

6-15-2017

Film Piracy: Surfing the Internet for Free Content Provides Little Bounty for the Collective Economy

Jordan Matthews

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/jbel>



Part of the [Entertainment, Arts, and Sports Law Commons](#), [Intellectual Property Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Jordan Matthews, *Film Piracy: Surfing the Internet for Free Content Provides Little Bounty for the Collective Economy*, 10 J. Bus. Entrepreneurship & L. 273 (2017)

Available at: <https://digitalcommons.pepperdine.edu/jbel/vol10/iss2/6>

This Note is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in The Journal of Business, Entrepreneurship & the Law by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

FILM PIRACY: SURFING THE INTERNET FOR FREE CONTENT PROVIDES LITTLE BOUNTY FOR THE COLLECTIVE ECONOMY

JORDAN MATTHEWS*

I. Introduction	274
II. Background Law	276
A. Copyright	276
B. Copyright: Case Law.....	279
1. Wheaton v. Peters	279
2. Folsom v. Marsh	280
3. Stowe v. Thomas.....	280
4. Encyclopedia Britannica Educational Corp. v. Crooks	280
5. Salinger v. Random House	281
C. Copyright Infringement.....	281
III. The Scope of Film Piracy	282
A. Dallas Buyers Club, LLC v. Cordova.....	282
B. In re Napster Inc. Copyright Litigation.....	283
C. Universal Studios Productions LLLP v. Bigwood.....	283
D. Disney Enterprises Inc. v. Delane.....	284
E. Damages	285
F. Defenses.....	285
A. Catalysts for Infringement	286
B. Enforcement and Deterrence.....	287
V. Dallas Buyers Club and the Scope of Infringement in International Territories.....	288
A. The Practical Financial Outcome of Litigating Copyright Infringement in the Form of Film Piracy.....	288
B. Implications and Counterarguments.....	288
C. Economic Effects of Film Piracy	290
1. Box Office Revenue.....	290
2. Film Ultimates	290
D. Effect of Film Piracy on Box Office Performance and Film Ultimates.....	290
E. Film Piracy's Macroeconomic Effects	292

F. Proposed Solutions	293
VI. Conclusion	294

I. INTRODUCTION

The making of *Dallas Buyers Club* was a twenty-year venture riddled with obstacles.¹ The project began as a result of a story that caught the interest of Bill Minutaglio, a reporter for the *Dallas Morning News* in 1992.² Minutaglio received a lead regarding AIDS patients who were paying entrepreneurs to supply them with drugs not yet approved by the FDA.³ Eventually, he crossed paths with Ron Woodroof⁴—the seminal character in the film—and Woodroof’s stories led to a feature for the *Morning News*’s Sunday magazine.⁵

In connection with Minutaglio’s feature, screenwriter Craig Borten decided to travel to Dallas to spend several days with Woodroof, which led to the development of a screenplay.⁶ However, the film did not go into production immediately; instead, it spent twenty years in development.⁷ Along the way, the project attracted the interest of actors such as Brad Pitt and Ryan Gosling, as well as directors such as Dennis Hopper and Marc Forster.⁸ Regardless, two motion picture studios dropped the project and several financial arrangements fell through.⁹ The screenwriter also fell into addiction as a result of ominous rejection.¹⁰ Eventually, due to the financial commitments of individuals in the

* Jordan Matthews is a graduate of Pepperdine University School of Law. Jordan served as the symposium editor for the Journal of Business, Entrepreneurship and the Law. Previously, he was the CEO of Quantum Media Fund, LLC, a Los Angeles based film finance and production company.

¹ Andrew Romano, *The True Case Behind Dallas Buyers Club: Meet the Real Ron Woodruff*, THE DAILY BEAST (Nov. 3, 2013), <http://www.thedailybeast.com/articles/2013/11/03/the-true-story-behind-dallas-buyers-club-meet-the-real-ron-woodruff.html>.

² *Id.*

³ *Id.*

⁴ Ron Woodroof established what was known at the Dallas Buyers Club, an underground network that supported the use of alternative treatments for AIDS. *Ron Woodroof Biography*, BIOGRAPHY.COM, (Sept. 29, 2014), <http://www.biography.com/people/ron-woodroof-21329541> [hereinafter *Biography*]. He was born in 1950 and diagnosed with AIDS in 1986. *Id.* Ultimately, Woodroof was told that he only had a short time to live, but extended his life for an additional six years through alternative treatments. *Id.* Dallas Buyers Club successfully treated many who were unable to access those options because the treatments were not FDA-approved at the time. *Id.*

⁵ Romano, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Texas fertilizer business and actor Matthew McConaughey, the film was made.¹¹ It went on to win three Academy Awards.¹²

Despite the film's critical and relative financial success,¹³ Voltage Pictures—one of the production companies affiliated with the picture—pursued litigation against 4,726 alleged pirates in Australia.¹⁴ However, the production company was ordered to pay a \$600,000 bond in order to proceed, which was a requirement meant to deter speculative invoicing.¹⁵ Speculative invoicing is a process whereby studios send demand letters seeking large payments to settle claims outside of court.¹⁶

Voltage won the right to initiate a discovery process with the help of six Australian Internet service providers to acquire the identities of customers who allegedly uploaded their film.¹⁷ Initially, the production company sought to recover damages for the cost of obtaining details about the alleged infringers, the cost of downloading a single copy of the film, the total number of individuals who had accessed and uploaded the film, and the non-Voltage films that had actually been uploaded from the sites.¹⁸ Voltage recently amended its claim, seeking damages and court costs for a single upload of the film while offering \$60,000 to access information on 472 listed names.¹⁹ Regardless, the presiding Justice Perram has suggested that the proposal remains unrealistic, hinting that the parties will likely have to seek closure in litigation.²⁰

Part II of this Note begins by providing a background on the origins of copyright law, including the *prima facie* case for a copyright infringement claim.²¹ Part III discusses the scope of film piracy—the particular issue in the

¹¹ *Id.*

¹² The Deadline Team, *OSCARS: The Complete Winners List*, DEADLINE (March 2, 2014), <http://deadline.com/2014/03/academy-award-winners-2014-oscar-winner-list-692118/> [hereinafter The Deadline Team].

