, employ a handful of workers, and contract with dozens more. These entrepreneurs make a middle class living, and contribute to the tax base of their local communities, but see their ability to continue to make a living eroded daily by digital thieves who steal their images, commercialize them and pass them off as their own.
- And they are people working in unexpected places on extraordinary projects, like a music producer living in Reidsville, North Carolina, who is working from his home studio with musicians as far away as Glasgow and as recognized as Neil Young.

Copyright Alliance members unreservedly embrace all of the new technologies that enable our works to be seen and heard through a wide range of methods, including –

- traditional broadcast methods like TV, cable, satellite and radio;
- online methods including both download and streaming services, as well as cloud storage and delivery models; and
- apps for mobile phones and tablet computers that allow consumers to obtain works directly from the author or legitimate distributor even in territories where major distributors like iTunes are not offering the work.

Nevertheless, we are daily faced with an ever-changing parade of unlawful website operators who stream and otherwise distribute our members’ works, stand little risk of criminal prosecution under today’s laws, and erode legal commerce.

Just like the legitimate marketplace, which has long embraced streaming technology, illegitimate distributors are increasingly turning to streaming to deliver works because it is faster, cheaper and more convenient. As a result, at any given time, users are one or two clicks away from listening to or viewing any television program, movie, music video or song in the world - all with no return to the creator.

Enacting legislation to address felony streaming is an important battle in this war. Bringing penalties for illegal streaming in line with other forms of infringement would send a message to operators and large scale contributors to rogue streaming sites that they are not immune from serious prosecution. It would also provide the Justice Department the same tools to battle fraudulent streaming operations as it uses to battle infringing physical or download operations.

The proposal to harmonize penalties for illegal streaming operations with those applicable to other copyright infringements is supported not only by artists and creators like our members, but is consistent with the recommendations of all of the relevant Federal agencies, including the Departments of Commerce, Health and Human Services, Homeland Security (DHS), Justice (DOJ), and State, and the U.S. Trade Representative. In suggesting this change in March of this year, the Administration rightly noted that:

It is imperative that our laws account for changes in technology used by infringers. One recent technological change is the illegal streaming of content. Existing law provides felony penalties for willful copyright infringement, but felony penalties are predicated on the defendant either illegally reproducing or distributing the copyrighted work. Questions have arisen about whether streaming constitutes the distribution of copyrighted works (and thereby is a felony) and/or performance of those works (and thereby is not a felony). These questions have impaired the criminal enforcement of copyright laws. To ensure that Federal copyright law keeps pace with infringers, and to ensure that DOJ and U.S. law enforcement agencies are able to effectively combat infringement involving new technology, the Administration recommends that Congress clarify that infringement by streaming, or by means of other similar new technology, is a felony in appropriate circumstances.

We urge this Subcommittee to act to implement these recommendations.

The Impact of Illegal Streaming on Independent Artists and Creators

When considering issues of copyright infringement, the public often thinks in terms of its impact on the largest copyright owners and distributors. But digital theft – regardless of the means used to accomplish it – affects all creators and has an outsized impact on independent artists and creators.¹

The experience of Copyright Alliance member independent filmmaker Ellen Seidler is representative of the experiences of other independent artists. As in many creative disciplines, young directors, actors and craftspeople often work on independent projects to develop their skill and gain entry to larger projects. These independent films represent the great diversity of the filmmaking community. Sadly, they are also the most at risk of vanishing if the directors and producers of such films cannot make a return on their investment, so Ms. Seidler’s story is instructive.

Ms. Seidler is the director and creator of the critically acclaimed film “And Then Came Lola”. She and her co-director financed the film by taking loans from their families, putting liens on their homes, and borrowing against their retirement savings. While the total budget for the movie would be considered small in terms of major Hollywood movies (where production costs can often run into the hundreds of millions of dollars), the \$250,000 of personal capital invested by Ms. Seidler and her colleague is a huge amount for an individual creator to put at risk for a single project. Based on research and experience in the field, Ms. Seidler nevertheless reasonably anticipated breaking even on the project, and even hoped for a modest profit.

To understand the magnitude of the threat illegal streaming operations pose to independent filmmakers, it is important to understand that many independent films are typically shown at

¹ It is also worth noting that illegal streaming sites have a similarly profound impact (but for somewhat different reasons) on those who own or license the rights to live events such as concerts and sporting events. This is because much of the value of such programming is inherent in the live (or pay per view broadcast) nature of the event. With streaming of live events in particular, remedies available after the fact, such as notice and takedown, are ineffective in preventing or remedying the harm.

festivals, but often do not have any theatrical release. Instead they depend entirely on “back end distribution” through DVD sales and legitimate online and other channels to earn returns and recoup investment that they cannot secure through theatrical release.² Knowing this, Ms. Seidler ensured the film would have the most widespread distribution possible. She secured international distribution, and in addition to DVD sales, lined up distribution on Amazon, Netflix and iTunes. To ensure that the film would be available even in jurisdictions where the services she licensed did not distribute it, Ms. Seidler additionally created an app which was made available worldwide for free to give viewers access to behind-the-scenes video, extras, interviews and clips, and enable them to rent or purchase the movie inside the app.

