



Intellectual Property:

Making It Personal

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Citizens Against Government Waste

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Introduction

Most Americans do not think much about how property rights affect them in their daily lives. If they consider the subject at all, they are likely to be more aware of the monetary value of private property than intellectual property (IP). People will protect their valuables at home and work by locking their doors and installing security systems, and they usually have a good idea of how much their business, home, car, and investments are worth.

But few people realize that nearly every product they use is the result of someone's idea, or IP; nor are they likely to know the value of IP to the economy. And it is even more unlikely that they understand the impact of IP theft on either the creative process or the tens of millions of ordinary Americans who participate in that process.

A Brief History of Intellectual Property Protection

During medieval times guilds, associations, or artisans were granted authority by the government to control the regulation and conduct of various industries.¹ In England, personal property and IP were traditionally viewed as distinct subjects with different origins. Personal or tangible property was viewed as “a creature of common law,” whereas copyrights and other IP were considered “largely a creature of statute.”²

The 1623 Statute of Monopolies provided for the exclusive control over an invention for a period of 14 years to the “true and first inventor.”³ The Statute of Anne in 1710 granted an initial 14-year protection period with a possible 14-year renewal for protection of IP rights.⁴

In the United States, following the Revolutionary War every state had its own patent law, and every state except Delaware had its own copyright law.⁵ The protection and promotion of IP was so important to the Founding Fathers that they included it in the General Welfare Clause, Article 1, Section 8 of the U.S. Constitution:

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.⁶

Unlike IP, personal property is protected under the Fourth and Fifth Amendments, not in the Constitution itself. During the First Congress, H.R. 43, the Copyright Act of 1790, was enacted and signed into law on May 31, 1790 by President George Washington. As one of the first laws enacted by Congress, the legislation provided copyright protection for books, maps, and charts and established both the U.S. Copyright Office and the U.S. Patent and Trademark Office (PTO). These agencies were tasked with cataloguing, analyzing, and protecting IP rights.

Musical compositions were not mentioned in the text of the act and would not be expressly covered by copyright until the Copyright Act of 1831. However, they were routinely registered under the 1790 Act and categorized as “books.”⁷

Unlike the PTO, there is no “Office of Personal Property” or a “Department of Personal Property.” In fact, Article 5 states that private property can be taken for public use with just compensation. Although the government can exercise eminent domain over private property under such circumstances, it has no similar right to take away IP.

The legal protection of IP has enormous value. It turns intangible assets into exclusive property that can be traded in the marketplace. A March 2012 report by the U.S. Department of Commerce Economics and Statistics Administration and the PTO found that direct employment

in the most IP-intensive industries in the U.S. accounted for 27.1 million jobs in 2010, and indirect activities associated with those industries provided an additional 12.9 million jobs for a total of 40 million jobs, or 27.7 percent of all jobs in the economy.⁸

In a comparative study on the value of IP, economists Kevin A. Hassett and Robert J. Shapiro estimated that “innovation in its various forms accounts for 30-40 percent of the gains in growth and productivity by the American economy during the 20th century.”⁹ The study further found that the value of IP in the U.S. was between \$5 trillion and \$5.5 trillion in 2005.¹⁰ By comparison, in 2010 that value had increased to between \$8.1 trillion and \$9.2 trillion, or the equivalent of 55–62.5 percent of U.S. GDP.¹¹

In 2010, the value of IP comprised approximately 80 percent of a company’s total assets based on the Standard & Poor’s 500 Index.¹² This compares to the 1975 value of intangible assets comprising only 17 percent as IP, with the remaining 83 percent found in physical and financial assets.¹³

Internationally, some governments have been developing policies that threaten IP. The creative process will suffer as a result of such policies, because individuals and companies will not be willing to spend as much time or money on new IP if they believe the fruits of their labor will be taken away without sufficient – or any – compensation.

In a 2007 CAGW report entitled “Property Rights in the 21st Century: Don’t Steal This Paper or My Ideas,” one of this report’s co-authors examined four “myths and reality” surrounding the definition and use of IP. These premises hold true today.

Four Intellectual Property Myths

1. Myth: The price of information and ideas should be zero because products should be priced at marginal cost.

Reality: Economists reject marginal cost pricing because such policies destroy investment.

2. Myth: Intellectual property rights result in information and ideas being “locked down” by their owners.

Reality: The creators of art, books, movies, and inventions want their creations to reach as many people as possible, so long as they are compensated.

