



July 17, 2018

Ms. Fiona Alexander
Associate Administrator,
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

Re: Notice of Inquiry on International Internet Policy Priorities
Docket No. 180124068–8068–01

Dear Administrator Alexander,

CreativeFuture is a coalition of tens of thousands of people from the American content industry – over 540 organizations and companies and over 190,000 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 are under siege from the rampant, illicit activity of digital piracy.

As representatives of the millions of Americans who work in the creative industries, we are writing to call on the NTIA to support more effective laws and policies, in the U.S. and globally, to reduce this theft that stymies creative expression and totals in the billions of dollars of annual economic harm.

Strong copyright protections give creatives the freedom to pursue their art as a career, not just as a hobby. These protections ensure that the years of uncompensated work that are invested in the creation of songs and films or coding a program have a real opportunity to be rewarded with a meaningful return – a return that may then be used to pursue the next work, continuing to enrich our culture and society.

These protections, which incentivize millions of Americans to make a reasonable living by contributing to the creative economy, must be reinforced here and around the globe. 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.

Yet for the past two decades, U.S. policy has prioritized the growth of the latter, with little attention paid to the former. During the past decade, copyright-based industries have adapted rapidly to changing markets and consumer demand, 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.

This is why the NTIA's request for comments on the free flow of information online and emerging technologies and trends is so timely for millions of Americans who depend on copyright to make a living.

We ask the NTIA and all relevant federal agencies responsible for the development of international internet policy to remain sensitive to the need to preserve and strengthen these rights in the face of a digital onslaught

– through appropriate domestic policy and global advocacy that provides both accountability and meaningful incentives.

Copyright is the Foundation of a Strong Creative Economy

The creative industries are a significant economic driver, contributing more than \$1.2 trillion to America's Gross Domestic Product and employing 5.5 million Americans. U.S. core copyright 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, job creation and economic growth occur domestically. But rampant online theft diminishes the value of this creative economy, adversely affecting our favorable trade balance and American jobs.

Why the Creative Communities Should Play a Major Role in Crafting the Future of Internet Policy

The outcome of the NTIA's notice of inquiry will go a long way to determining the success or failure of tomorrow's creative economy. Today, the U.S. is home to the largest and most diverse creative economy in the world – significant not only in volume of revenue but in contributions to global culture and understanding.

The digital age – starting in the mid '90s – has presented copyright owners with incredible opportunities, as well as increasingly insurmountable challenges. During this time, creatives have benefited from technological achievements that have allowed us to reach global audiences as never before. Yet, those same technologies have facilitated rampant digital piracy that has devalued our life's work.

This pivotal change has been most damaging in the last decade – as internet giants like Google and Facebook, supported by a U.S. policy framework that prioritizes the growth of internet platforms over accountability for the harms they enable, became large-scale facilitators to an illicit global content marketplace that creates unfair competition to all legitimate content businesses.

It is no coincidence that during the same decade, these companies have grown to be among the world's most powerful (and valuable) companies. They have both destroyed and appropriated value – largely without constraints. And creatives are not alone among those negatively impacted. Every day seems to bring new examples of the wide-ranging consequences of the lack of online accountability: interference in elections, rampant hate speech, fake news, fraud, malware and identity theft, not to mention the illicit trafficking in everything from airport security credentials to opioids, and even human beings.

As the NTIA considers its internet policy priorities and the issues facing the internet globally, it must acknowledge that we have reached (or are very close to reaching) a tipping point. The hands-off policies and statutory immunities adopted 20 years ago to promote the growth of the internet are now significantly contributing to the demise of the public's confidence in the very technology we sought to advance, thereby impairing its potential as a driver of economic growth and legitimate digital trade and commerce.

The Free Flow of Information and Jurisdiction

The internet sector frequently asserts that anything short of the broad immunities it presently enjoys would be tantamount to censorship – a violation of the First Amendment rights of the platforms and the millions of Americans that use them. But creatives are staunch supporters of the First Amendment as well – it protects our communities from those who would silence our creative expression. Creatives rely on the free, unobstructed flow of information online to reach their audiences. Indeed, few things have been more instrumental to the growth of the global economy than the open exchange of information.

However, we strongly oppose the viewpoint that criminals offering copyright infringing versions of films, television shows, books, and music online are merely exercising their free speech rights – or that the protection of copyright and the freedom of expression are competing values. Freedom of speech, and the need to protect creative rights to advance the arts, not only coexist in our Constitution, they are interdependent. In fact, the Supreme Court has noted that copyright acts as an engine of free expression.

It has been particularly insulting to watch self-anointed “internet freedom fighters” leaping to the defense of technologies, websites, and apps whose sole or predominant purposes are to make available copyrighted works like films, television shows, music, and books without the permission of the rights holders. Deliberately obfuscating their conduct in the name of “free speech” or an “open internet” is not a legitimate argument.