¹³ *Dallas Buyers Club (2013)*, THE NUMBERS, <http://www.the-numbers.com/movie/Dallas-Buyers-Club#tab=summary> (last visited February 26, 2016); *Dallas Buyers Club (2013)*, IMDB, <http://www.imdb.com/title/tt0790636/?ref=nvsl> (last visited Feb. 26, 2016).

¹⁴ Michael Safi, *Dallas Buyers Club Piracy Case: Judge Dismisses Bid to Access Private Details*, THE GUARDIAN (Dec. 16, 2015), <http://www.theguardian.com/australia-news/2015/dec/16/dallas-buyers-club-piracy-case-judge-dismisses-bid-to-access-private-details>.

¹⁵ *Id.*

¹⁶ David Glance, *Why the Dallas Buyers Club Piracy Letter Won't Matter*, LIFEHACKER (April 8, 2015, 8:30 AM), <http://www.lifehacker.com.au/2015/04/why-the-dallas-buyers-club-piracy-letter-wont-matter/>.

¹⁷ See The Deadline Team, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *infra* Part II.

case of *Dallas Buyers Club*.²² Part IV addresses the scope of copyright infringement in international territories—specifically touching on the issue of enforcement.²³ Part V emphasizes the impact of piracy on the film industry by contextualizing the effects of illegal downloading on companies of all sizes as well as the entertainment industry’s efforts to lobby for more significant protection. Part V gives an overview of the potential revenues of a given film property, inclusive of macroeconomic issues surrounding tax revenue and job creation for both domestic and foreign governments.²⁴ The section also gives proposals to mitigate economic shortfalls. Finally, Part VI concludes by framing these proposals in the context of film piracy and copyright infringement generally.²⁵

II. BACKGROUND LAW

A. Copyright

Copyright, which protects original works of authorship, is a form of intellectual property protection encompassed within the laws of the United States.²⁶ Notably, ideas, procedures, processes, systems, discoveries, principles and titles are not protected in this area of the law.²⁷ Those original works that may receive protection must be fixed in a tangible medium of expression.²⁸

The concept of copyright protection began with the invention of the printing press during the late fifteenth century.²⁹ While the innovation expanded revenues due to the ability to copy books and other publications more efficiently, the new technology also increased exposure to illegal copying.³⁰

²² See *infra* Part III.

²³ See *infra* Part IV.

²⁴ See *infra* Part V.

²⁵ See *infra* Part VI.

²⁶ U.S. Copyright Office Definitions, COPYRIGHT.GOV, <http://www.copyright.gov/help/faq/definitions.html> (last visited Feb. 26, 2016).

²⁷ *Id.*

²⁸ *Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, COPYRIGHT.GOV, <https://www.copyright.gov/title17/circ92.pdf> [hereinafter *Copyright Law*] (last visited Jan. 11, 2016). Works of authorship include books, architecture, music, motion pictures and various other forms of creative expression. *Id.* Moreover, fixation is a requirement for copyright protection; fixation is achieved when, under the authority of the author, the work is sufficiently fixed permanently, or for a period of time where it is stable enough to be perceived, reproduced, or communicated in some other manner for more than a transitory period of time. *Id.*

²⁹ *Copyright Timeline: A History of Copyright in the United States*, ASS’N OF RES. LIBR., <http://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline#.VqK9UWV2e8U> [hereinafter *Copyright Timeline*] (last visited April 7, 2016).

³⁰ *Id.*

Authorities in England attempted to control the publication of books by “granting printers a near monopoly on publishing in England.”³¹ England passed the Licensing Act of 1662, which established a register of licensed books; the Act was to be administered by the Stationers Company.³² This group had the authority to censor publications.³³ However, the Act lapsed in 1695, resulting in less restrictive administrative censorship; in 1710, Parliament passed the Statute of Anne to address the concerns of English booksellers and printers.³⁴

The Statute of Anne established an author’s exclusive right to ownership of a copyright for a fixed term.³⁵ Authors maintained copyright protection for a period of fourteen years, which could be extended by an additional fourteen years at the end of the first term.³⁶ The Act also established a public domain by limiting the term of the copyright.³⁷ And, although the Act provided protection, it was effectively meaningless to the extent that authors were required to assign their copyright privileges to booksellers to be paid for their work.³⁸

Although the Statute of Anne was established more than three hundred years ago, the legislation influenced the drafters of the U.S. Constitution.³⁹ Article 1 of the Constitution provides that: “Congress shall have the power . . . 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.”⁴⁰ Moreover, the First Congress was influenced by the language set forth in the Constitution when it drafted the Copyright Act of 1790, which was enacted to encourage learning and societal growth.⁴¹ The regulation protected authors by giving them the exclusive right to “print, re-print, or publish their work” for a term of fourteen years, with an option to extend the copyright for an additional fourteen years, which was a clear reflection of the terms set forth in the Statute

³¹ *Id.*

³² *Id.* As the number of printing presses increased in volume, authorities sought to control the publication of books by granting printers a near monopoly on publishing in England. The Licensing Act of 1662 confirmed that monopoly and established a register of licensed books to be administered by the Stationers’ Company, a group of printers with the authority to censor publications. *Id.*

³³ *Id.*

³⁴ *Id.* The 1710 Act provided for fundamentals regarding the author’s ownership of a copyright and established a fourteen-year time limitation for protection, which was renewable if the author was alive when the initial term expired. *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ U.S. CONST. art. I, § 8, cl. 8.