3. Myth: Intellectual property rights are monopolies that give their owners too much economic power.

Reality: Patents or copyrights support competition by encouraging inventors and creators to enter new markets; IP gives its owners no more economic power than any other asset.

4. Myth: Intellectual property rights benefit big firms at the expense of “the little guy.”

Reality: Patents are often the best protection that a small inventor has against large firms; copyright benefits creative ventures of many sizes, from solo musicians to big studios.

Strong protection of IP provides real benefits. Consider the following American inventions and whether they would have come about in a climate of weak IP protection:

- The telegraph in 1835¹⁴
- The phonograph in 1877¹⁵
- The light bulb in 1880¹⁶
- Air conditioning in 1902¹⁷
- The television in 1927¹⁸
- The point contact transistor in 1947-1948¹⁹
- Marshmallow Peeps in 1952²⁰
- Magnetic tape cartridges in 1964²¹
- The cell phone in 1973²²
- The microprocessor in 1973²³

The value of these and future inventions relies on strong IP protection. This report will review copyright, trademark, and patent issues, as well as ongoing threats to IP protections from piracy, counterfeiting, and illegal sharing online.

Many individuals who buy a fake Gucci bag on the corner or illegally download a TV show, movie, or music, share the view of Hana Beshera, one of the founders of NinjaVideo, who served 16 months in prison for violating copyright laws. Even after she got out of jail, Beshera still believed that “the movie business is so large that skimming a little off the top doesn’t hurt anybody.”²⁴ IP theft is wrong at every level; its impact affects everyone associated with the creative process. Indeed, with more than 40 million Americans directly or indirectly working in an IP-related industry, one of the victims of IP theft might well be personally known to the perpetrator.

The importance of protecting IP rights cannot be overemphasized. The right to retain legal possession of, and benefit financially from, IP is constantly being threatened. The intent of this publication is to help educate the public about the value and importance of IP, the impact on individuals and the economy from the theft of IP, and how IP helps innovation flourish and economies around the world thrive.

Chapter 3 – Music and Movies and Torrents, Oh My

"Many worked very hard to bring this story to the big screen, and their work should not be taken advantage of including the Godfather or and his many contributions to society," – Deanna Brown Thomas, daughter of the "Godfather of Soul" James Brown, confirming she had heard of illegal copies of "Get On Up" being found on the streets of Augusta, Georgia.⁹⁴

On June 15, 2014, HBO aired the Season 4 finale of its hit series "Game of Thrones." Within 12 hours of its initial televised showing, the episode had "roughly" 1.5 million online downloads worldwide, the equivalent of two petabytes of data.⁹⁵ The problem with this surge of downloads is that they were mostly pirated copies, meaning the vast majority of those who downloaded the program never paid to watch the show.

Although the illegal copying and distribution of music, television shows, and movies has been made easier with the advent of computer file sharing networks, the practice, at least for music, dates back to cassette and 8-track tapes, which made duplication of recordings fairly easy. Albums such as Kraftwerk's 1974 album "Autobahn" included a "Buyers Bulletin," warning consumers that copying the recording was illegal. The document included a story about singer and songwriter Jerry Lee Lewis smashing a rack of pirated tapes outside of a gas station. According to the bulletin, bootlegging provided music pirates with \$200 million annually.⁹⁶

While illegal taping required playing an entire album (many of which were not in pristine condition), the advent of the Internet increased both the speed and quality of pirated music. In May 1999, Shawn Fanning and Sean Parker debuted Napster, a peer-to-peer file sharing network.⁹⁷ Through the Napster website, users stored and retrieved songs in a central computer server, with no payment to the copyright holders.

In December 1999, the Recording Industry Association of America (RIAA) found that Napster users had figured out how to illegally share music files, and sued the company for copyright infringement.⁹⁸ On July 27, 2000, a federal judge in San Francisco shut Napster's website down, noting that the company had acknowledged that they encouraged "wholesale infringement" against music copyrights.⁹⁹ Napster got the message and now operates as a music subscription service, paying copyright fees to artists, creators, and owners.¹⁰⁰

However, other file sharing sites have evolved through which illegal downloads of music and videos take place. First used in 2001, torrent technology provides an easy way for users to trade and share large media files online, including software, music, movies, and digital books.¹⁰¹ Taking small pieces of information (known as bits) from several different web sources, torrents filter the content to remove any corrupted files and encourage users to share any complete files they hold.¹⁰² Downloads on torrent file sharing networks can be performed at speeds of more than 1.5 megabits per second. The code for torrents is supposed to be open source, ad-free, and adware/spyware-free.¹⁰³

