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ALA American Library Association



CENTER FOR
DEMOCRACY
& TECHNOLOGY

June 18, 2024

Congresswoman Zoe Lofgren
1401 Longworth House Office Building
Washington, DC 20515

Dear Representative Lofgren:

We represent a broad cross-section of groups dedicated to balanced copyright and a free and open internet, including libraries, civil libertarians, online rights advocates, start-ups, consumers, and technology companies of all sizes. We understand that you are looking at approaches to drafting site-blocking legislation, as a means of addressing the difficulties of reaching foreign infringers through established procedures. We realize that pursuing foreign infringers online is a daunting task, but we believe site-blocking legislation would do serious harm to the ecosystem copyright is meant to foster. We thought it was important to state in writing our fundamental concerns with this exercise so that there is no ambiguity between us and two of our greatest champions in Congress.

1. **Site blocking is a solution in search of a problem:** Site blocking is an extraordinary measure, and adding it to the panoply of remedies available to copyright holders requires proof of extraordinary harm that cannot otherwise be addressed. We haven't seen that proof. Copyright-reliant industries are relatively healthy. The *Sky Is Rising* report series¹ has documented their internet-fueled growth for more than a decade. The U.S. Copyright Office recently found that while these industries experienced a notable downturn during the COVID-19 pandemic, their revenues have more than recovered, exceeding pre-COVID projections in many cases.² The report notes that these industries have generally fared better than most business sectors in this regard.
2. **Site blocking would destabilize the foundation of the creative ecosystem.** Millions of creators, consumers, and innovators rely on an internet that is open, equitable, and democratic. Giving any industry an internet mute button jeopardizes that ecosystem. Overblocking—whether through bad faith, bad technology, or both—is inevitable, and inevitably hurts the most vulnerable internet users. When a legitimate site goes down unexpectedly, less tech-savvy people, like older adults, are left in the dark. Any law that

¹ Mike Masnick and Leigh Beadon, *The Sky Is Rising 2024 Edition* (2024), <https://ccianet.org/research/reports/sky-is-rising-2024-edition/>.

² U.S. Copyright Office, *The Resilience of Creativity* (2024), <https://copyright.gov/economic-research/resilience-of-creativity/>.

threatens expression and access to information in this way would of course raise grave First Amendment concerns. As you consider other countries' site-blocking regimes, it is important to remember that most legal systems do not have equally robust protections for free expression.

3. **Ex parte proceedings are fundamentally flawed.** We understand that the legislation you are considering would be aimed at foreign pirate websites that are dedicated to infringing activity, and, ideally, a federal court would make the determination that a pirate website met the requisite standard. However, our adversarial system of justice only works where there is an adversary,³ and we believe that in many cases no one representing the targeted website will appear in court. Default judgments will result. Safeguards such as an adequately funded public advocate or guardian ad litem would improve matters, but they would never have the full knowledge of the facts necessary to adequately represent the website or the public interest.
4. **Collateral damage is inevitable.** Although the legislation presumably would require the court to consider the possible collateral damage to legitimate sites that might result from a blocking order, the extent of overblocking that an order may cause typically isn't known until it's too late—after the innocent sites have already been taken down. This concern about collateral damage is not theoretical. There have been numerous documented incidents of site blocking leading to interference with legitimate internet activities. In its recent [Responses to Questions for the Record](#), CCIA provided examples of overblocking in Germany, Austria, Italy, India, Spain, and Slovakia, all in the context of alleged piracy enforcement.
5. **User privacy is at risk.** Site blocking is often ineffective, as it is easily circumvented using privacy-focused tools, such as virtual private networks (or VPNs). VPNs obscure a user's IP address from the websites to which they navigate and apps they use, and can be a useful tool for protecting users' privacy online. At the same time, less reputable VPNs may collect sensitive personal information about their users without their full knowledge and could contain malware. Site-blocking legislation could, therefore, not only be ineffective in meeting its own goals but also sacrifice users' privacy and safety in the process.

In sum, the harms of site blocking outweigh any purported public benefit, regardless of how the bill is drafted. Much has changed in the world since the massive internet protests that (along with your crucial efforts) helped prevent the Stop Online Piracy Act and the PROTECT IP Act (SOPA/PIPA) from passing more than a decade ago. But one thing has not: our broad and diverse coalition of stakeholder groups opposes site blocking. Experts from our organizations are happy to discuss legal, technical, and policy concerns in more detail, but our main goal in this short

³ So-called Schedule A Defendants (“SAD”) Schemes in trademark law are a case in point: rightsholders engaged in this scheme obtain TROs against thousands of merchants by alleging infringement in ex parte proceedings, then have those merchants' accounts frozen by intermediaries. Merchants never get a day in court and end up paying lopsided settlements to get their sites back. See Eric Goldman, *A SAD Scheme of Abusive Intellectual Property Litigation*, 123 Colum. L. Rev. Forum 183 (2023), <https://columbialawreview.org/content/a-sad-scheme-of-abusive-intellectual-property-litigation/>.

letter is to say clearly, unambiguously, and unanimously that we do not believe site-blocking legislation is needed or appropriate at this time.

Respectfully,

Re:Create
American Library Association
Association of Research Libraries
Center for Democracy & Technology
Computer & Communications Industry Association (CCIA)
Organization for Transformative Works
Public Knowledge
R Street
SPARC

Additional resources on site blocking:

- Public Knowledge Responds to MPA Chairman and CEO Charles Rivkin on Site-blocking, <https://publicknowledge.org/public-knowledge-responds-to-mpa-chairman-and-ceo-charles-rivkin-on-site-blocking/>
- CDT, The Perils of Using the Domain Name System to Address Unlawful Internet Content, <https://cdt.org/wp-content/uploads/pdfs/Perils-DNS-blocking.pdf>
- CCIA, Testimony, “Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators”, <https://docs.house.gov/meetings/JU/JU03/20231213/116671/HHRG-118-JU03-Wstate-ScruersM-20231213.pdf>
- CCIA, Responses to Questions for the Record, “Digital Copyright Piracy: Protecting American Consumers, Workers, and Creators”, <https://www.congress.gov/118/meeting/house/116671/documents/HHRG-118-JU03-20231213-QFR005.pdf>