⁴¹ *Id.*

of Anne.⁴² However, the initial term was extended to a period of twenty-eight years, including a potential extension of an additional fourteen years.⁴³

The Berne Convention was implemented in 1886 to provide for mutual recognition of copyright protection between nations, resulting in a more uniform recognition of copyright protection on an international platform.⁴⁴ European nations implemented a more congruent system, where separate registration was no longer required in each country.⁴⁵ Further, various revisions of the legislation created meaningful adjustments to the protections afforded to authors.⁴⁶ For example, the Berlin Act of 1908 extended the term of protection under copyright law to the duration of the author's life plus an additional fifty years, prohibited formalities such as registration as a prerequisite for copyright protection, and expanded the breadth of the protection to encompass developing technologies.⁴⁷ The United States became a signatory to the Berne Convention in 1988.⁴⁸

In 1909, the U.S. Copyright Act was revised.⁴⁹ The 1909 revision extended the first term of protection to twenty-eight years with an option to renew protection for an additional twenty-eight year period.⁵⁰ Moreover, the revision resulted in broadened protection of creative works by extending protection to all works of authorship.⁵¹

In 1976, additional revisions to the U.S. Copyright Act were imposed⁵² for two particular reasons.⁵³ First, due to extensive developments in technology, it was necessary to assess what works would be subject to copyright protection, inclusive of how these changes would affect what actually constituted infringement.⁵⁴ Moreover, these revisions were made in anticipation of the United States complying with the guidelines set forth in the Berne Convention.⁵⁵ The 1976 revisions effectively preempted all previous U.S. copyright law and adjust-

⁴² *Copyright Timeline*, *supra* note 29.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* The Berne Convention was established in order to provide for international norms in the area of copyright law. *Id.* "European nations established a mutually satisfactory uniform copyright law to replace the need for separate registration in every country." *Id.*

ed the term of protection to the life of the author plus an additional fifty years.⁵⁶ Similarly, the convention determined works for hire would be protected for a term of seventy-five years.⁵⁷

Through the revisions in 1976, lawmakers considered many new issues.⁵⁸ For instance, the revised act covered the following areas: the subject matter of works covered, inclusive of the scope of protection; copyright registration and notice; copyright term; the concept of exclusive rights; copyright infringement; fair use and defenses; and remedies to damages caused by infringement.⁵⁹

Importantly, because of issues with film piracy, revisions to copyright law enhanced the scope of protection to encompass new technologies, such as motion pictures.⁶⁰ Motion pictures were defined as “audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.”⁶¹

B. Copyright: Case Law

*1. Wheaton v. Peters*⁶²

In *Wheaton v. Peters*, a complainant, Henry Wheaton, was the author of twelve books of reports of cases argued in the Supreme Court of the United States.⁶³ Complainants alleged that defendants published a work entitled *Condensed Reports of Cases in the Supreme Court of the United States*, which contained all of the decisions included in the Wheaton Reports, without abbreviation.⁶⁴ Moreover, complainant argued that authors maintained a perpetual property right in their works.⁶⁵ The defendants denied that they had infringed upon the complainants’ works.⁶⁶ The Court found that an author is not entitled to a perpetual right, and instead, the utilitarian theory applied, which suggested that copyrights are exclusive rights of limited duration.⁶⁷ Additionally, copy-

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See *Copyright Law*, *supra* note 28.

⁶¹ See *Copyright Law*, *supra* note 28.

⁶² *Wheaton v. Peters*, 33 U.S. 591 (1834).

⁶³ *Id.* at 591.

⁶⁴ *Id.* at 595.

⁶⁵ *Id.* at 654.

⁶⁶ *Id.* at 595.

⁶⁷ *Id.* at 629; *Copyright Timeline*, *supra* note 29.

rights are granted in order to serve the greater interest of the public by promoting the creation and distribution of new works.⁶⁸

2. *Folsom v. Marsh*⁶⁹

In *Folsom v. Marsh*, the plaintiff, owner and editor of a multi-volume collection of letters from George Washington, sued the defendant for copyright infringement on the basis that the defendant used hundreds of pages of the letters in their entirety when publishing a work about the life of George Washington.⁷⁰ The court found that the defendant was liable for copyright infringement and held that “[i]f so much is taken, that the value of the original is sensibly diminished, or the labors of the original author are substantially to an injurious extent appropriated by another, that is sufficient, in point of law, to constitute a piracy pro tanto.”⁷¹

3. *Stowe v. Thomas*⁷²

In *Stowe v. Thomas*, Harriet Beecher Stowe sued F.W. Thomas, who published a German-language work entitled *Die Freie Presse*.⁷³ There, Thomas translated the work *Uncle Tom’s Cabin* into German and sold it in the United States without Stowe’s permission.⁷⁴ Consequently, Stowe claimed that her copyright was infringed and accordingly, brought a cause of action.⁷⁵ However, the court determined that once an author publishes a work and makes it available to the public, that author no longer has exclusive possession of the material.⁷⁶

4. *Encyclopedia Britannica Educational Corp. v. Crooks*⁷⁷

In *Encyclopedia Britannica Educational Corp. v. Crooks*, Encyclopedia Britannica sued the Board of Cooperative Educational Services because the group of public school districts copied certain educational programs that were

⁶⁸ *Copyright Timeline*, *supra* note 29.

⁶⁹ *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841) (No. 4901).

⁷⁰ *Id.* at 345.

⁷¹ *Id.* at 348.

⁷² *Stowe v. Thomas*, 1 Pitts. 82 (C.C.E.D. Pa. 1853) (No. 13,514).

⁷³ *Copyright Timeline*, *supra* note 29.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Encyclopedia Britannica Educ. Corp. v. Crooks*, 542 F. Supp. 1156 (W.D.N.Y. 1982).

broadcast on public television channels.⁷⁸ As a result, the copies were made available to other public schools.⁷⁹ There, the court determined that although those actions were seemingly for educational purposes, such actions would result in substantial damages to the market for commercially produced programs.⁸⁰ Thus, the defendant's fair use defense failed.⁸¹

5. *Salinger v. Random House*⁸²

In *Salinger v. Random House*, author J.D. Salinger brought an action seeking a preliminary injunction in order to bar publication of a biography, which allegedly included the author's copyrighted and unpublished letters.⁸³ There, the district court denied the preliminary injunction and the plaintiff appealed.⁸⁴ The Court of Appeals for the Second Circuit held that the biographer was not protected by the fair use defense and found that the author of a letter was entitled to copyright protection in the letter.⁸⁵ Moreover, the central issue centered on the application of a fair use defense to unpublished works and noted that common law has typically denied the fair use defense in the context of unpublished works of authorship.⁸⁶ The court established that, per the terms set forth in the Copyright Revision Act of 1976, an author's right to the first publication of a work will generally outweigh the arguments set forth in a fair use defense.⁸⁷

C. *Copyright Infringement*

To establish a claim of copyright infringement, a plaintiff must demonstrate (1) ownership of a valid copyright and (2) copying of original constituent elements of the work.⁸⁸ Moreover, a violation of any of the exclusive rights of the copyright owner constitutes infringement.⁸⁹ These exclusive rights include the right to reproduce the work, the right to prepare derivative works based on

⁷⁸ *Id.* at 1158–59.