Torrent file sharing networks have thus enabled users to share both legally and illegally obtained copyrighted material, including pirated movies, music and television programs. While the technology may be neutral, a 2011 study by Envisional concluded that more than 99 percent of the traffic on the global file sharing website BitTorrent contains infringing content.¹⁰⁴ On January 2, 2014, *Wired* announced the most pirated movies of 2013, including major blockbusters such as "The Hobbit: An Unexpected Journey;" "The Hobbit;" "Django Unchained;" "Fast and Furious;" "Silver Linings Playbook;" "Gangster Squad;" and, "Now You See Me."¹⁰⁵ "The

Hobbit: An Unexpected Journey” topped *Wired’s* list, with an estimated 8.4 million downloads via BitTorrent.¹⁰⁶

Speaking about the effects of pirating videos on the movie industry, Actress Chloe Moretz, who played the teenage version of Dirty Harry in the movie series “Kick-Ass” and “Kick-Ass 2,” stated:

Sadly, I think I’m done with the character. Hit-Girl was a very cool character, but I don’t think there will be any more movies. You make these movies for the fanboys, but nowadays everyone seems to pirate them rather than watch them in the movie theatre. KICK-ASS 2 was one of the number one pirated movies of the year, but that doesn’t help us because we need box office figures. We need to prove to the distributors that we can make money from a third and fourth movie – but because it didn’t do so well, we can’t make another one. If you want more than one movie, everyone has to go and see movies at the cinema. It’s all about the numbers in the theatre.¹⁰⁷

A March 2013 University of Lund study reviewed one of the global file sharing sites, Pirate Bay, to determine who was involved in pirating various types of media, including music, movies, TV shows, sports material, games and software, e-books, and pornography. The study found that 93.8 percent of the 75,616 file sharers who responded were male, with almost half of the respondents between the ages of 18-24.¹⁰⁸ The study also found that music files were the most prevalent with 46,554 files shared, despite the availability of legal streaming solutions.¹⁰⁹ As to why more males than females share files, an August 5, 2014 editorial in *TechCentral* surmised that women are more risk-averse than men when it comes to pirating files, even though music pirating is a low-risk activity with little chance that those sharing files will be prosecuted.¹¹⁰

On March 10, 2012, Rick Carnes told the Music Technology Policy blog:

[As] President of the Songwriters Guild of America ... if I am supposed to be getting ‘untold riches’ someone forgot to tell me! The mission statement of the SGA is two words ‘Protect Songwriters.’ That lack of specificity has forced me to show up in all kinds of places I never thought I would be! I was the lead witness in the latest Copyright Rate Board hearing. I have testified on behalf of songwriters in both the Senate and the House of Representatives on many issues concerning song writers rights, and I have spent the last ten years flying all over the country talking to people about the harm that is being done to American music by the widespread theft of songs on the internet by a mob of anonymous looters.¹¹¹

Musician David Lowery (of Cracker and Camper Van Beethoven fame) explained the musician’s position when he responded to a June 16, 2012 letter posted by Emily White at National Public Radio (NPR):

The fundamental shift in principals [sic] and morality is about who gets to control and exploit the work of an [sic] artists. The accepted norm for hundreds [sic] of years of western civilization is the artist exclusively has the right to exploit and control his/her work for a period of time. (Since the works that are [sic] almost invariably the subject of these discussions are popular culture of one type or

another, the duration of the copyright term is pretty much irrelevant for an ethical discussion.) By allowing the artist to treat his/her work as actual property, the artist can decide how to monetize his or her work. This system has worked very well for fans and artists. Now we are being asked to undo this not because we think this is a bad or unfair way to compensate artists but simply because it is technologically possible for corporations or individuals to exploit artists work without their permission on a massive scale and globally. We are being asked to continue to let these companies violate the law without being punished or prosecuted. We are being asked to change our morality and principals [sic] to match what I think are immoral and unethical business models.¹¹²

During a March 2, 2011 hearing before the office of the U.S. Trade Representative, Michael Schlesinger, chief counsel of the International Intellectual Property Alliance, testified that 90 percent of newly-released movies pirated by thieves are stolen in a movie theater with a digital recording device that takes the image and/or sound off the screen.¹¹³ Movies are also pirated before they appear in theaters. In July 2014, a DVD quality copy of “The Expendables 3” appeared online and was downloaded millions of times before a single ticket was sold at theaters in September. The movie then flopped at the box office.¹¹⁴ On average, pre-release piracy cuts box office revenues by 19 percent compared to piracy that occurs after a movie is released in theaters.¹¹⁵