Significantly, dozens of democracies around the world have committed themselves to stronger policies to disrupt the flow of pirated content, which have proven to be both effective and consistent with the principles of free speech and an open internet. In fact, many nations whose content industries are a fraction of the size of comparable U.S. industries have done more to address these issues and protect creatives, both indigenous and American, than we have.

One such policy, site blocking, which has proven to be effective in countries such as Australia, Canada, Denmark, France, Germany, Ireland, Japan, Spain, and the United Kingdom, is an effective mechanism for blocking websites that are found by courts or duly authorized administrative agencies to systematically provide visitors with copyright infringing materials. [The Information Technology and Innovation Foundation](#) (ITIF) reports that the “Australian Screen Association analyzed the impact of website blocking, finding a 53 percent reduction in the use of pirate sites which were targeted by a blocking order.”

The article further states that research firm INCOPRO found “that overall piracy in Australia decreased by 25 percent year-on-year.” Similarly, a [study](#) of site blocking in the UK by Carnegie Mellon and Chapman Universities found that sustained site blocking over time leads to significant decreases in the overall rate of piracy and a meaningful increase in the use of legitimate services. If these kinds of results were achieved in the U.S. piracy landscape, American content creators could again be fairly compensated for their hard work.

In its international advocacy, it is critical for the NTIA to make clear distinctions between laws that aim to police the internet for the purpose of censorship versus laws that have the intent or effect of protecting free creative expression and intellectual property. We urge the NTIA to advocate for strong and effective copyright laws and policies here and around the globe – and to recognize that meaningful protections against piracy can readily coexist with and reinforce commitments to free speech and an open internet.

Emerging Technologies and Trends

As the NTIA evaluates emerging technologies and trends, we encourage it to pay careful attention to the growth of streaming piracy and continued innovations in piracy devices and apps that make the global theft of creative content easier, more widespread, and more insidious.

A prime example is the emergence of illicit video streaming devices that bring both real-time channels from every continent, as well as massive on-demand content libraries into living rooms globally. These boxes, most of which use an open-source video platform called Kodi, can be used for legitimate purposes, such as accessing and organizing one’s personal photos and videos, as well as a wide range of audiovisual content obtained from legitimate sources. *(CreativeFuture member and renowned producer Wendy Finerman wrote an op-ed on this issue that was published in The Hill on March 7, 2018. See attached op-ed.)*

But accessing legitimate content is not the primary motivation for many of the sellers and buyers of these devices. Because Kodi is an open-source software, programmers can easily and inexpensively create apps and add-ons that turn these devices into near-perfect piracy machines. These apps are either pre-loaded onto the boxes or are readily available to be downloaded at home – just as easily as loading an app into an Apple TV or comparable device. Once installed, these add-ons look and feel like legitimate, fully licensed services, leading unsuspecting consumers to unwittingly contribute to the piracy problem.

Piracy streaming devices are for sale at mall kiosks, stock shows, and other marketplaces, as well as through major online retail sites. They are often advertised with the promise of “free and limitless television shows and movies” and “access to your favorite live television channels, including sports and news broadcasts from all over the world.” All of this is for the one-time cost of the device (a couple of hundred dollars) or, in some cases, for a “subscription” of just a few dollars a month, and, of course, none of the revenue ever makes its way to the creatives that made the content.

Thankfully, some major U.S.-based online retailers have taken steps to delist or prohibit the sale of illegal streaming piracy devices, and both government and private enforcement actions in many countries around the world have begun to slowly fight the streaming piracy phenomenon. We are hopeful that U.S. law enforcement will soon follow suit. Today these pirate devices continue to be marketed through paid advertisements on Google, Facebook, and Twitter, as well as web ads placed by various agencies.

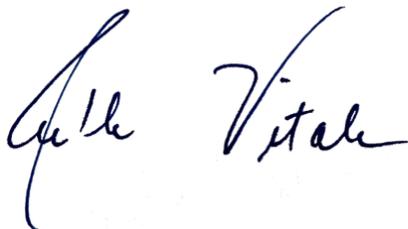
The phenomenon of streaming piracy is now a global threat, with unprecedented financial impact on the creative community as well as the legitimate distributors of innovative, creative content such as cable and satellite companies and over-the-top providers such as Netflix and Hulu.

We urge the NTIA to support global enforcement efforts against piracy devices and applications and to coordinate with the other departments of government to promote the effectiveness of these efforts. It is only through action by law enforcement agencies at the international, national, and local level – and a commitment to voluntary best practices by major online retailers – that this epidemic will be stopped.

We very much appreciate the opportunity to share our comments and the perspective of our communities. Millions of Americans are depending on smart government policies to make it possible to do what they love – create content that the world loves while being compensated fairly for their work.

We respectfully ask the NTIA to advocate for policies that promote a free and open internet, while at the same time advocating for effective laws and policies to combat piracy.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth Vitale". The signature is fluid and cursive, with the first name "Ruth" written in a larger, more prominent script than the last name "Vitale".

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.