⁷⁹ *Id.*

⁸⁰ *Id.* 1178.

⁸¹ *Id.* at 1184–85.

⁸² *Salinger v. Random House, Inc.*, 811 F.2d 90 (2d Cir. 1987).

⁸³ *Id.* at 92–93.

⁸⁴ *Id.* at 92.

⁸⁵ *Id.* at 100.

⁸⁶ *Id.* at 97.

⁸⁷ *Id.* at 95 (citing *Harper & Row Publisher v. Nation Enters.*, 471 U.S. 539, 555 (1985)).

⁸⁸ *See Harris Custom Builders, Inc. v. Hoffmeyer*, 92 F.3d 517 (7th Cir. 1996).

⁸⁹ 17 U.S.C. § 501(a) (2012).

the work, the right to distribute copies of the work to the public, and the right to display the work publicly.⁹⁰ As innovation has increased over the past several decades, copyright legislation has developed to adjust to resultant technologies, including motion pictures.⁹¹ Specifically, issues have arisen due to changing distribution models, including the onset of peer-to-peer networks, which have made works available while circumventing the need to pay producers for the value brought to the market.⁹² While technology has helped spur innovation, the ensuing creations have effectively disrupted the entertainment and media industry, causing significant harm to producers and financiers of creative works.

III. THE SCOPE OF FILM PIRACY

A. *Dallas Buyers Club, LLC v. Cordova*

In *Dallas Buyers Club, LLC v. Cordova*, the plaintiff, owner of the copyright in the film *Dallas Buyers Club*, sued the defendant, alleging that the defendant illegally used his computer in order to download the motion picture property on a peer-to-peer network.⁹³ The copyright holder moved for an entry of default against the defendant as a result of defendant's failure to comply.⁹⁴ The court found that the installation of a peer-to-peer network on a computer and the subsequent uploading of the *Dallas Buyers Club* were sufficient to support a judgment for copyright infringement.⁹⁵ However, the court also found that the defendant was not liable for contributory infringement resulting from the extensive downloading of the motion picture by others on the peer-to-peer network.⁹⁶ Regardless, the court determined that the defendant was liable for \$2,250 in statutory damages and attorney's fees totaling \$2,986.40.⁹⁷

The court elaborated on the concept of BitTorrent technology, defining it as "a peer-to-peer file sharing protocol [I]t is a peer-to-peer model that improves on prior generations of peer-to-peer networks by solving the 'free-rider problem wherein a substantial majority of users downloaded but never uploaded content.'"⁹⁸ The court further articulated the BitTorrent process:

⁹⁰ 17 U.S.C. § 106 (2012).

⁹¹ See generally *Copyright Law*, *supra* note 28.

⁹² See *Dal. Buyers Club v. Cordova*, 81 F. Supp. 3d 1025 (D. Colo. 2015).

⁹³ *Id.* at 1028.

⁹⁴ *Id.* at 1027.

⁹⁵ *Id.*

⁹⁶ *Id.* at 1035.

⁹⁷ *Id.* at 1036.

⁹⁸ *Id.* at 1029 (citation omitted).

A file transfer begins “when one user accesses the Internet through an ISP and intentionally makes a digital file of a work available to the public from his or her computer. This file is referred to as the first ‘seed.’ Other users, who are referred to as ‘peers,’ then access the Internet and request the file. These users engage each other in a group, referred to as a ‘swarm,’ and begin downloading the seed file. As each peer receives portions of the seed, that peer makes those portions available to other peers in the swarm.”⁹⁹

B. In re Napster Inc. Copyright Litigation

In *In re Napster Inc. Copyright Litigation*, owners of copyrights in musical compositions asserted contributory and vicarious infringement against investors in an Internet service.¹⁰⁰ Specifically, the action involved multi-district copyright proceedings initiated by record labels against a music file-sharing network.¹⁰¹ There, the record labels moved to compel the disclosure of all privileged attorney-client communications according to the crime-fraud exception.¹⁰² The court determined that in a civil trial, where a party seeks disclosure of privileged attorney-client communications, it is necessary for both parties to provide evidence pertinent to asserting the privilege and concerning the exception to the privilege.¹⁰³ The court ultimately held that the evidence provided was insufficient to determine that the attorney-client privilege could be undermined.¹⁰⁴

C. Universal Studios Productions LLLP v. Bigwood

In *Universal Studios Productions LLLP v. Bigwood*, Universal City Studios Productions and Paramount Pictures Corporation sued the user of a personal computer alleging that downloading two copyrighted films resulted in further downloading of the pictures without compensation to the studios.¹⁰⁵ The district court found that there was copyright infringement and awarded \$3,000 in statu-

⁹⁹ *Id.* at 1029–30 (citation omitted).

¹⁰⁰ *In re Napster Inc. Copyright Litigation*, 479 F.3d 1078, 1083 (9th Cir. 2007), *partially abrogated by* *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 114 (2009).

¹⁰¹ *Id.* at 1078.

¹⁰² *Id.* at 1084.

¹⁰³ *Id.* at 1098.

¹⁰⁴ *Id.* at 1098–99.