Unfortunately, the pirate’s gain is the creative and financial loss of those individuals who make music, films, and television programs. For example, fewer new artists are likely to become successful because they will not be able to make even a basic living from the intellectual property they have produced. In a September 4, 2014 interview in *Esquire*, the legendary Gene Simmons of KISS spoke about the demise of rock and the challenges facing new musicians:¹¹⁶

The masses do not recognize file-sharing and downloading as stealing because there’s a copy left behind for you – it’s not *that* copy that’s the problem, it’s the *other* one that someone *received* but didn’t pay for. The problem is that nobody will pay you for the 10,000 hours you put in to create what you created. I can only imagine the frustration of all that work, and having no one value it enough to pay you for it.

It’s very sad for new bands. My heart goes out to them. They just don’t have a chance. If you play guitar, it’s almost impossible. You’re better off not even learning how to play guitar or write songs, and just singing in the shower and auditioning for *The X Factor*. And I’m not slamming *The X Factor*, or even pop singers. But where’s Bob Dylan? Where’s the next Beatles? Where are the songwriters? Where are the creators? Many of them now have to work behind the scenes to prop up pop acts and write their stuff for them.¹¹⁷

The creative writing of music that Simmons spoke about in his interview is protected by U.S. copyright law, which is based on the Constitutional protection for intellectual property. In 1897, Congress founded the U.S. Copyright Office (USCO) as a department within the Library of Congress, in order to provide for a centralized licensing process for creative works found in literature, drama, music, and art.¹¹⁸ The USCO maintains the registration of “copyright claims in books, music, movies, software, photographs, and other works of authorship. In fiscal year 2011, the USCO processed more than 700,000 registration claims.”¹¹⁹

Authors of original creative work eligible for copyright are not required to register their work; it is copyright protected from the moment of creation. However, the USCO recommends registering works in order to have factual documentation of a copyright on the public record, a certificate of registration, and eligibility for statutory damages and attorney fees in the event of litigation over the work. If registration occurs within five years of publication, it is considered prima facie evidence of the copyright.¹²⁰

Some of the creative works that are not protected by copyright include an individual recipe or listing of ingredients; names, titles, slogans, or logos which may be protected under trademark law; and “ideas, concepts, systems, or methods of doing something.”¹²¹

Copyright infringement, which is the legal term for stealing a copyrighted work, is subject to both civil and criminal penalties. Civil penalties include injunctions, impoundment and disposition of infringing items, damages and lost profits, and attorney’s fees. Criminal cases can be brought against anyone who makes a fraudulent copyright claim or uses copyrighted material for commercial or private financial gain. Copyright infringement affects all sizes and kinds of copyright holders, from large record companies to budding artists and major movie studios to novice filmmakers. In fact, despite the (false) impression that theft of copyrighted material hurts only the big movie studios that can “afford” the cost, many movies are produced by individuals or small independent studios running on a shoestring budget. In 2010, several independent filmmakers cried foul when their movies were posted online, and filed lawsuits against thousands of individuals who were illegally distributing their videos over the Internet.¹²² These filmmakers, whose profit margins are typically very thin, remain concerned that illegal file sharing will drive them out of business.

For example, in the spring of 2010, school teacher Ellen Seidler released the independently produced film “And Then Came Lola.”¹²³ She and her co-producers used \$250,000 of their own money and paid for the film through personal loans, and credit cards.¹²⁴ Unfortunately, shortly after the movie’s release, unauthorized copies of the film began to spread on the Internet, landing on websites specializing in pirated movies and TV shows.

The companies and organizations hosting pirated versions of the films on their websites care little about the impact of their illegal activities on filmmakers and songwriters. They seem to believe that the copyright laws are free to be broken and everyone should be able to share copies of songs, television shows, and movies.¹²⁵ And, as evidenced by the email string that Ms. Seidler shared with NPR, many of those infringing upon copyrighted movies and television shows are under the mistaken belief that all movies are produced by large companies that have an army of lawyers at the ready to kill their “business.”¹²⁶

The NPR blog stated:

Seidler was attempting to get the attention of whoever was running Pirate Bay at the time, and another site that connected to them called novamov.com. She never got through to Pirate Bay or Novamov directly. But she did reach Sven Olaf Kamphius, who runs Cyberbunker.com.

