

# A Harbor Safe for All

## Using Levies to Incentivize DMCA Service Providers to Reduce Online Piracy

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# **“Whac-A-Mole” Game w/Cyberlockers, YouTube**

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**SEs that have received 61,000,000+ TDNs  
for a single site**

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ISPs, SEs and Host Sites that monitor  
and shape activity when it is in their interest  
(but allow piracy, in violation of  
their own T&Cs)

# The DMCA's Central Problem

Piracy  
+ Immunity  
Profits

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**LIBRARY OF CONGRESS**

**Copyright Office**

[Docket No. 2015–7]

**Section 512 Study: Request for  
Additional Comments**

**AGENCY:** U.S. Copyright Office, Library  
of Congress.

**ACTION:** Notice of inquiry.

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**10. How can the adoption of additional voluntary measures be encouraged or incentivized? What role, if any, should government play in the development and implementation of future voluntary measures?**

# The Concept

- To change behavior, cut the link between piracy and profits.

Piracy + DMCA immunity  $\neq$  Profits

- Amend the DMCA to apply a levy aimed to disgorge revenue from piracy as a condition for DMCA immunity.

# Preliminary Attributes

- Which types of service providers?
- Who determines the levy, and how is it calculated and distributed?
  - Service providers already collect the relevant data
  - Multi-stakeholder agreement

# ISPs

- Not passive common carriers
- How to measure infringing bandwidth?
  - Internal data
    - ISPs monitor your activity, including websites you visit and P2P traffic
      - E.g. Verizon Privacy Policy: We monitor “websites visited, . . . network traffic data, video streaming. . .”
  - External data
    - E.g. 2013 Netnames Report (finding that at least 11.35% of U.S. ISP bandwidth was for infringing content)  
<https://www.netnames.com/insights/whitepapers/2016/sizing-the-piracy-universe/>

# Search Engines

- Only 5 main U.S. SEs:

Core Search Entity	Jan-2017
Google Sites	63.4%
Microsoft Sites	22.6%
Yahoo Sites	11.6%
Ask Network	1.4%
AOL, Inc.	0.9%

*Source: Comscore, Top U.S. SEs by volume of search queries*

- Google's data-sharing
  - Search Analytics Reports
    - **Clicks** (how many clicks to your site from Google results )
    - **Impressions** (how many links to your site users saw in Google results)
    - Results for particular **Pages** on a Site

Source: <https://support.google.com/webmasters/answer/6155685?hl=en>

# Host Sites

- Internal data
  - YouTube, Facebook collecting as much data as possible about activity on their platforms
  - Cyberlockers – at minimum, collecting data on popularity of content (#s of streams, D/Ls)
- External data
  - Studies on revenues and levels of piracy on linking sites and cyberlockers

**Linking Sites:** Good Money Still Going Bad,” available at <http://www.digitalcitizensalliance.org/cac/alliance/resources.aspx>

**Cyberlockers:** “Behind the Cyberlocker Door,” available at <https://www.netnames.com/insights/whitepapers/2016/behind-the-cyberlocker-door/>

# Challenges

- Quantifying piracy and associated revenues
- Embracing an “outside the box” solution
- Internet businesses earning profits from the status quo will resist
  - However, I posit that if we turned back the clock to the mid to late ‘90s, when full liability was still possible, internet companies would have wholeheartedly embraced the DMCA levy solution as a fair compromise.

# Pros (1/2)

- Proactive measures are voluntary
  - Works via incentives: if you do more to limit piracy, your pay less
- Will not stifle innovation, promotes investment in new content
- It is fair for startups and small business too
- Agnostic as to how/if to limit piracy (e.g. filtering)
- Helps small and large copyright owners alike
- Level playing field for innovators
- Does not impair free speech

## Pros (2/2)

- Relief against foreign rogue sites
- Will greatly reduce reliance on TDNs
- Will reduce enforcement actions
- Still no duty to monitor
- Potential to address “large scale” private group sharing, for which you cannot send TDNs
- Internet Companies’ preferred solution?
  - History of advocacy for levies in the U.S. to remedy piracy by tech-leaning scholars, tech management, and government

# Thank you

If you have comments or feedback, please email me.

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