¹⁰⁵ *Universal City Studios Prods. LLLP v. Bigwood*, 441 F. Supp. 2d 185, 185 (D. Me. 2006).

tory damages for each download.¹⁰⁶ However, the court refused to grant an injunction and held that attorney's fees were not recoverable due to a lack of sufficient support.¹⁰⁷

The court noted that in order to establish a prima facie case for copyright infringement, a plaintiff must show ownership of a valid copyright and the unauthorized copying of original elements of the work.¹⁰⁸ In that case, the record showed that Universal owned the copyright to the film *Half Baked*, that Paramount was the exclusive licensee of the picture *Coach Carter*, and that the defendant downloaded unauthorized copies of the motion pictures using a file sharing network called KaZaA.¹⁰⁹ Thus, both studios satisfied the copyright infringement elements.¹¹⁰ Defendant knew that the works were copyrighted and that he did not have permission to download copies of them.¹¹¹ The plaintiffs successfully established their prima facie case because their copyrights were valid and the defendant admitted to the unauthorized copying of their motion pictures.¹¹² Therefore, the court granted summary judgment in favor of the two studios.¹¹³

D. Disney Enterprises Inc. v. Delane

In *Disney Enterprises Inc. v. Delane*, three motion picture studios filed suit against an individual who operated a peer-to-peer network and website that supported the reproduction and distribution of television programs owned by the studios.¹¹⁴ The court determined that the studios, which provided sufficient evidence to successfully support a claim for copyright infringement, were entitled to enforce a permanent injunction and were owed \$6,500 for each of the ten infringements of the works.¹¹⁵

The court elaborated on the nature of statutory damages, referencing 17 U.S.C. § 504(c)(1), which provides that an infringer of a copyright is liable for

¹⁰⁶ *Id.* at 192.

¹⁰⁷ *Id.* at 193.

¹⁰⁸ *Id.* at 189.

¹⁰⁹ *Id.* at 188.

¹¹⁰ *Id.* at 191.

¹¹¹ *Id.* at 188.

¹¹² *Id.* at 190. The defendant was deemed to have admitted to downloading the motion pictures by virtue of failure to respond to a request for admissions. *Id.* at 188, 190.

¹¹³ *Id.* at 193.

¹¹⁴ *Disney Enters., Inc. v. Delane*, 446 F. Supp. 2d 402, 404 (D. Md. 2006).

¹¹⁵ *Id.* 408.

statutory damages from \$750 to \$30,000.¹¹⁶ Additionally, the court noted that:

The determination of statutory damages within the applicable limits may turn on such factors as the expenses saved and the profits reaped by the defendant in connection with the infringement; the revenues lost by the plaintiff as a result of the defendant's conduct; and the state of mind of the defendant, whether willful, knowing, or innocent.¹¹⁷

E. Damages

A copyright infringer is liable for either “(1) the copyright holder’s actual damages and any additional profits of the infringer, as provided by subsection (b); or (2) statutory damages, as provided by subsection (c).”¹¹⁸ Damages can depend on the varying levels of intent.¹¹⁹ Moreover, the copyright owner may, at any time before a final judgment is furnished, elect to be compensated in the form of statutory damages, rather than actual damages, of no less than \$750 and no more than \$30,000 per infringement.¹²⁰ Further, in a case where the infringement was committed willfully, the court has discretion to increase the award up to \$150,000.¹²¹ Moreover, a court can issue an injunction to restrain copyright infringement, if applicable.¹²²

F. Defenses

One of the primary defenses used in copyright infringement cases is the fair use doctrine.¹²³ This defense is defined by courts in numerous ways, with some considering the defense to be a privilege and others finding it to be a limitation on the rights of copyright owners.¹²⁴ The term was also defined as a “‘technical infringement, which is nevertheless excused’ because of the circumstances” sur-

¹¹⁶ *Id.* at 406.

¹¹⁷ *Id.*

¹¹⁸ 17 U.S.C. § 504(a) (2012).

¹¹⁹ *See, e.g., id.* § 504(d).

¹²⁰ *Id.* § 504(c)(1).

¹²¹ *Id.*

¹²² 17 U.S.C. § 502 (2012).

¹²³ C. T. Drechsler, *Extent of Doctrine of “Fair Use” Under Federal Copyright Act*, 23 A.L.R.3d 139 (originally published in 1969).

¹²⁴ *See Id.*

rounding the infringement.¹²⁵ Another common definition of fair use is a vested “privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner by the copyright.”¹²⁶

Additional defenses include arguments by defendants that infringements cannot exist absent valid copyrights. This invalidity argument may prevail if the material in question was an idea not expressed in a tangible medium.¹²⁷ Moreover, a copyright is invalid for lack of originality if the material is only a set of facts without any originality as to composition.¹²⁸ Further defenses include expiration of the statute of limitations¹²⁹ and authorization to use the work via a license.¹³⁰

IV. How is Film Piracy Assessed?

A. Catalysts for Infringement

Film piracy, particularly in the international market, resulted in significant losses to the economy in the United States.¹³¹ Interestingly, the failure to enforce copyright laws led to a growing trend in Chinese film piracy, demonstrated by the increased yearly rate of piracy since 2004.¹³² Today, China is considered to be the worldwide leader in film piracy, due substantially to the lack of enforcement of copyright laws by the Chinese government.¹³³

¹²⁵ *Id.* § 3c.

¹²⁶ Horace G Ball, *The Law of Copyright and Literary Property* § 125, at 260 (1944); see Robert Denicola, *Copyright in Collections of Facts: A Theory for the Protection of Nonfiction Literary Works*, 81 COLUM. L. REV. 516, 524 (1981).

¹²⁷ 17 U.S.C. § 102(a) (2016). Copyright protection is afforded to original works “fixed in any tangible medium of expression.” *Id.*

¹²⁸ *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991) (“[E]ven a directory that contains absolutely no protectable written expression, only facts, meets the constitutional minimum for copyright protection if it features an *original* selection or arrangement.”) (citations omitted) (emphasis added).

¹²⁹ 17 U.S.C. § 507(b) (2016) (“No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”).

¹³⁰ See, e.g., *MacLean Assocs., Inc. v. Wm. M. Mercer-Meidinger-Hansen, Inc.*, 952 F.2d 769, 779 (3d Cir. 1991) (“[A] *nonexclusive* license does not transfer ownership of the copyright from the licensor to the licensee, [and] the licensor can still bring suit for copyright infringement if the licensee's use goes beyond the scope of the nonexclusive license.”) (emphasis added).