It’s a web hosting service inside a former NATO bunker in the Netherlands that was hosting Pirate Bay and several similar websites. Seidler’s legal notice to Novamov to take down her copyrighted film reached Kamphius and he responded.

Kamphuis's e-mail comes out strongly against any kind of copyright protection. He dismissed Seidler's references to United States copyright law by saying:

... the laws of that retarded ex-colony cannot be enforced here, thank god;).

Seidler tried to explain that she doesn't have a battalion of high-paid lawyers helping her fight copyright violations:

I am an independent filmmaker who has put her life savings into a project and now see it uploaded illegally on the Web before the DVD is even released.

But Kamphuis responded [sic] as if she *was* a lawyer representing a large client:

i'd [sic] suggest your clients just fix their own business model and find a way to make money on their productions which doesn't involve bugging everyone else to get other people to remove stuff for them.

You, nor your clients, pay us for our time, and our time is worth more than lousy entertainment anyway.

Kamphuis actually threatened Seidler with legal action for 'spamming' him:

Similar [sic] organisations like yours try to infringe on OUR rights by wasting our time (yes, immunity from liability also includes not having to waste my man hours or the ones of my attorneys on this without financial compensation, now where do we send the bill for answering this email ? ;)

Should there be any further questions, I'm quite sure I can get our shiney [sic] attorney firm, to make things clear to you, like they are doing against some other movie firms at this moment already (Don't you worry about that ;)

It sounds as he thinks he is addressing a big Hollywood operation, not an independent artist.¹²⁷

In 2012, another independent filmmaker, Tom Lowe, tried a different approach to draw individuals away from pirating sites that were hosting counterfeit copies of his movie, "TimeScapes." He posted a note on the websites asking anyone uploading the film to consider purchasing a copy of the movie from his website, or from the iTunes store, so that he could recover the money he invested in producing the film.¹²⁸ As of the date of publication of this report, "TimeScapes" is still posted on Pirate Bay's website.

The New York Times reported on September 27, 2014 that according to Tru Optik, a media analytics company, “nearly 10 billion movies, television shows and other files, including games and pornography, were downloaded globally in the second quarter of 2014.”¹²⁹ The company estimates that there are about 400 million illegal downloads monthly just in the United States.

According to a July 17, 2014 article in *The Guardian*, almost 30 percent of individuals in Great Britain now watch movies illegally online or purchase counterfeit DVDs.¹³⁰ These thefts have cost the audiovisual industry in the UK about £500 million a year (the equivalent of more than \$855 million).¹³¹ A study conducted by the University of Portsmouth found that, on average, individuals involved in illegally downloading movies and music had downloaded around 2,900 music files, and 90 movie files.¹³²

According to Tru Optik’s “*Digital Media Unmonetized Demand and Peer-to-Peer File Sharing Report* ... there were 2 billion TV show downloads and 2.2 billion movie downloads worldwide in the first half of 2014 from peer-to-peer sites.”¹³³ The company estimates that these illegal activities represent more than “\$12.5B in ‘unmonetized demand.’”¹³⁴

The impact of the theft of IP on individual creators or smaller companies is relatively easy for them to calculate. However, the “rich” movie studios, “major” record producers, and “profitable” networks that are viewed by some as “victimless” entities are only part of the economic infrastructure of the creative process. There are thousands of individuals involved behind the scenes whose earnings are far from extravagant and who are disproportionately affected by piracy.¹³⁵

For example, the film industry spends tens of millions of dollars across the country, filming movies in locations far removed from Hollywood. In 1978, eastern central Ohio was abuzz with the news that a film would be produced by 20th Century Fox in Fairfield, Licking and Perry Counties.¹³⁶ A rural area of farms, coal mines, and small pottery and glass factories, the region that had previously hosted filmmakers from “*Green Grass of Wyoming*” (1948) found itself at the hub of “*Brubaker*,” starring Robert Redford. The producers used more than 300 local extras for filming at the Junction City Treatment Center in Perry County.¹³⁷ Many more films have been produced around Ohio since then, including “*Amish Ice*” (2013); “*Bad Grandpa*” (2013); “*The Christmas Spirit*” (2013); “*Fear Clinic*” (2014); “*Love Finds You in Sugarcreek*” (2014); “*Miss Meadows*” (2014); “*The Tribunal*” (2014); “*The Do Over*” (2014); “*Jenny’s Wedding*” (2014); “*Captain America: The Winter Soldier*” (2014); and, “*Draft Day*” (2014).¹³⁸