Ms. Seidler released the movie approximately one year ago, and it was popular. Within days illegal copies began circulating on line. Within a couple of months Ms. Seidler had counted 35,000 illegal streams and downloads. At that point, overwhelmed, she stopped counting. Despite the fact that the film could be viewed legally for less than the cost of a latte, and Ms. Seidler had spared no effort to ensure that it was available conveniently in multiple formats and languages via a variety of delivery models (including streaming), the film popped up on illegal streaming and download sites not only in the U.S. but throughout Europe, Asia and the Arab world. It appeared in Arabic, Finnish, Korean, Mandarin, Russian, Turkish, and other languages (see Appendix 1a and 1b).

Ms. Seidler found the film on one Chinese streaming site which claimed 300,000 views, and on another site in Spain claiming more than 60,000 views (see Appendix 2). Often, the sites streaming and offering downloads of her film were monetizing her work by selling advertising against the streams. Ironically, on one of the sites, www.videocave.net Google’s AdSense program was placing ads for legitimate streaming services including Netflix, a legitimate distributor of “And Then Came Lola” (see Appendix 3).

Ms. Seidler has documented her efforts to get her film removed from these illegal sites on her website www.popuppirates.com. When she contacted the operators of such sites and the advertising networks that were placing ads on them to seek help in stopping the illegal distribution of her film, she received many dismissive responses. They ranged from websites in Russia that responded “your laws don’t apply here,” to a still unresolved exchange with Google. In that instance, Google refused to remove an illegal site from its AdSense program despite having received extensive documentation from Ms. Seidler establishing that the site persists in illegally streaming her works and those of other copyright holders. She describes the remedies available to her and other independent artists as “the equivalent of being handed an umbrella and being told to stand under Niagara Falls.”

Despite the diligent efforts of creators like Ms. Seidler to police against the illegal streaming of their works, the problem is only growing, in part because the risk to the operators of such sites is so low. Legitimate third parties do business with such sites and thus help perpetuate their existence, and law enforcement agencies are loathe to prosecute such sites for their criminal activities because of the lack of clarity about what remedies are available against them, and also

² But the effect of global piracy is similarly felt by even Oscar-nominated independent work that likewise depends on downmarket sales to recoup investment

because misdemeanor crimes are often not perceived as having a great enough return on time and resources invested.

Along with illegal streaming and download sites, illegal cyberlockers are now emerging as another threat. Indeed, some rogue operators are even recruiting the general public to help them steal works by offering cash incentives for every 1,000 streams or downloads a file generates (see Appendix 4). These illegitimate websites are creating the infrastructure to expand the digital theft problem exponentially, and they rely on the relatively low risk associated with operating an illegal streaming site to do so.

Many Legal Streaming Services are Available

There is no excuse for allowing illegal streaming services to flourish, when so many legal alternatives are available. All creative sectors of the economy have long ago moved online, and are at the forefront of delivering news, entertainment, and information to consumers in creative, cutting edge formats including by streaming, and cloud computing.

For example:

Most professional sports leagues offer subscription streaming services that give fans access to their favorite teams on their favorite devices.

- MLB.com offers a subscription streaming service that lets consumers watch every out-of-market game live from devices such as the Roku and PlayStation 3. Premium packages offer the ability to choose home or away team video broadcasts, DVR functionality, and split-screen viewing.
- NHL GameCenter is a subscription streaming service that lets fans watch up to 40 out-of-market games every week live online.
- The National Basketball Association's (NBA) "[League Pass Broadband](#)" lets fans follow seven teams, and a premium option lets viewers watch games from all 30 teams, amounting to more than 40 games a week during the season.
- Motion picture companies are daily releasing their works on virtually every digital device and format, including in apps and through Facebook. These efforts ensure that consumers around the world can receive their content legally, and with additional features and functionality, even in cases where the content may not be available in their jurisdiction via popular services such as iTunes.
- The recording industry likewise delivers legal content via innovative services, partnering with technology companies. For instance, Sony has recently launched a new subscription-based music service, Music Unlimited powered by Qriocity. The service will give subscribers access to more than 6 million songs through the cloud-based network used by more than 60 million PlayStation gamers. Music Unlimited subscribers can stream

millions of songs infinitely on Internet-connected devices like personal computers, as well as Sony's Playstation 3 game console, Blu-ray Disc player and Bravia televisions. Fans can also import their personal music collections and iTunes libraries into their Qriocity accounts to access all of their music in one place and receive personalized music recommendations.

