



## Insight

# Primer: Site Blocking and Online Piracy

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### Executive Summary

- In light of rising piracy of copyrighted material online, the Motion Picture Association has called for Congress to pass a law requiring some form of site blocking for websites that host illegal content, which are normally hard-to-reach international websites.
- In practice, this would require copyright holders to bring a challenge in court alleging a website structurally supports piracy, and if successful, would allow them to obtain a court order requiring intermediaries such as internet service providers (ISPs) to block the website entirely.
- While this approach may prevent bad actors from intentionally hosting copyrighted material, Congress should ensure that site blocking legislation does not result in the blocking of legitimate websites, limiting free speech online, or subjecting the intermediary to unnecessary burdens or additional liability.

### Introduction

Earlier this year, the [CEO of the Motion Pictures Association \(MPA\)](#) announced that the organization would begin working with Congress to pass legislation requiring the blocking of websites that host pirated content. One estimate in 2019 found that piracy cost the U.S. film and TV industry between [\\$29 billion and \\$71 billion annually](#). One of the key challenges, however, is that the Digital Millennium Copyright Act (DMCA), the law governing the notice and takedown of copyrighted material, can't adequately stop online piracy when websites are dedicated to allowing users to continually upload new infringing content, especially when the websites are outside of the jurisdiction of U.S. courts.

Site blocking would allow copyright holders to go beyond an individual piece of infringing

content and require intermediaries such as internet service providers (ISPs) to block the website entirely, preventing consumers from reaching the infringing material. As envisioned by proponents, copyright holders could go to court, argue the merits of whether the website should be blocked, and if the court agrees with the copyright holder, issue an order requiring intermediary to block the content.

Such an approach would come with two main concerns. First, many websites that host pirated content also host a wide array of information and data, and requiring an intermediary to block websites that allow for widespread sharing of both legal and illegal content has serious First Amendment and due process considerations. Second, site blocking can potentially increase liability for the intermediary themselves, as failure to sufficiently block a website or a successor to the original could violate the court order.

If Congress decides to pursue site blocking legislation, it should carefully balance the objective of removing pirated material with free speech protections and liability concerns for intermediaries. No party wants pirated content to spread, but a poorly designed site-blocking regime could cause more harm than good.

### **Online Piracy: An Increasing Challenge in the Digital Age**

Over the last few decades, most content has [gone digital and online](#). Television shows, movies, music, and art have all increasingly become available online through streaming services and content-hosting websites. While this shift in the delivery of content has largely come at the benefit of consumers, it has also made it increasingly easy to pirate and share content illegally, harming a wide range of businesses from movie studios to telecommunication providers with video businesses that distribute content.

While the exact impact of piracy is unclear, academic research suggests that digital piracy [largely harms creators](#) by reducing their ability to profit from their creative efforts and can harm innovation more broadly by reducing economic incentives for investments in creative outputs. Some estimates suggest that the number of visits to online piracy websites reached [141 billion in 2023](#), equating to 386 million visits every single day. This is a 12 percent increase from 2019, which in that year alone cost the U.S. film and TV industry between [\\$29 billion and \\$71 billion](#). There are also reasons to be skeptical of some of these figures, however, as many users who [pirate content would not otherwise pay for that content](#), meaning the cost on the copyright holder isn't exactly clear.

Currently, the most direct way for copyright holders to enforce their rights is to file a claim through the DMCA with the website hosting the infringing content so that it is removed. This method, however, provides little protection against websites that ignore requests or

are outside of reach of U.S. law, many of which are specifically designed to host and stream pirated content. Further, current interpretations of the DMCA suggest that injunctive relief against an intermediary can only apply if that intermediary was at fault.

## **Site Blocking**

To address these concerns, the MPA has suggested that intermediaries, specifically ISPs, should be required to block access to websites hosting pirated content. Intermediaries often have more access to specific websites and could theoretically better limit access to pirate websites. While most intermediaries do not want pirated content to proliferate, they also have a duty to allow their customers access to the legal websites of their choosing.

The MPA approach would likely allow copyright holders such as movie studios or musicians to directly bring a claim against a website that illegally hosts their content. If the copyright holder can prove that the website is structurally designed to host illegal content, the court will then be able to order ISPs to block access to the website entirely.

This is a fairly drastic measure, as blocking access to the website blocks all access to its content, both legal and illegal, although it has been implemented in other jurisdictions to some success. After a decade of [site blocking in Singapore](#), for example, only 39 percent of consumers engage in some form of piracy, the lowest in the region. And in Indonesia and Malaysia, just over 60 percent consumers have shifted their viewing habits following site-blocking legislation. At the same time, the [evidence isn't uniform](#), and often site blocking regimes can result in the [over blocking](#) of websites.

## **Major Concerns**

Despite the potential benefits in the prevention of the spread of pirated materials, site blocking could also harm free speech online and add serious compliance risk for intermediaries. Congress should carefully consider these risks if lawmakers decide to pursue drafting potential site-blocking legislation.

First, many of the websites that would be targeted by this type of remedy provide users with the ability to share files directly. Because such content isn't necessarily posted for a wide audience, it can be difficult for the website to identify every file that contains pirated material. At the same time, users share much more than pirated materials, and legitimate speech could be caught up in a block order if the website fails to adequately defend itself in court. For example, in Italy, a new site blocking "piracy shield" resulted in [the inadvertent blocking](#) of a charity, a telecom company, and several schools. Further, because many of these websites operate overseas, they may not have the desire or the capability to defend themselves in court, raising due process concerns.

Second, shifting the onus to intermediaries creates an additional burden that could also potentially open intermediaries up to liability if they fail to adequately comply with a court order. If an ISP, for example, receives an order to take down a website, and users simply change its Domain Name Service (DNS) resolver to Cloudflare, Google, or Cisco, among others, rather than the ISP's own DNS resolver, users could still access the site. Depending on how a law is structured or a court order is granted, the ISP could be liable for failing to comply with the court order in that scenario. Generally, most parties agree that ISPs should be able to choose the technical means for compliance with an order and should not be held at fault for failure to fully block all access to a website, but finding the right balance of requiring takedowns and not holding intermediaries to the order has stalled discussions thus far. This also highlights how focusing on one layer of the stack may fail to achieve meaningful results, and Congress should consider other components of internet infrastructure, such as DNS providers, when considering site blocking or anti-piracy legislation more generally.

Taken together, any future site-blocking proposals Congress considers should acknowledge the risks that an overbroad mandate could impose.

## **Conclusion**

Content piracy is a legitimate problem that Congress could take steps to more meaningfully address, but overbroad regulation can add significant burdens to both user speech and the intermediaries ordered to block the infringing sites. No party wants to see bad actors flourish, but Congress must be careful to ensure that in taking down these websites, it does not cause significant harm to an open internet.