A 2013 study by Film L.A. Inc. found that the top five locations for filming movies and television shows were Louisiana, Canada, California, the United Kingdom, and Georgia; the average production budget for these films is around \$71 million.¹³⁹ The study found that nearly 20 different states and foreign countries were used in film production, with 65 percent of those films being produced in the U.S.¹⁴⁰ In 2012, movie and TV producers spent \$717 million filming in the state of Louisiana.¹⁴¹

States are well aware of and welcome the positive impact of film and television production. In an August 5, 2014 press release, Georgia Governor Nathan Deal said that the industry has created jobs, revitalized communities, and increased tourism in the state. There were 158 feature film and television productions shot in Georgia in fiscal year 2014, which generated an economic impact of \$5.1 billion. The press release stated that according to the Motion Picture Association of America (MPAA), the industry is responsible for more than 77,900 direct and indirect jobs and \$3.8 billion in wages in Georgia. In 2013, MPAA member companies paid \$696 million to 4,066 local food service, lodging, real estate and technology businesses.¹⁴²

For the most part, the money spent in these local vicinities stays local, providing an important source of revenue for cities and towns, regardless of the financial success of the movie or TV show. However, piracy eats into the profits of both large media companies and small independent production companies alike, which leads to the production of fewer movies and TV shows. IP theft, therefore, has more widespread consequences than most people, particularly the pirates, imagine.

While movies generally provide a one-time infusion into the local economy, television series that are renewed for several years have a long-term impact on the communities in which they are filmed. Every member of the production team benefits when the program is renewed and suffers when it is cancelled. Since the decision to renew a program is based on paid viewership, illegal downloads cannot be considered to assess the market value of a program.

For example, Netflix' "The Killing" was renewed twice after fans legally downloaded the program in sufficient numbers to keep it on the air. One of the show's producers, Dawn Prestwich, wrote that "Networks rely heavily on that type of honest feedback from the audience, in order to tailor their programming. In short: if you don't buy it, they don't make it."¹⁴³ Prestwich noted that the two extra seasons "provided hundreds of jobs, paid for people's health insurance and pensions, and provided eighteen more hours of creative content."¹⁴⁴ Prestwich spoke for all TV production teams when she added that strong, legal, paid support for programs "not only helps me as a writer, it leads to further investment in the shows audiences like."¹⁴⁵

In addition to BitTorrent and Pirate Bay, massive online theft is being perpetrated by CiNEDUB and Kim Dot Com's file sharing network, megaupload.com.¹⁴⁶ Even though Denmark, the Netherlands, and the United Kingdom have ordered Internet service providers (ISPs) to block Pirate Bay's website due to copyright violations, the number of visitors to its website has doubled since the bans were instituted in 2011.¹⁴⁷

Even YouTube has had illegal movies uploaded to its network, although Google, YouTube's parent company, claims that it makes every effort to remove illegal content as soon as it is notified of copyright violations.¹⁴⁸ For those that are not taken down, illegally distributed copyrighted material now appears with paid ads, making the site appear legitimate.¹⁴⁹

Music and movie companies are taking several steps to combat illegal file sharing. Music companies are monitoring file sharing sites like Ares, BitTorrent, and LimeWire and issuing takedown notices to ISPs when they detect any illegal activity.¹⁵⁰ Movie companies are developing anti-piracy technology that imbeds graphic designs into the movies that can only be viewed with a camcorder recording of the movie¹⁵¹ and audio watermarks.¹⁵² Even as these efforts move forward, video pirates have become more tech savvy as well, imbedding videos into still pictures on file sharing sites in order to thwart enforcement efforts.¹⁵³

Both industries are trying to reduce traffic on illegal file sharing sites by making consumers aware that content is widely available through legitimate online distribution platforms. MPAA's wheretowatch.com website lists more than 100 legal online distribution outlets for movies and TV shows.¹⁵⁴ RIAA's whymusicmatters.com website details more than 70 authentic sources of online music.¹⁵⁵

In addition, several laws have been enacted to protect copyrighted material. The No Electronic Theft (NET) Act of 1997 made it illegal to distribute unlicensed copies of music CDs, films, DVDs, and other copyrighted digital media regardless of whether money was exchanged.¹⁵⁶ The Digital Millennium Copyright Act (DMCA) of 1998 gave copyright owners the ability to remove infringing content by sending a takedown notice to online providers.¹⁵⁷ The

providers were granted a broad safe harbor from prosecution if they promptly responded to the notice.¹⁵⁸