¹³¹ Stephen Carlisle, *Copyright Piracy and the Entertainment Industries*, NOVA SE. UNIV. (Aug. 13, 2014), <http://copyright.nova.edu/copyright-piracy-entertainment-industries/>.

¹³² Oliver Ting, *Pirates of the Orient: China, Film Piracy and Hollywood*, 14 VILL. SPORTS & ENT. L.J. 399, 399 (2007).

¹³³ Eric Priest, *The Future of Music and Film Piracy in China*, 21 BERKELEY TECH. L.J. 795,

Ultimately, the catalysts for film piracy are the advanced forms of technology that make these activities possible.¹³⁴ The Internet changed business models by allowing for virtually limitless data exchange.¹³⁵ One business model that underwent intense reformation is the entertainment industry's distribution process, particularly film distribution.¹³⁶

B. Enforcement and Deterrence

Reports indicate an annual loss of \$20.5 billion from the U.S. economy as a result of film piracy.¹³⁷ Thus, as indicated above, greater enforcement can be viewed as an investment in economic growth for the U.S.¹³⁸ In 2012, federal law enforcement agencies joined six U.S. motion picture studios in providing an updated anti-piracy warning intended for display on film titles.¹³⁹ The warning notes a penalty of up to five years in prison and a fine of up to \$250,000.¹⁴⁰ Presently, 760 domain names responsible for the distribution of illegal copyrighted works have been seized.¹⁴¹ Moreover, eleven individuals have been arrested and charged with crimes relating to online piracy, and more than \$1 million has been confiscated by enforcement agencies.¹⁴² However, these figures appear to be relatively meager in the context of the actual harm to both individuals and businesses.

797 (2006).

¹³⁴ See Trevor Norkey, *Film Piracy: A Threat to the Entire Movie Industry*, MOVIE PILOT (April 26, 2015, 8:13 PM), <https://moviepilot.com/posts/2889420>.

¹³⁵ See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 21ST CENTURY TECHNOLOGIES: PROMISES AND PERILS OF A DYNAMIC FUTURE (1998), <https://www.oecd.org/futures/35391210.pdf>.

¹³⁶ Charles Prutzman, *Joinder and the Internet: Understanding the Intricacies of Bittorrent and the Fair Resolution of Copyright Infringement Cases*, 32 TEMP. J. SCI. TECH. & ENVTL. L. 185, 199 (2013).

¹³⁷ Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, Institute for Policy Innovation, Sept. 2006, at 1-2, Policy Report 186.

¹³⁸ Carl Bialik, *Putting a Price Tag on Film Piracy*, WALL ST. J. (April 5, 2013), <http://blogs.wsj.com/numbers/putting-a-price-tag-on-film-piracy-1228/>.

¹³⁹ *Federal Law Enforcement Agencies Join Movie Industry to Unveil New Anti-Piracy Warning*, U.S. ICE (May 8, 2012), <https://www.ice.gov/news/releases/federal-law-enforcement-agencies-join-movie-industry-unveil-new-anti-piracy-warning>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

V. DALLAS BUYERS CLUB AND THE SCOPE OF INFRINGEMENT IN
INTERNATIONAL TERRITORIES

*A. The Practical Financial Outcome of Litigating Copyright Infringement
in the Form of Film Piracy*

In the primary case addressed in this Note, the court placed a deterrent in front of the studio by requiring the posting of a \$600,000 bond before the studio could send invoices claiming damages, because the court asserted that the studio would be invoicing for speculative damages.¹⁴³ Thus, we must look at the importance of statutory damages as a remedy.¹⁴⁴ Here, Voltage Pictures has been working with its lawyers on an argument that would allow for a fine of up to \$150,000.¹⁴⁵ Importantly, most defendants settle out of court for around \$5,000.¹⁴⁶ In this instance, an Australian justice will personally decide how much money Voltage can demand from infringers.¹⁴⁷

B. Implications and Counterarguments

Social media, the erosion of the DVD market, and extensive piracy via peer-to-peer networks have changed the distribution model for filmed entertainment. As such, the industry must enforce its rights and create new revenue streams.¹⁴⁸ Most of all, the industry must work with the U.S. and various international governments to ensure the enforcement of laws protecting copyright ownership.¹⁴⁹

Both large and small companies are affected by the costs of piracy.¹⁵⁰ A

¹⁴³ Safi, *supra* note 14.

¹⁴⁴ *See id.*

¹⁴⁵ Australian Associated Press, *Dallas Buyers Club Piracy Case: Court Dismisses Many of Studio's 'Surreal' Claims*, THE GUARDIAN (Aug. 14, 2015, 1:16 AM), <http://www.theguardian.com/film/2015/aug/14/dallas-buyers-club-piracy-case-court-dismisses-many-of-studios-surreal-claims>; see 17 U.S.C.A. § 504 (2012).

¹⁴⁶ Lisa Parker, *Movie Studio Targets Consumers for Illegal Downloads*, NBC UNIVERSAL (May 2, 2014), <http://www.nbcchicago.com/investigations/Movie-Studio-Targets-Consumers-For-Illegal-Downloads-257608961.html>.

¹⁴⁷ Sam Thielman, *Dallas Buyers Club Piracy Case: Court to Determine Level of Fines*, THE GUARDIAN (Apr. 7, 2015), <https://www.theguardian.com/technology/2015/apr/07/dallas-buyers-club-piracy-fines-australia>.

¹⁴⁸ *See supra* Part III.

¹⁴⁹ Diana Lodderhose, *Movie piracy: threat to the future of film intensifies*, THE GUARDIAN (July 17, 2014, 7:11 AM), <http://www.theguardian.com/film/2014/jul/17/digital-piracy-film-online-counterfeit-dvds>.

