

Hearing on
“World Intellectual Property Day: The Role of Intellectual Property in Sports and Public Safety”
Before the United States Senate Committee on the Judiciary, Subcommittee on Intellectual
Property
Statement of Riché T. McKnight
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Chairman Tillis, Ranking Member Coons, distinguished Members of the Subcommittee, thank you for inviting me to testify today. My name is Riché T. McKnight, SVP, Deputy General Counsel and Global Head of Litigation of Endeavor. Endeavor,¹ which owns the Ultimate Fighting Championship® (UFC), is a major provider of copyrighted sports entertainment content. I am honored to testify before you about the importance of intellectual property to our business and the challenges we face combatting piracy – more specifically, illegal online streaming.

UFC

UFC is a premium global sports brand and the largest Pay-Per-View event provider in the world. UFC boasts more than 278 million fans worldwide and has produced over 460 events in 24

¹ Endeavor is a leader in sports, entertainment, and fashion, operating in more than 30 countries. Named one of *Fortune*'s 25 Most Important Private Companies and one of *Fast Company*'s Most Innovative Companies, Endeavor specializes in talent representation and management; brand marketing, sponsorship and licensing; media development, sales and distribution; event operation and management; and sports training and league development. In addition to owning dozens of leading consumer brands including UFC, Miss Universe, the Professional Bull Riders, Frieze art fairs, and New York Fashion Week: The Shows, the company represents much of the world's most recognizable IP, ranging from top sports leagues and organizations to preeminent media companies and content producers to consumer lifestyle brands.

countries since its inception in 1993. UFC is headquartered in Las Vegas with a network of employees around the world.

Today, UFC produces more than 40 live events annually that consistently sell out some of the world's most prestigious arenas, while programming is broadcast in over 165 countries and territories, in 40 different languages, to one billion TV households worldwide. UFC FIGHT PASS®, a digital subscription service, delivers exclusive live events, thousands of fights on-demand and original content to fans around the world.

More than almost anyone else in our industries, Endeavor and UFC embrace technology and innovative distribution platforms that benefit our fans and athletes. By empowering creators and giving more options to our customers, modern technology has helped to grow our sport globally. Endeavor uses technology to improve the viewing experience for our events, to train and protect our athletes, and to develop new businesses that benefit our fans. We strive to provide our content to consumers wherever and however they want it. In fact, Endeavor owns its own streaming company.

UFC recently announced a new partnership with ESPN that will deliver value and simplicity to fans of mixed martial arts. ESPN+, the company's direct-to-consumer video service, is now the single point of purchase for consumers in the U.S. of UFC's biggest events — our Pay-Per-Views — and the definitive destination for fans to get the most comprehensive coverage of UFC.

Effects of Illegal Streaming

In the context I have described, unfortunately, the spread of illegal streaming of our Pay-Per-View content threatens our growth and all the new jobs that UFC is creating. Most of the popular professional sports leagues derive billions of dollars in revenue from network and cable broadcast companies, which in turn derive their revenue from advertising and cable

subscriptions. By contrast, UFC derives a significant portion of its revenue from Pay-Per-View events. Accordingly, piracy of our live events — costing us all the viewers who participate wittingly or unwittingly in these piracy schemes — directly hits our bottom line. UFC and its U.S. Pay-Per-View partner ESPN are potentially losing tens of millions of dollars a year from piracy. And pirates, who add nothing to the creative process, profit either by collecting a fee or by selling advertising on their stolen content. Oftentimes, these pirates are diversified criminals who traffic in significant pirated content from multiple sources. UFC is not the only victim. In 2010, the Sports Coalition sent a letter to the U.S. Intellectual Property Enforcement Coordinator, and explained that “Internet piracy of live sports telecasts is not only a growing problem, but also a global one, often involving bad actors in more than one nation.”² Consumers can be victimized too: accessing a pirated stream may subject the unsuspecting viewer to other forms of harm, including identity theft and other computer related intrusions.

Here is how the theft occurs. With a simple adapter purchased from any retail electronic store, someone with access to one of our live events reproduces the program and retransmits it over the Internet with the aid of certain new websites. The pirate’s website then allows any user to view the programming without authorization or payment. Unauthorized viewers then watch the live event just like those who lawfully purchased the Pay-Per-View.