However, takedown notices have not functioned as intended. When infringing content is removed, it is usually instantly reposted, requiring rights holders to spend an enormous amount of time and money repeating the process over and over again. On December 5, 2013, the Center for the Protection of Intellectual Property released a report by Professor Bruce Boyden of Marquette University that found copyright owners were sending than 6.5 million takedown notices each month for content that appeared on more than 30,000 websites. Between March and August 2013, the six MPAA member companies alone sent 25.3 million takedown notices combined to search engines and site operators.¹⁵⁹ In January 2014, RIAA announced that the recording industry had sent its 100 millionth takedown notice to Google.¹⁶⁰

While the massive number of notices is indicative of an ongoing problem for every content creator, sending notices is a far greater burden for individuals than large companies. On March 13, 2014, three-time Grammy Award-winning composer, conductor, and producer Maria Schneider told the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet that she spends more time issuing takedown notices than creating new music. Schneider suggested that content creators should be allowed to stop the uploading before infringement takes place and that takedown should mean what it says.¹⁶¹

I'm now struggling against endless Internet sites offering my music illegally. After I released my most recent album, *Winter Morning Walks*, I soon found it on numerous file sharing websites. Please understand, I'm an independent artist, and I put \$200,000 of my own savings on the line and years of work for this release, so you can imagine my devastation. Taking my music down from these sites is a frustrating and depressing process. The DMCA makes it my responsibility to police the entire Internet on a daily basis. As fast as I take my music down, it reappears again on the same site—an endless whac-a-mole game.¹⁶²

While the DMCA may not be as effective as it could be, law enforcement agencies are having some success in fighting piracy. On April 26, 2012, ICE announced that it had seized more than 70,000 pirated copies of music and movies in Fresno, California, valued at more than \$900,000.¹⁶³ In commenting on the seizure, HSI Special Agent Clark Settles stated, “Commercial piracy and product counterfeiting undermine the U.S. economy, rob Americans of jobs, stifle American innovation and promote other types of crime. Intellectual property theft amounts to economic sabotage, which is why HSI will continue to aggressively pursue product counterfeiters and those who sell counterfeit products.”¹⁶⁴

On June 25, 2014, American Society of Composers, Authors and Publishers (ASCAP) President Paul Williams told the House Judiciary Committee that the U.S. Copyright Act fails to meet marketplace challenges for songwriters, creators, and performers of music who are increasingly faced with new transformative technologies that include iTunes Radio, Pandora, and Spotify.¹⁶⁵ ASCAP and its counterpart, Broadcast Music Inc. (BMI), use a collective licensing model for businesses seeking to perform copyrighted music. Williams stated that he believes this licensing model is the most effective, efficient and compelling model to serve the needs of music creators, businesses that perform music, and listeners everywhere.¹⁶⁶

In his testimony before a February 12, 2011 Senate Judiciary Committee hearing on “Targeting Websites Dedicated to Stealing American Intellectual Property,” ITIF Senior Analyst

Daniel Castro stated, “Online piracy harms the artists, both the famous and struggling, who create content, as well as the technicians, sound engineers, editors, set designers, software and game programmers who produce it. Piracy ultimately also hurts law-abiding consumers who must pay higher prices for content, enjoy less content or relatively lower quality content, or pay higher prices for Internet access to compensate for the costs of piracy.”¹⁶⁷

It should not matter whether a movie is produced by a major film studio or by a small independent filmmaker; or if a song is distributed by a large recording label or independently distributed by a budding young artist: IP is being stolen and widely distributed without any compensation returning to the creators and without their consent. Until it is reined in, this industrial-scale theft will continue to rob the U.S. economy and consumers of jobs, investment, innovation, and creativity.

Conclusion

IP rights have been paramount since the Republic was established. As James Madison noted in “Federalist Paper 43,” referring to the authority to promote science and the arts by providing exclusive rights to authors’ and inventors’ writings and discoveries (which became Article I, Section 8 of the Constitution):

The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged in Great Britain to be a right of common law. The right to useful inventions seems with equal reason to belong to inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of this point by laws passed at the instance of Congress.³¹⁶

The Founding Fathers understood that by protecting the individual rights of artists, authors, entrepreneurs, innovators, and inventors, they were promoting the greater public welfare. These fundamental privileges remain essential to ensure that IP will continue to have a substantial, positive impact on everyone’s life.

