



October 13, 2022



Ms. Ariel Gordon  
Director for Innovation and Intellectual Property  
Office of the United States Trade Representative  
600 17th St. NW  
Washington, DC 20508

*Re: 2022 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request [Docket Number USTR-2022-0010]*



Dear Ms. Gordon,



On behalf of the Department for Professional Employees, AFL-CIO (DPE), I write in response to the Office of the United States Trade Representative's ("USTR") August 26, 2022, Federal Register notice requesting comments on the 2022 Review of Notorious Markets for Counterfeiting and Piracy.



I commend USTR for using the 2022 Notorious Markets List to examine the impact of online piracy on U.S. workers, an issue directly relevant to the members of DPE's 12 affiliate unions in the arts, entertainment, and media industries. The members of these unions are actors, choreographers, cinematographers, dancers, directors, editors, musicians, singers, stage managers, stunt performers, technicians, writers, and other creative professionals. They help power a sector that employs more than five million people, generates more than four percent of the United States' GDP, and produces a positive trade balance.<sup>1</sup>



Online piracy,<sup>2</sup> or content theft, threatens the economic security of many union creative professionals, even though they are not typically the copyright holder. These middle-class workers earn collectively bargained pay and contributions to their health insurance and pension plans from the sales and licensing of the content they help create. In 2021, for instance, Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA) performers earned \$1.11 billion (at an average amount of \$229 per residual check), International Alliance of Theatrical Stage Employees (IATSE) behind-the-scenes professionals earned \$510 million for their pension and health plan, the Directors Guild of America (DGA) distributed \$460 million to directors and directorial team members, and writers, including members of the Writers Guild of America East (WGAE), earned \$569 million.



SAG-AFTRA



<sup>1</sup> "Intellectual Property Theft: A Threat to Working People and the Economy." (2021.) Department for Professional Employees, AFL-CIO.

<sup>2</sup> Union creative professionals often object to using the term "piracy," because it can conjure images of noble swashbuckling and sticking it to "The Man," when, in reality, it is the theft of hard-earned pay that people depend on to provide for themselves and their families.



In addition, union creative professionals' future work opportunities depend on legitimate sales and licensing, particularly in international markets. Illegal downloads and streaming of film and television productions results in the estimated annual loss of at least 230,000 jobs.<sup>3</sup> This job loss occurs because employers, who generally are the rights holders, set their budgets based on their expected return on investment. When copyrighted content is stolen, investment returns diminish, and less money is available to put members of DPE's unions to work on future projects. Fewer job opportunities also become available as investors lose faith in the ability of countries to adequately enforce copyright protections, which is why U.S. trade agreements must provide strong copyright protections for creative professionals.

Content theft is also an impediment to advancing diversity, equity, and inclusion in creative industries. Too often creative professionals of color, women, and other marginalized individuals are not able to realize the full economic value of their intellectual property, an obstacle to maintaining a career that utilizes their unique talents and abilities. All creative professionals must be able to earn fair pay and benefits, otherwise their industries will be limited to a non-inclusive group of people who can afford to work for little to no compensation as they hold out for the promise of a future payday that may never arrive.

Fortunately, there are actions that USTR can take as part of its worker centric trade policy and the broader Biden-Harris Administration's pro-worker agenda to protect the wages, benefits, and jobs of the many middle-class creative professionals who depend on the legitimate sales and licensing of creative content.

The United States should not incorporate outdated, overbroad copyright safe harbor language that is modeled after Section 512 of the Digital Millennium Copyright Act into future trade agreements. Section 512, in specified circumstances, frees online platforms from liability for infringing content posted by others. Due to a series of harmful court decisions, Section 512, which was originally intended to create a narrow protection to an infant industry, now provides broad protection against copyright infringement liability to some of the largest, most dominant companies in the world. In essence, Section 512 acts as a nearly free pass for platforms to profit from stolen or otherwise illegitimate content posted by third parties. When U.S. trade agreements include an online safe harbor rule similar to Section 512, they allow stolen or otherwise illegitimate content to proliferate across the globe. Mandating that our trading partners adopt rules that turn a blind eye to stolen and unlicensed copyrighted content on the Internet contributes to DPE unions' members losing out on the aforementioned collectively bargained royalties, residuals, and contributions to their health care and retirement funds that come from exploitation of the creative works they helped make, along with fewer future job opportunities.

The United States should also not include in trade agreements a provision modeled on Section 230 of the Communications Decency Act, which allows online platforms to avoid responsibility for unlawful user content they themselves facilitated or profit from. Along with content theft, union creative professionals too often experience their voices, images, and

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<sup>3</sup> Blackburn, David, Eisenach, Jeffery and Harrison, David. "Impacts of Digital Video Piracy on the U.S. Economy." NERA Economic Consulting and The U.S. Chamber of Commerce. June 2019. <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>

likenesses misappropriated for use in unauthorized AI-generated online content. The reality is that AI is rapidly advancing, and society does not fully know the impacts. What is already clear are the dangers and downsides, including image-based sexual abuse, misappropriation for commercial gain, and the proliferation of disinformation using known public figures without their consent. Therefore, inclusion of Section 230-type language in U.S. trade agreements is a mistake that makes it difficult to establish safeguards against content that puts ordinary people, including DPE unions' members, at risk. Section 230-type language may also prevent the United States and our trading partners from adopting a law similar to Australia's "payment for news" law. DPE's unions' members include journalists and other media professionals whose works giant tech companies profit from, while draining the news industry of its entitled revenue.

The Indo-Pacific Economic Framework (IPEF) provides an immediate opportunity for the United States to pursue policies that will protect and promote the economic security of the more than five million people, including members of DPE's affiliate unions, who depend on copyright protection to sustain their livelihoods. I refer you to the recommendations included in the Labor Advisory Committee on Trade Policy and Negotiations (LAC) comments responding to USTR's March 10, 2022, Federal Register notice, *Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework* (USTR-2022-0002).

In closing, thank you again for your attention to this important issue. Union creative professionals rely more than ever on adequate and effective copyright protection to secure their livelihoods in today's digital era. The numerous examples of online markets engaged in content theft and their global reach showcase how stolen content can be transmitted across borders at speeds and in quantities that few could imagine even a decade ago. It is for this reason that I urge USTR to go beyond naming online content theft markets in its Notorious Markets List and to pursue trade policies that address this scourge inflicting economic damage on the middle-class, working people in the creative industries.

If you have any questions, please contact me or DPE's Assistant to the President/Legislative Director, Michael Wasser at [mwasser@dpeaflcio.org](mailto:mwasser@dpeaflcio.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "JDorning", written over a light blue circular stamp.

Jennifer Dorning, President