

LINDSEY O. GRAHAM, SOUTH CAROLINA, CHAIRMAN

CHARLES E. GRASSLEY, IOWA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
BEN SASSE, NEBRASKA  
JOSHUA D. HAWLEY, MISSOURI  
THOM TILLIS, NORTH CAROLINA  
JONI ERNST, IOWA  
MIKE CRAPO, IDAHO  
JOHN KENNEDY, LOUISIANA  
MARSHA BLACKBURN, TENNESSEE

DIANNE FEINSTEIN, CALIFORNIA  
PATRICK J. LEAHY, VERMONT  
RICHARD J. DURBIN, ILLINOIS  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII  
CORY A. BOOKER, NEW JERSEY  
KAMALA D. HARRIS, CALIFORNIA

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

### Via Electronic Transmission

June 18, 2019

The Honorable William Barr  
United States Attorney General  
Department of Justice  
950 Pennsylvania Ave. NW.  
Washington, DC 20530

Dear Attorney General Barr:

On Tuesday, April 30, 2019, the Senate Judiciary Committee, Subcommittee on Intellectual Property held a hearing on the role of intellectual property in the sports business economy. We heard testimony from multiple witnesses about how ongoing intellectual property infringement harms American businesses and consumers, as well as our nation's larger innovation economy. Specifically, witnesses testified about the significant economic losses caused by rampant copyright infringement through illicit streaming.

As technology has advanced, so has the form of digital copyright infringement. Today, consumers can stream both live performances, such as sporting events, and pre-recorded performances, such as movies and television shows, over the Internet without any specialized technical knowledge. Modern streaming technology enables consumers to stream copyrighted content without authorization and without downloading the copyrighted content. Instead, websites and other services use streaming to distribute copyrighted content more quickly and more conveniently than providing downloads. Current copyright law, however, treats streaming as a public performance, which is a misdemeanor, instead of reproduction and distribution, which is a felony.

The significant increase in illicit streaming, often through devices and apps configured specifically to allow for the illicit streaming of copyrighted content, poses important risks to copyright owners. It has significant economic implications for creators and industries that rely on live performances or streaming of original content through advertising sales, licensing agreements with companies that stream the performances, or per-stream fees. The relative ease with which consumers can pirate a live stream undermines the ability of these companies to negotiate fair market rates for their content and ultimately limits their ability to expand production or invest in the creation of new content, which also translates to fewer jobs.

Based on the testimony we received at this hearing, we believe that the Department of Justice should prioritize enforcement actions against entities that provide copyrighted content to stream

without authorization. The Department should consider all tools currently available to effectively deter illicit streaming. Failing to prioritize enforcement could cost the American economy millions of dollars a year.

We also recognize the limitations of the current legal framework related to illicit streaming. Infringers have benefited from technological advances that have outpaced the law, including a “streaming loophole” resulting in only misdemeanor liability for illicit streaming compared to felony liability for reproducing and distributing unauthorized content through traditional download methods available when the federal criminal copyright laws were last revised in 2008. We are concerned that illicit streamers may assume that the DOJ will not take the time to prosecute them for a misdemeanor. Moreover, the penalties for misdemeanor copyright infringement are not sufficient to deter the underlying conduct. We believe that felony penalties would more effectively deter repeat infringers.

Given the significant economic implications related to these issues, we ask that you answer the following questions by July 18, 2019:

1. What enforcement options does the DOJ currently have to prosecute entities who provide copyrighted content without authorization for streaming? Are these enforcement options sufficient to address the growing problem of online piracy through illicit streaming? Please explain.
2. How many criminal investigations, charges, and successful prosecutions for illicit streaming has the DOJ conducted over the last three years?
3. How many criminal investigations, charges, and successful prosecutions for reproducing and distributing copyrighted material through illegal downloads has the DOJ conducted over the last three years?
4. Does the DOJ have adequate resources to prosecute copyright infringement through illicit streaming? If not, will you provide a detailed accounting of the resources needed to adequately prosecute this form of copyright infringement?
5. Do you believe that increasing the penalty for the unauthorized streaming of copyrighted material from a misdemeanor to a felony would better deter illicit streaming?
6. Do you believe the DOJ needs additional legal authority to adequately prosecute large scale criminal enterprises that engage in illicit streaming of copyrighted material?
7. The Internet Corporation for Assigned Names and Numbers (ICANN) recently shut down the “Whois” database in response to the European Union General Data Protection Regulation (GDPR). How has the loss of the “Whois” database affected DOJ or private enforcement of intellectual property rights? How has it affected the ability of rights holders to cooperate with DOJ to enforce intellectual property rights?

We look forward to your answers to these questions. We believe they are important to addressing the significant risks illicit streaming poses to the American sports economy. As always, we are committed to working with you to protect American athletes, sports leagues, fans, and all consumers.

If you have any questions, please do not hesitate to contact either Elliott Tomlinson with Senator Tillis at 202-224-6342 or Philip Warrick with Senator Coons at 202-228-1993.

Sincerely,

Handwritten signature of Thom Tillis in blue ink.

Thom Tillis  
United States Senator

Handwritten signature of Chris Coons in blue ink.

Christopher A. Coons  
United States Senator