¹⁵⁰ *See* Nelson Granados, *How Online Piracy Hurts Emerging Artists*, FORBES (Feb. 1, 2016), <http://www.forbes.com/sites/nelsongranados/2016/02/01/how-online-piracy-hurts-emerging->

substantial contributing factor is the failure of enforcement agencies to deter piracy and infringement.¹⁵¹ Moreover, one of the most important questions is whether a pirate would actually pay for a movie on Netflix or another service or medium; many claim that pirates do not drastically hurt the industry because these infringers would not have made an actual purchase, and therefore there is limited actual erosion.¹⁵² But clearly these infringers have a desire to consume the product; they do want access to the content. If they desire the commodity, then it is reasonable to infer that they would pay for it if that was their only option for access to the material.¹⁵³

The movie industry continues to lobby to both the U.S. and foreign governments to take action against infringers, as a lack of enforcement will arguably result in the continued loss of substantial revenue.¹⁵⁴ A previous forecast estimated a loss of around \$6 billion per year to the entertainment industry.¹⁵⁵ Yet other estimates of total losses are significantly greater, posing a challenge to the enforcement, particularly when defendants argue that the damages are merely speculative.¹⁵⁶ This clearly affects both state and foreign governments due to lost tax revenue. Further, this results in lost jobs and a weaker economy as the lost revenue could have been reinvested into infrastructure.¹⁵⁷ In an effort to combat such detrimental effects in the United States, in 2010 Homeland Security Investigations established Operations In Our Sites, which is directed at policing online commercial criminal activity that concerns intellectual property.¹⁵⁸

artists/#31e1d2087fa2.

¹⁵¹ Ernesto, *Three Strikes Law Does Nothing to Curb Piracy, Research Finds*, TORRENTFREAK (Jan. 22, 2014), <https://torrentfreak.com/three-strikes-law-does-nothing-to-curb-piracy-research-finds-140122/>.

¹⁵² Karsten Strauss, *TV and Film Piracy: Threatening an Industry?*, FORBES (Mar. 6, 2013, 12:31 PM), <http://www.forbes.com/sites/karstenstrauss/2013/03/06/tv-and-film-piracy-threatening-an-industry/>.

¹⁵³ *Id.*

¹⁵⁴ Frank Ahrens, *Hollywood Says Piracy Has Ripple Effect*, THE WASHINGTON POST (Sept. 29, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/28/AR2006092801640.html>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See generally Sangeeta Shastri, *Internet Piracy Taking Big Tolls on Jobs*, REUTERS (Mar. 17, 2010), <http://www.reuters.com/article/us-eu-piracy-idUSTRE62G3BU20100317>.

¹⁵⁸ *Federal Law Enforcement Agencies Join Movie Industry to Unveil New Anti-piracy Warning*, *supra* note 139.

C. Economic Effects of Film Piracy

1. Box Office Revenue

Statistical analysis projected total revenue of \$564 billion by the close of the fourth quarter in 2014 for the entertainment industry.¹⁵⁹ By 2018, total revenue is projected to reach \$679 billion.¹⁶⁰ Interestingly, worldwide revenue at the global box office reached approximately \$39.1 billion in 2015, and is anticipated to grow to approximately \$48 billion by 2019,¹⁶¹ noting the expansion of many international markets, which is led by growth in China.¹⁶²

2. Film Ultimates

Many film studios work with various banking organizations in order to structure operating cash flow based upon loans achieved through leveraging long-term film assets.¹⁶³ Due to a variety of distribution formats, studios and production entities can exchange film assets for financing.¹⁶⁴ Banks will provide debt financing based upon future cash flows derived from distribution windows including video on demand, free TV, home video, etc., referred to as “film ultimates.”¹⁶⁵ In this context, “banks will lend against these future cash flows (discounted at net present value) under a borrowing base with applicable advance rates.”¹⁶⁶

D. Effect of Film Piracy on Box Office Performance and Film Ultimates

In August 2014, *The Expendables 3* was theatrically released and despite the trend in stronger financial performance for franchise sequels in a franchise,

¹⁵⁹ *Statistics and Facts About the Film Industry*, STATISTA, <https://web.archive.org/web/20160122091923/http://www.statista.com/topics/964/film/> (last visited Feb. 7, 2017).

¹⁶⁰ *Id.*

¹⁶¹ *Global Box Office Revenue from 2015 to 2019 (in Billion U.S. Dollars)*, STATISTA, <https://web.archive.org/web/20160118164509/http://www.statista.com/statistics/259987/global-box-office-revenue> (last visited Feb. 7, 2017).

¹⁶² *China Box Office Growth at 49% as Total Hits 6.78 Billion*, VARIETY (Dec. 31, 2015), <http://variety.com/2015/film/asia/china-box-office-growth-at-49-percent-1201670519/>. In 2015 alone, China’s box office grew by 49 percent, while reaching \$6.78 billion in box office revenue. *Id.*

¹⁶³ ABF Journal, *Film Financing . . . It’s Not About Box Office Performance*, ABF JOURNAL (May, 2013), <http://www.abfjournal.com/articles/film-financing-its-not-about-box-office-performance/>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

the film's release resulted in the weakest box office gross for the trilogy.¹⁶⁷ In this context, a copy of the film was illegally released on the Internet three weeks before the first scheduled release of the picture, which resulted in views by 2.2 million people that did not pay for the benefit of seeing the movie.¹⁶⁸ Moreover, the first film in the franchise was released in 2010 to an opening weekend of \$34.8 million and the second motion picture in the trilogy earned \$28.6 million in its opening weekend.¹⁶⁹ Regardless, Phil Contrino, vice president and chief analyst at BoxOffice.com noted that "[t]his is really a clear situation where there is an impact," as the third film earned \$16.2 million in its opening weekend, approximately \$10 million less than anticipated.¹⁷⁰ Reportedly, more than 10 million people downloaded *The Expendable 3*, which resulted in an estimated aggregate loss of \$250 million.¹⁷¹ Ultimately, a 2011 study from Carnegie Mellon University estimated that a piracy event before the release of a motion picture can result in losses of nearly twenty percent of anticipated revenue.¹⁷²

Licensing arrangements between motion picture studios and companies such as Netflix are substantially affected by the box office performance of a given film.¹⁷³ For instance, "Relativity [Media] licenses its film properties to Netflix for exclusive distribution on its streaming service in exchange for a fee that is calculated based on the domestic box office revenue for that film."¹⁷⁴ Although there is guarantee in the agreement, which constitutes additional revenue outside of box office performance, the fee is significantly affected by gross revenues during the theatrical release window. For example, if a film grosses less than \$1 million, then Netflix will acquire rights for \$787,500.¹⁷⁵ Alternatively,

¹⁶⁷ Brent Lang, 'Expendables 3' Flops: Is Piracy to Blame? VARIETY (Aug. 17, 2014), <http://variety.com/2014/film/news/expendables-3-flops-is-piracy-to-blame-1201284859/>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* Phil Contrino, vice president and chief analyst at BoxOffice.com went on to elaborate and stated that "[i]t's hard to measure, but the ripple effect, not only of the downloads, but of the word-of-mouth that spread as a result, can be seen in the soft opening." *Id.* (internal quotations omitted).