Patent holders need strong enforcement of IP laws in the U.S. and by its trading partners. New initiatives to license underutilized patents will increase the availability of hundreds of inventions while reducing the amount of patent litigation. Consumers must have assurances that they are buying safe and effective products that will not cause them harm, and taxpayers need to know that the government is not using fake parts in its weapons systems.

However, there are headwinds to the protection of IP rights. The Internet has spawned a new wave of IP piracy that includes counterfeit drugs being sold on fake pharmaceutical websites and music and videos being illegally downloaded from file sharing or torrent sites. Stealing IP and distributing it without just compensation to its creator has a far-reaching negative impact on the next independent filmmaker, struggling garage band, or young author.

The theft of trademarks creates confusion for consumers who believe they are purchasing specific brand name goods, only to find that the items are mislabeled, counterfeit, or even deadly. Some governments have passed laws that essentially strip trademarks from certain goods, in order to support social goals or policies. Other governments enforce antitrust laws or weaken IP laws to allow their domestic businesses to make a profit from the ideas and sweat of others. If more countries develop policies that threaten IP, there will be less incentive to invest in technology, research, and development, and the global economy will suffer.

Despite these barriers to IP rights, there are many countries that understand and promote the importance of IP for economic growth. As Great Britain’s ITV Director of Policy and Regulatory Affairs Magnus Brooke said, “A strong IP regime is an engine of growth, NOT a barrier.”³¹⁷

Keeping this engine running smoothly, using the recommendations and concepts contained in this report and similar sources, will help the global economy continue to grow. In the U.S. alone, IP-related industries provide more than 40 million jobs³¹⁸ and account for between 55 and 62.6 percent of GDP.³¹⁹ Without the innovation propelled by IP, the global economy would be on a slow (or slower, in current circumstances) train going nowhere.

Everyone benefits from IP. If the Founding Fathers had not recognized its importance, the light bulb, the telephone, the cell phone, and the microchip might never have been invented. Strong IP protection is fundamental to keeping the engine of ingenuity on track for generations to come.



Thomas A. Schatz is president of Citizens Against Government Waste (CAGW).

Mr. Schatz is a nationally-recognized spokesperson on government waste and has been interviewed on hundreds of radio talk shows from coast to coast. He is a regularly featured guest on national television news programs and local news broadcasts. Mr. Schatz has testified numerous times on government waste issues before committees of the U.S. Senate and House of Representatives, as well as before state and local legislative and regulatory bodies.

During his 28 years with CAGW, Mr. Schatz has helped make CAGW a “leading government watchdog on fiscally conservative issues, like taxes and earmarks,” according to *National Journal*. CAGW was cited by *The Hill* for its leading role in successfully pushing for the congressional earmark moratorium, which was identified as one of the “top 10 lobbying victories in 2010.” *The Hill* has

named Mr. Schatz as a “top lobbyist” for five consecutive years, from 2010-2014.

His previous books include “End the Income Tax,” co-authored with Jack Anderson in 1997; and “Telecom Unplugged: Ushering in a New Digital Era,” co-authored with Deborah Collier in 2014.

Prior to joining CAGW in 1986, Mr. Schatz spent six years as legislative director for Congressman Hamilton Fish, Jr. and two years practicing law and lobbying.

Mr. Schatz holds a law degree from George Washington University and graduated With Honors from the State University of New York at Binghamton with a bachelor’s degree in political science. He is married to Leslee Behar and has two daughters, Samantha and Alexandra.



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Since joining CAGW in July 2011, Ms. Collier has authored numerous of educational issue briefs; articles and blogs on technology and telecommunications policy, including three reports relating to cloud computing; and a report on the development of government mobile apps. In 2014, Ms. Collier joined with CAGW President Tom Schatz in co-authoring “Telecom Unplugged: Ushering in a New Digital Era.” She

has been a guest on radio and television news programs to discuss Internet taxation and other technology related issues.

Prior to her work at CAGW, Ms. Collier spent 24 years on Capitol Hill working in IT and legislative arenas. She worked for Rep. Clarence Miller (R-Ohio) both as a caseworker and system administrator, and then joined the staff of Rep. Steve Buyer (R-Ind.) as the director of information technology. From 2005 to 2010, she served on the House Committee on Veterans’ Affairs as the Republican Legislative Director. Ms. Collier was a member of the House Systems Administrators Association from 1989 until 2005, and served as the organization’s president from 2002 to 2005.

Ms. Collier holds a Bachelor of Arts (AB) degree in History from Ohio University. She is married to Kimo Collier, and has a son, Christian.

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Conclusion

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