The Authors Guild, Inc.

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The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee,

We are writing to ask you to make certain much-needed changes to the Copyright Act to help curtail Internet book piracy. Writers' income is in steep decline. There are many reasons for this, but a decrease in copyright protection and the aggregate effect of Internet piracy play an important role: the entire publishing industry loses $80 to $100 million to piracy annually, according to a 2012 estimate by the Association of American Publishers. Meanwhile, a recent Authors Guild survey shows that approximately 67% of our authors earn less than the poverty level from their writing, with median writing-related income at $8,000, down 24% since 2009, when e-book sales started to take off.

Books provide an essential contribution to our society. Most authors don't expect to get rich from what they do: they write to inform, educate, and entertain, and in doing so add to our common store of knowledge and culture. But to keep writing, they must be able to support themselves and their families. This has become increasingly difficult in the digital age.

Online book piracy, once the province of shady offshore websites, has migrated to mainstream American distribution platforms. Our "Notice and Takedown" system is completely inadequate to combat this problem. What we need instead is a **"Notice and Stay-Down"** regime: once a webhost knows a work is being infringed, it should not receive continued "safe harbor" immunity from claims of infringement unless it takes reasonable measures to remove all copies of the same work.

Our research shows that some of the largest tech platforms, including Google Play, provide safe havens for copyright theft. On Google Play Books, for example, pirates sell unauthorized e-books under false publisher and author names at cut-rate prices. Search results—especially for bestsellers—display these cheap pirated copies right beside authorized editions, and readers are inclined to buy them.

Our copyright laws are not helping authors to address this problem. Although Google and other Internet service providers ("ISPs") clearly have the means to keep their sites free of most pirated content, the Section 512 safe harbor rules have been applied to allow these wealthy commercial enterprises to sit quietly and profit from pirates who use their platforms to traffic in stolen content. In reverse Robin Hood fashion, the safe harbor rules allow rich companies to become richer at the expense of the poor, robbing creators of hard-earned income and the creative economy of hundreds of millions of dollars a year.

Meanwhile, court decisions have construed the DMCA safe harbor's Notice and Takedown provisions to mean that a copyright owner is required to send a notice for each separate instance of infringement, specifying the URL. Under the DMCA, the ISP has no obligation either to take down infringing copies, if the location is not specified, or to remove a copy that is re-posted immediately after being taken down. So the same pirates will put the same material right back up at a different location.

The result is that Notice and Takedown is just not working. As witnesses testified at the Judiciary Committee's March 13, 2014 hearing on the DMCA, Notice and Takedown has become an exceedingly ill-suited means for an individual to tackle piracy. Composer and musician Maria Schneider testified, "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." At this same hearing, Paul Doda, Global Litigation Counsel at Elsevier Inc., described his company's "futile attempt to keep pace" with repeat online infringement.

Individual copyright owners do not have the resources to send notices for every instance of infringement online, much less to keep sending them for copies reposted after being taken down. Individuals do not have access to automated systems that track infringing copies and send notices, nor do they have the bargaining power to make the deals with ISPs that larger corporations can.

ISPs, on the other hand, do have the ability to monitor piracy. Technology that can identify and filter pirated material is now commonplace. It only makes sense, then, that ISPs should bear the burden of limiting piracy on their sites, especially when they are profiting from the piracy and have the technology to conduct automated searches and takedowns. Placing the burden of identifying pirated content on the individual author, who has no ability to have any real impact on piracy, as the current regime does, makes no sense at all. It is technology that has enabled the pirate marketplace to flourish, and it is technology alone that has the capacity to keep it in check.

What we are asking is simple: that the law be clarified so that the safe harbors work as Congress intended—to protect innocent ISPs from liability for user infringement, *but only to the extent* they cooperate with copyright owners to remove infringing content and keep pirates off of their sites.

The purpose of copyright is to encourage the creation of new works—including and especially literary works, which contribute so greatly to our nation's store of knowledge and culture. To continue to work effectively, U.S. copyright law must provide meaningful protection against the widespread online piracy of books and journals, so that authors can afford to write them.

Sincerely,

Mary Rasenberger
Executive Director
The Authors Guild

Cc: Members of the House Judiciary Committee