

INTELLECTUAL PROPERTY THEFT: A THREAT TO WORKING PEOPLE AND THE ECONOMY

Highlights:

- Copyright protections secure the current and future pay and benefits for over five million creative professionals working in motion picture and television production, live and recorded music, and theater and other performing arts.
- Digital theft has a direct negative impact on creative industries and the professionals who work in them, with a cost of at least 290,000 jobs and \$29 billion in lost revenue in the film and television industry alone.
- Outdated laws such as Section 512 of the Digital Millennium Copyright Act need to be reformed to prevent big corporations from profiting from the unlicensed use of copyrighted works.

Creative industries - including motion pictures, television, theater and music - directly employ millions of Americans, bolster local economies, and generate substantial export revenues. Many of the union professionals who imagine, develop, design, and give life to creative content depend on legitimate sales and licensing of these works for their collectively bargained pay and contributions to their health insurance and pension plans.

Stolen or otherwise illegitimate content undermines the value of creative professionals' work and threatens their hard-won pay and benefits. The theft and unlicensed distribution of copyrighted films, television shows, recorded music and live performances also costs the American economy billions of dollars every year. And in today's digital age, creative works are now able to be stolen and transmitted illegally at rapid speeds and in ever increasing quantities. Strong copyright protections appropriate for the 21st century are necessary to protect middle class professionals' economic security and protect the future of the creative industries.

The Economic Engine of Creative Industries

Copyright-protected creative industries power local economies across the United States, contributing more than \$1.5 trillion to the nation's gross domestic product every year, about 7.4 percent of the total U.S. economy. In 2019, these industries employed 5.7 million people, many in good union jobs with family-sustaining wages.¹

	Core Copyright Industries	Total U.S. Economy
Economic Growth, 2016-2019	5.87% ²	2.48% ³
Trade Balance, 2020	\$70.8 billion ⁴	- \$616.1 billion ⁵

Copyright Protections Support Millions of Jobs

The creative workforce consists of millions of people working in many different middle-class occupations, both in front and behind the camera, on and off stage.^{6 7 8} These creative professionals rely on copyright protections and royalty or residual payments to make a living, provide healthcare for their families, and retire with security.

2.5 million people work in motion picture and television production



including actors, animators, assistant directors, assistant producers, boom operators, camera operators, casting directors, gaffers, grips, musicians, screenwriters, script supervisors, special effects coordinators, and others.

1.9 million people work in live and recorded music

including arrangers, audio engineers, backup singers, editors, lighting technicians, mixers, session artists, song writers, stage managers, and others.



126,000 people work in live theater and other performing arts



including actors, choreographers, dancers, makeup artists, musicians, scenic artists, set designers, sound technicians, stage managers, stagehands, ushers, and others.

Through their unions, creative professionals have secured their rights as a largely freelance workforce, ensuring they are able to succeed alongside the industry as a whole. Indeed, through collective bargaining, creative professionals and their unions have won wages that outpace working professionals in other parts of the economy.

Unions representing professionals across the entertainment industries include Actors' Equity Association, the American Federation of Musicians, the American Guild of Musical Artists, the American Guild of Variety Artists, the Directors Guild of America, the Guild of Italian American Actors, the International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts, the International Brotherhood of Electrical Workers, the Office and Professional Employees International Union, the Screen Actors Guild - American

Federation of Television and Radio Artists, the Stage Directors and Choreographers Society, and the Writers Guild of America, East.

The Damage to Creative Professionals

Digital theft hurts the millions of Americans who make a living and provide for their families through careers in the creative industries.

Intellectual property theft cuts into the resources available to employ people in the entertainment industry and other copyright-protected industries. While difficult to quantify, one study found that illegal downloads and streaming of film and television productions results in the annual loss of at least 230,000 jobs and \$29.2 billion in economic activity.⁹

Intellectual property theft also reduces the real earnings of professionals already working in creative industries. While not typically the copyright holders themselves, when an individual receives credit on a production, they may be entitled to compensation if the material is used beyond its original exhibition. For example, residual payments begin for a credited cast or crew member on a television production “once a show starts re-airing or is released to video/DVD, pay television, broadcast TV, basic cable, or new media.” Other creative professionals, such as recording artists, song writers, and musicians, receive royalties from the sale, distribution and public performance of their creative work.

Depending on a creative professional’s specific role in a production, residual or royalty payments may be paid directly to the professional as compensation, or as contributions towards the professional’s health and pension fund. These payments are a significant portion of creative professionals’ total pay and benefits. In 2020, through legitimate sales and streams of creative works, SAG-AFTRA members received more than \$1.01 billion (at an average amount of \$220 per residual check), IATSE members earned \$496 million for their pension and health plans, the DGA distributed over \$430 million in residuals to members, and writers, including members of the WGAE, earned \$529 million.

As the unions who represent creative professionals work to expand opportunities in these industries and expand the creative workforce to include more Black, Latinx, Asian-American, and Native professionals, it is essential that there be strong copyright protections that these individuals can depend on for their pay and benefits. 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 impediment to maintaining a career that utilizes their unique talents and abilities.

"Content theft undercuts the right to a fair share of profits that union professionals across the entertainment industry have fought for and won. When consumers pay to experience our members' work in films, television shows, and songs, the union professionals who helped create the content get fair pay and health and retirement benefits. It's simple: strong copyright laws support good union jobs."

- Fran Drescher, SAG-AFTRA President

Intellectual Property Theft Continues to Grow

Because current copyright policy fails to match the realities of today's digital age, intellectual property theft continues to threaten the economic security of creative professionals. The emergence of new legal paid streaming services such as Netflix, Hulu and Spotify has not reduced the scourge of digital theft; data indicates this type of theft is more popular than ever.

