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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

Via Electronic Transmission

June 18, 2019

The Honorable Karyn Temple
Register of Copyrights and Director of U.S. Copyright Office
United States Copyright Office
101 Independence Ave., S.E.
Washington, DC 20559

Dear Register Temple:

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.

The Copyright Act of 1976 grants rights holders the exclusive right to reproduce their work, distribute their work, and control the public performance of the work. The Act defines a public

performance as “to transmit or otherwise communicate a performance or display of the work . . . to the public by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”¹ The Act does not expressly define reproduction or distribution to include streaming. However, Congress intended to protect rights holders from anyone who unlawfully distributes copies of a protected work.

The most recent revision to federal criminal copyright statutes occurred in 2008, when today’s streaming environment was well beyond the technological limitations and business models existing at that time.

In 2011 testimony to the House Subcommittee on Intellectual Property, then-Register Maria Pallante said that the unauthorized streaming of copyrighted content infringes the right of public performance. She also indicated that unauthorized streaming could implicate the distribution right, but not as a general matter. Ambiguity about when the unauthorized streaming of copyrighted content infringes the distribution right emboldens infringers and harms America’s innovation economy.

Based on the testimony we received regarding the apparent “streaming loophole” enabling illicit streamers to avoid felony criminal liability, we would appreciate the U.S. Copyright Office providing clear guidance regarding if and when unauthorized streaming infringes the right to control distribution of a work. Allowing this to remain unanswered will only benefit infringers and harm America’s economy.

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

1. Does unauthorized streaming violate the copyright holder’s right to public performance? If so, why?
2. Does unauthorized streaming violate the copyright holder’s right to control reproduction and distribution? If not, why not? If so, under what circumstances?
3. Do you believe that increasing the criminal penalty for the unauthorized streaming of copyrighted material from a misdemeanor to a felony would better deter illicit streaming? If yes, what specific statutory changes would you recommend?
4. Are there additional legislative solutions that you believe would address the growing issue of unauthorized streaming of copyrighted content?

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, and fans.

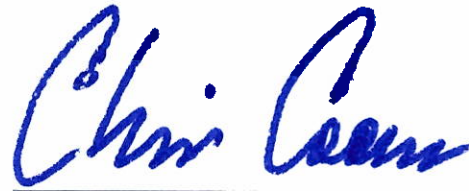
¹ 17 U.S.C. § 101.

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, written in a cursive style.

Thom Tillis
United States Senator

Handwritten signature of Chris Coons in blue ink, written in a cursive style.

Christopher A. Coons
United States Senator