Despite the Herculean efforts taken by individual entrepreneurs and corporate stake holders to bring high quality, professional work to audiences on line legally and in multiple formats, individual livelihoods and corporate investments alike are jeopardized by relentless battles with rogue streaming site operators. These individuals steal and redistribute the content, often profiting handsomely by monetizing the content through payment systems and subsidizing it by advertising.

Numerous studies released recently demonstrate the devastating impact of parasitic sites on legitimate commerce.

- According to the Organization for Economic Cooperation and Development, international trade in counterfeit and pirated physical goods was as high as \$250 billion in 2007; but if the significant volume of online distribution of pirated goods via the Internet were included, the total could be “several hundred billion dollars more.”
- According to research by Envisional, nearly 25 percent of Internet traffic consists of pirated copyrighted works. According to the study: 23.8 percent of global internet traffic is infringing; more than 17 percent of internet traffic in the U.S. is infringing; bitTorrents account for around half of the global and U.S. infringing traffic; and cyberlockers and infringing video streaming sites also contribute significantly. It is notable that this study confirms earlier research by Princeton Professor Edward Felten, who is often critical of the creative industries, and his student Sauhard Sahi that approximately 99 percent of content shared on a bitTorrent system they surveyed last year was infringing.
- Finally, building on the OECD's research, Frontier Economics issued a report predicting that by 2015, the annual global economic impact of piracy and counterfeiting will reach \$1.7 trillion and put 2.5 million jobs at risk each year. According to Frontier's research the total global economic and social impact of counterfeiting and piracy is \$775 billion every year.

At a time when communities and individuals across the country are struggling to recover from a lengthy recession, when not only individual but local, state and Federal budgets are stressed beyond measure, these data points demonstrate that the case for combating piracy in all its forms, and improving IP protection and enforcement could not be more clear.

We applaud the Subcommittee for its focus on harmonizing the penalties applicable to illegal streaming with those applicable to other forms of infringement, and stand ready to assist in the Subcommittee's consideration of this important topic.

Appendix 1 a.

Full movie streaming on Spanish blog (via blogspot.com)

The screenshot shows a web browser window with the address bar displaying <http://verpeliculasenlinea2.blogspot.com/2010/06/an>. The page title is "Solo las Peliculas que te Gustan".

The main content area features a video player for the movie "And Then Came Lola - Estrenos / Drama". The video player shows a scene with two women. The video title is "And Then Came Lola - Estrenos / Drama". Below the video player, there is a link: "Mas Estrenos...Mas Peliculas...Ok Peliculas >>Click Aqui<<".

On the right side of the page, there are several advertisements:

- An advertisement for "Ver peliculas gratis" (Free movies) with a video player showing "BROOKLYN'S FINEST". The text includes: "Ver peliculas gratis Online con la barra de herramientas videos", "Lo Mejor En Cine Hispano", "Lo Encuentras En La Guia Completa De AARP Segunda Juventud.", "AARPSegundaJuventud.org", "Peliculas Gratis", "Disfrute De Cientos De Peliculas Haga Clic YA", "www.cinemamania.tv", "Estrenos De Peliculas 2010", "Save on Estrenos De Peliculas 2010: Top offers at unbeatable prices now!", "www.best-price.com", and "Anuncios Google".
- An advertisement for "VOLVER AL INICIO" (Return to the beginning) with a video player showing a scene from the movie "Jonah Hex - Estrenos / Accion". The text includes: "VOLVER AL INICIO", "MY PELICULAS EN LINEA", "Jonah Hex - Estrenos / Accion", and "www.best-price.com".
- An advertisement for "click click" with a video player showing a scene from the movie "KONTAKTE". The text includes: "click click", "Toda la información en", and "KONTAKTE".

Appendix 1 b.

Full movie streaming on
www.depeliculasub.webcindario.com (Spanish site)

And Then Came Lola Online - Sub Español

http://depeliculasub.webcindario.com/and-then-came-lola

Most Visited - Getting Started - Latest Headlines - WGTtools.com - Link - Digital Millennium C... - Rapidshare Search - ATC Lola TBMs J RR... - Domain White Pages... - Google Translate

WGTTool... Web-Ba... Free Fil... Hotfile... Web-Ba... And Th... And ... Solo las... MEGA... And+T... AdSens...