In 2009, UFC testified before the House Judiciary Committee on the dangers of illegal streaming and how it threatens jobs and the expansion of U.S.-based companies. Since then, the pirates’ technology has improved. The threat from illegal streaming has increased in the U.S. and

²https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/IPEC/frn_comments/SportsCoalitionMajorLeagueBaseball.pdf

throughout the world. While UFC has expanded significantly since 2009, the threat from online streaming has increased, as well.

Today, new technologies, like the Kodi Box, allow individuals to easily download illegal streaming applications and watch virtually any content free of charge.³ These relatively cheap plug-in devices represent a significant threat to the value of live Pay-Per-View events.

Internationally, sports leagues and other content providers have had to combat sophisticated illegal streaming operations such as BeoutQ.⁴ These well-funded streaming operations make it very difficult for sports leagues to market and sell their content where these services are available.

During UFC's most recent Pay-Per-View event on April 13, 2019, we had 3,814 illegal streams with many thousands of viewers each. For the Floyd Mayweather-Connor McGregor event in August 2017, estimates suggest this may have been the largest single illegally streamed event of all time. Forbes described the damage that pirates did:

“VFT Solutions, which specializes in monitoring live streams in social media, is reporting records in its books for a single live event. Its preliminary numbers show more than 7,000 partial or full live streams of the fight in social media platforms, with roughly 100 million viewers, or an average 14,000 viewers per stream.”⁵

³ See The Little Black Box that Took Over Piracy, Brian Barrett, *Wire*, available at <https://www.wired.com/story/kodi-box-piracy/>

⁴ See The Brazen Bootlegging of a Multibillion-Dollar Sports Network, Tariq Panja, *New York Times*, available at: <https://www.nytimes.com/2018/05/09/sports/bein-sports-qatar-beoutq.html>

⁵ See Tens Of Millions Watched Mayweather Beat McGregor On Pirate Streams, Nelson Granados, *Forbes*, available at <https://www.forbes.com/sites/nelsongranados/2017/08/28/tens-of-millions-watched-mayweather-beat-mcgregor-on-illegal-streams/#3063aa7779a3>

This is a global problem. We are seeing increased illegal streaming in all parts of the world. This piracy deprives the UFC of revenue and makes it harder for us to expand our offerings to new markets. Without stronger enforcement, viewers will continue to seek out providers who offer our events for free — even if it is illegal.

The scale of the problem is immense. A recent article in *Yahoo News* stated that “[a]ccording to piracy data company MUSO, humans made 362.7 million visits to sports piracy websites in January 2019 alone.”⁶ A 2017 UFC fan study found that 13% of our prime target audience admitted to watching one of our Pay-Per-View events for free during the previous year.⁷ That amounts to almost 3.8 million viewers who are willing to admit they were not paying for our events. Further, these efforts are often encouraged online. One subreddit account related to piracy has 165,000 MMA subscribers.⁸ Numerous links to HD illegal streams are shared here on event night, and subscribers are even told to migrate to a different service to continue enabling the sharing of illegal stream links.

Piracy at this scale not only undermines UFC’s copyright protections but also deprives our athletes and employees of additional revenue from these events. Every viewer who chooses to use an illegal online streaming service instead of the authorized Pay-Per-View reduces the income of our athletes.

⁶ See Inside the complex world of illegal sports streaming, Henry Bushnell, *Yahoo Sports News*, available at <https://sports.yahoo.com/inside-the-complex-world-of-illegal-sports-streaming-040816430.html>

⁷ Liberman Research Worldwide Q2/Q3 2017 study, based on individuals 16-54yrs

⁸ <https://www.reddit.com/r/MMAstreams>

Combating Illegal Streaming

Everyone who benefits from the internet sports revolution — including UFC, our vendors, platform providers, ISPs, and the sports fans — has a role to play in combatting the spread of piracy for our events. We take our responsibility seriously. We spend millions of dollars removing pirated content from various platforms. But more must be done.