- Globally, the digital theft of music, television, film, software and other published works rose dramatically over the course of the COVID-19 pandemic. As quarantines and lockdowns spread across the globe in March 2020, digital theft surged by over 33 percent worldwide.¹⁰
- Worldwide, there were 130.5 billion visits to websites that facilitate the theft of creative content in 2020, or about 39 visits per person with access to an internet connection. The United States topped the list of countries with the most visits to these websites, followed by Russia, China, India, and Brazil.

In particular, illicit streaming websites are able to take advantage of the popularity and ease of use of legal streaming platforms to more easily distribute unlicensed content, which is often stolen directly from legal streaming platforms and disguised to look legitimate. In 2020, illegal streaming sites were the destinations of 93 percent of visits to illegal TV distribution websites and 52 percent of visits to illegal film distribution websites.¹¹ And because newer illegal streaming sites are compatible with mobile devices in a way that peer-to-peer and the other older “file sharing” mechanisms were not, online copyright crime is poised to continue growing as consumers rely more and more on mobile devices.

“When our work is stolen, we’ve been robbed of our living. We are artists, but we are also working people who depend on the intellectual property that we create to pay for our homes, families, health care, and more.”

- Marc Sazer, Violinist and
American Federation of
Musicians Local 47 member

Digital Theft Replaces Legitimate Sales

Data from natural experiments demonstrate how digital theft of creative content displaces legitimate sales and licensing, depriving creative professionals of appropriate compensation.

In 2012, the U.S. Department of Justice shutdown the website Megaupload, which hosted large volumes of stolen movies, television shows and music, and the site's owners were arrested and indicted on multiple charges of copyright infringement. Prior to its shutdown, Megaupload was estimated to have been the Internet's 13th largest website.¹² In the months following the website's removal, legitimate digital movie sales revenue increased between 6.5 percent and 8.5 percent¹³ Furthermore, the illegal distribution of films prior to their theatrical release has been shown to cause a 19.1 percent decrease in box-office revenue compared to films that only experienced post-release theft.¹⁴

The music industry is particularly susceptible to the harm caused by illicit downloading and ripping. For every 100 illegal downloads of music, 84 legal downloads are displaced.¹⁵



All sectors of the arts and entertainment industry are susceptible to intellectual property theft. Live theater is often “cinecast” in movie theaters to expand the number of people who are able to take in a show. Unfortunately, this opens theatrical productions to the same types of theft used to steal major motion pictures. Theatrical productions are also subject to illegally produced video recorded during live performances, stolen copies of sheet music and cast recordings, and illegally produced merchandise. When these works are stolen, there is a direct impact on the revenue that creative professionals rely on for their pay and benefits.

“We make our living off of sheet music. We make our living off of digital music. There are ways to enjoy our music and download our music and purchase our music that supports the artists you love so much.”

*- Actor, composer, and director
Lin Manuel Miranda*

Other Threats to the Work of Creative Professionals

Outright theft is not the only way that copyright protections have been eroded and the work of creative professionals devalued.

The “value gap” is a term used to describe the growing disparity between the value that services such as YouTube derive from user-uploaded copyrighted content, such as a song uploaded in the background of an amateur video, and the revenue returned to the copyright holders, including musical artists. YouTube is the world’s largest on-demand music service, but it exploits a legal loophole in the Digital Millennium Copyright Act to avoid paying creators fairly for their work that is uploaded illegally by users. Payments to music creators from YouTube are less than 15 percent of the payments issued by popular streaming services Spotify and Apple Music.¹⁶

Another way copyright protections are being cheapened and creative professionals are cheated is through exploitation of the “fair use” doctrine beyond its intended purposes. The principle of fair use is meant to protect limited and transformative re-use in limited circumstances including criticism, reporting, teaching, scholarship, and research. However, a recent court case shows how some for-profit companies stretch the limits of fair use, to the detriment of content creators. In *Fox News Network v. TvEyes, Inc.*, the cable news network sued the media monitoring service for distributing copyright-protected content to service subscribers without obtaining the proper licensing. While TV Eyes argued that their service (which costs subscribers \$500 per month) was protected under the fair use exception, the Second Circuit Court of Appeals ruled in favor of Fox in February 2018.¹⁷

Defending U.S. Jobs and Benefits Requires Improving Copyright Laws

Intellectual property theft hurts working people and the entire U.S. economy. In today’s internet era, creative content can be transmitted across borders at speeds and in quantities few could imagine when our nation’s intellectual property protections were originally created.

Strong copyright protections developed with today’s digital age in mind are needed to help ensure fair compensation for the professionals who imagine, develop, design, and give life to creative works that are responsible for supporting more than a trillion dollars in economic activity and millions of jobs.

Currently, outdated laws such as Section 512 of the Digital Millennium Copyright Act (DMCA) enable the largest companies in the world to build businesses that profit from the unlicensed use of copyrighted works without compensating their owners or contributing to the pay, health care, or retirement security of creative professionals. The U.S. Copyright Office recently found that Section 512 is “unbalanced.”¹⁸ Congress must reform Section 512 to ensure big tech can no longer use the law as a shield to avoid liability for a business model that profits at the expense of creative professionals.

“Strong copyright laws have protected the industry that fed me during my career as a below-the-line worker and have allowed me to retire with dignity.”

- John Gates, retired IATSE member

For more information on issues impacting professional and technical employees, please see DPE’s website: www.dpeaflcio.org.

The Department for Professional Employees, AFL-CIO (DPE) comprises 24 national unions representing over four million people working in professional and technical occupations. DPE’s affiliates represent teachers, physicians, engineers, computer scientists, psychologists, nurses, university professors, actors, technicians, and others in more than 200 professional occupations.

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