And Then Came Lola Gratis

INICIO NENAS ANIME ONLINE MUJERES

DePeliculaSub
Tu película en retrocesos

Estás viendo And Then Came Lola Online - Sub Español

PLAY FOR FREE

THE ONLINE ACTION GAME
DARK OREB

DEPELICULASUB.COM

Pt 1
Pt 2
Pt 3
Pt 4

Siempre soy buena al principio.
Soy buena en los comienzos.

00:47 17:31

LEGAL

\$348

Los ahorros promedio anuales al cambiar tu seguro de auto a Allstate.

¡OBTÉN UN ESTIMADO!

Allstate

Las películas ahora vienen divididas, pero al terminar una parte automáticamente pasará a la otra, es como ver todo en una parte.

Appendix 2.

One page (out of dozens) of search results for Chinese streams for the full film

1 PAGE OF RESULTS FOR FULL MOVIE ON CHINESE WEBSITES

相关程度 最新发布 | 最多播放 | 最多评论 | 最多收藏

筛选: 所有时长 | 所有画质 | 所有分类 | 视图: [列表] [网格]

站内搜索 劳拉现身 共找到 17 个视频; 全网搜索找到相关 电影1部。

Thumbnail	Duration	Title	Member	Release	Views
	1:10:17	劳拉现身-拉拉喜剧	会员: 路过的猪tou	发布: 2个月前	播放: 333,661
	1:10:18	HD [劳拉现身]高清	会员: [S]野豚	发布: 6天前	播放: 2,610
	1:10:30	劳拉现身劳拉现身	会员: 蓝亮	发布: 2个月前	播放: 22,401
	1:10:18	劳拉现身	会员: AND舞者	发布: 23天前	播放: 2,483
	1:10:18	劳拉现身	会员: 我爱过的吗	发布: 1个月前	-
	1:10:18	劳拉现身	会员: [xp52]	发布: 2小时前	-
	1:10:17	美国电影【劳拉现身】	会员: ksddgga	-	-
	1:10:17	劳拉现身	会员: dalyx	发布: 2个月前	-

TOTAL VIEWS

MINI 中国任务 决赛火爆现场

嘉年华为你省油更省钱

Appendix 3.

Full movie streaming via videocave.net

The screenshot shows a web browser displaying a page from **VideoCave.net**. The page features a large video player area. On the left side of the player, there is a red advertisement for Netflix with the text "Watch Movies From Netflix" and a "FREE TRIAL" badge. A red arrow points to the play button icon on the Netflix ad. Below the ad, the movie title "And Then Came Lola (2009)" is visible. On the right side of the player, there is a video player showing a scene from the movie. A red arrow points from a text box to this video player. The text box contains the text: "Click play and watch the film for free (why bother with Netflix?)".

Click play and watch the film for free (why bother with Netflix?)

Appendix 4.

Cyberlockers encourage Piracy by offering \$\$\$ to uploaders-- turning the public into pirates.

The image shows a screenshot of the FileServe website's 'Make Money' page. The page features a navigation bar with 'Upload', 'Premium', 'Make Money', 'News', 'Tools', and 'Help' buttons. The main heading is 'Make More Money with FileServe!' with the subtext 'Make More Money with Less Limitations and Higher Payout!'. A central banner states 'You can make money by sharing your links with friends, family, and even strangers!'. Below this, there are two columns of text. The left column repeats the phrase 'Our payout rates do not carry any levels. Everyone can earn money no matter where they are from.' and lists several benefits: 'We pay up to US\$25 per 1000 downloads dependent on file sizes', 'We count downloads from all countries around the world', 'Easy, quick and painless uploads via FTP', 'Convenient remote upload tool to FileServe from other file host', 'Unlimited downloads for anonymous and free users, thus you can profit from your file', and 'We pay you 25% of your "total" earnings; this is the highest find for any one click file hosting service'. The right column is titled 'FileServe rates for each 1,000 download of your files' and contains the same phrase about payout rates, followed by a list of benefits: 'We pay up to US\$25 per 1000 downloads dependent on file sizes', 'We count downloads from all countries around the world', and 'Easy, quick and painless uploads via FTP'. Annotations include a blue box at the top right stating 'This isn't about sending files to co-workers, friends or family. It's about \$\$\$.', a red circle around 'and even strangers!' in the central banner, and another red circle around 'US\$25' in the right column's list. Red arrows point from the left column's text to the central banner and the right column's text.

This isn't about sending files to co-workers, friends or family. It's about \$\$\$.

You can make money by sharing your links with friends, family, and even strangers!

Our payout rates do not carry any levels. Everyone can earn money no matter where they are from.

FileServe rates for each 1,000 download of your files

Our payout rates do not carry any levels. Everyone can earn money no matter where they are from.

- ✓ We pay up to **US\$25** per 1000 downloads dependent on file sizes
- ✓ We count downloads from all countries around the world
- ✓ Easy, quick and painless uploads via FTP