Live sporting events are very valuable, which is why such events are a favorite target for pirates. Even though we spend significant sums on a team of in-house technicians and private vendors who scan the web and chatrooms to find our pirated content, it is often too late. Some platforms are slow to honor our requests to take down pirated content. In the world of live sports, minutes can be an eternity — particularly in boxing or mixed martial arts, where the bout can take a sudden turn and then be over in seconds. Once the event is over, the value of its copyright plummets.

We are doing what we can. UFC has sued the most egregious offenders. We have worked with the FBI to change its policy regarding who can utilize the antipiracy seal. And we work with our tech partners where we can to improve their systems.

UFC and other sports organizations cannot fix this problem alone. We need assistance from platform providers, customers, Congress, and the Administration to address this growing problem. All stakeholders have a role to play, not just content creators.

Potential Solutions

As Congress weighs the many issues affecting the future of the internet, it must strike a balance among the interests of creators, technology providers, and viewers. The Internet is no longer an emerging technology. The largest companies in the world consist of internet and e-commerce

platforms. Any recalibration Congress makes must acknowledge that some of the most powerful companies in the world have an obligation to do more to prevent illegal activity on their platforms. Social media and other online platforms may not be actively engaged in piracy, but they also lack incentives to discourage it, because they too benefit from increased traffic to their sites.

As a first step in trying to strike the appropriate balance, it would be helpful for Congress to identify and improve those areas of the law where opportunities are being wasted. In many areas, the law at presents fails to incentivize constructive conversations and action among industry participants to deter illegal actors. Content creators need to be better positioned to respond to the commercial power of the platforms and the speed with which piracy exploits live events. And digital providers ought to have incentives to be more proactive in keeping piracy from occurring on their platforms.

In many cases, individual users are illegally uploading multiple streams and making our copyrighted content available to viewers throughout the world. It is not enough for the illegal stream to be taken down, because within seconds the account can just add another stream. When such users are caught enabling illegal streams, all of their accounts should be disabled.

In addition, digital platforms should consider sending out piracy notices to their users before live events — or if that is not feasible, then at least periodically — reminding them that piracy is illegal. Much like the copyright notices at the start of a movie, these warnings can remind law-abiding viewers that unauthorized streaming is illegal.

Years ago, it was understandable that Congress would develop legal frameworks for the internet which treated platforms as agnostic carriers that simply facilitate the transmission of information

from one customer to another. But today's platforms are no longer blind transmitters of data. They are content creators, and they are partnering with established and nascent content providers. As such, they should be required to deploy their best efforts and technologies equally for all content owners. Providers should not be able to give state-of-the-art piracy protection to their partners while withholding it from non-partners or those it deems less worthy. Our legal framework ought to incentivize providers to provide the same level of piracy control to all creators, regardless of whether the creator is a subsidiary, a partner, or independent.

We recognize that change in this area of the law will be difficult and take time. But, in the near term, there are steps that Congress can take to deter the illegal streaming actors and those who profit directly from piracy. To improve matters immediately, the law needs to encourage criminal authorities to bring cases against these illicit actors.

Accordingly, Congress should harmonize the criminal penalties for commercial piracy. Currently the pirating of physical copyrighted goods is a felony, but online streaming is only a misdemeanor. Congress should consider expanding existing criminal laws to identify unauthorized streaming of copyrighted content as a felony. Strengthening the penalties will deter illegal streaming and increase the likelihood of prosecutors bringing these cases to court. In addition, it will send a message to the rest of the world that the United States takes this issue seriously, and will provide other countries an incentive to take similar actions. This simple and straightforward reform has been supported by the Intellectual Property Enforcement Coordinator, the Justice Department, and the Registrar of Copyrights. We made this suggestion in 2009, and we continue to believe it is a worthy first step.

Conclusion

The success of Endeavor, UFC, and many companies like them depends upon respect for and enforcement of our nation's intellectual property laws. Widespread piracy via illegal streaming is a serious problem. It threatens American jobs, harms the reputations of the platforms, hinders the development of new creative companies, and undermines the copyright laws that have always been critical to our economy. All stakeholders ought to work together to address this problem.

This is a years-long conversation requiring the active participation of all market participants and as it is pursued we hope to be able to work with you and the Members of this Committee.

We at UFC would be pleased to assist the Committee in any way. I want to thank the Committee again for giving me the opportunity to testify today. I'd be happy to answer any questions you might have. Thank you.