¹⁷¹ Thomas Ricker, *Hollywood's Christmas is being ruined by unprecedented leaks*, THE VERGE (Dec. 24, 2015), <http://www.theverge.com/2015/12/24/10663146/hollywood-s-christmas-is-being-ruined-by-unprecedented-leaks>.

¹⁷² Liye Ma, *An Empirical Analysis of the Impact of Pre-Release Movie Piracy on Box-Office Revenue*, CARNEGIE MELON UNIV., <http://repository.cmu.edu/cgi/viewcontent.cgi?article=1382&context=heinworks>. (last visited Jan. 21, 2017).

¹⁷³ Tom Corrigan, *Netflix has Paid \$283 Million to Use Relativity Films*, THE WALL ST. J. (Sept. 25, 2015), <http://www.wsj.com/articles/netflix-pays-283-million-to-use-relativity-films-1443193619>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

if a movie grosses more than \$125 million, then the fee can be as much as \$19 million.¹⁷⁶

Clearly, if a film is pirated, particularly before its initial theatrical release, the loss of about twenty percent of its revenue can be seen in revenue streams from alternative distribution methods. Moreover, while many studios secure financing for operations through banks willing to provide funding in exchange for future revenue on film properties assessed through film ultimate calculations, this financing can be substantially limited if revenue is limited due to loss from piracy. These systemic losses can also result in decreased interest in investment from outside financiers and, in some cases, can result in layoffs of personnel or even bankruptcy.¹⁷⁷

E. Film Piracy's Macroeconomic Effects

The entertainment industry contributes about \$80 billion per year to the U.S. economy and supports approximately 2.4 million U.S. jobs.¹⁷⁸ However, it is estimated that online piracy has resulted in the loss of about 750,000 occupations.¹⁷⁹ Aside from film piracy, the majority of online music downloads are illegal, which drastically undercuts revenue sources.¹⁸⁰ Specifically, about 95% of music downloads are free and illegal, while “the average mobile phone, iPod, or tablet contains \$800 worth of pirated content.”¹⁸¹

Online piracy has eviscerated the music industry, which currently produces revenue of \$16.5 billion—about half of the value of annual gross revenue from 15 years ago.¹⁸² In terms of film, more than 17 million copies of *Avatar* were downloaded in 2010, shortly after the theatrical release of the movie.¹⁸³ Ultimately, cumulative online piracy results in estimated losses of about \$250 billion per year to the U.S. economy alone.¹⁸⁴

¹⁷⁶ *Id.*

¹⁷⁷ When Relativity Media was initially preparing to enter bankruptcy, it laid off 75 employees. Zack Greenburg, *Bye-Bye, Billionaire: Ryan Kavanaugh's Relativity Media Files for Bankruptcy*, FORBES (July 30, 2015), <http://www.forbes.com/sites/zackomalleygreenburg/2015/07/30/ryan-kavanaughs-relativity-media-files-for-bankruptcy/#af58c2c37739>. Moreover, since 2014 none of the studio's movies reached a modest gross of even \$70 million at the box office. *Id.*

¹⁷⁸ Wayne Scholes, *Piracy's Ripple Effect on the Global Economy*, DIPLOMAT COURIER (Jan. 14, 2014), <http://www.diplomaticourier.com/piracy-s-ripple-effect-on-the-global-economy/>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

F. Proposed Solutions

Recently, Quentin Tarantino theatrically released his latest film, *The Hateful Eight*.¹⁸⁵ However, 1.3 million people pirated and viewed the movie via a leaked screener prior to the first actual scheduled release.¹⁸⁶ One of the proposed solutions to the online piracy virus is for Google to develop technology that blocks access to pirated works instead of directing viewers towards them. This technology could be used for both the search engine and its subsidiary, YouTube.¹⁸⁷ Interestingly, these companies have successfully blocked videos containing child pornography and violent beheading videos from ISIS, yet have questionably refused to halt access to illegally obtained intellectual property.¹⁸⁸

Another potential solution is to alter the industry norm of delivering watermarked screeners to distributors when independent films have not yet been released, but are in the process of being licensed to domestic and international distributors through sales agencies.¹⁸⁹ Typically, filmmakers deliver watermarked screeners to members of the Academy of Motion Picture Arts and Sciences for Academy Award consideration before release to the public.¹⁹⁰ Yet, instead of providing watermarked screeners, filmmakers should strictly provide designated recipients with online viewing links that are password protected. Ultimately, physical copies of DVDs can be mishandled and leaked to the public via the Internet, which is not possible in the case of private password-protected online links.

Interestingly, a technology company known as Thomson has experimented with methods that can avert those who pirate movies with camcorders.¹⁹¹ “In

¹⁸⁵ See *Hateful Eight*, IMDB, <http://www.imdb.com/title/tt3460252/> (last visited Feb. 7, 2017).

¹⁸⁶ Richard Gladstein, ‘*Hateful Eight*’ Producer on Piracy: “*Aspirin Ain’t Curing the Plague*” (*Guest Column*), THE HOLLYWOOD REP. (Jan. 7, 2016, 10:00 AM), <http://www.hollywoodreporter.com/news/hateful-eight-producer-piracy-aspirin-852744>. These views likely resulted in a net financial gain of zero for the producers of the picture.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ The Academy of Motion Pictures Arts and Sciences, *Regulations Concerning the Promotion of Films Eligible for the 87th Academy Awards*, OSCARS (June, 2014), <http://www.oscars.org/oscars/regulations-concerning-promotion-films-eligible-87th-academy-awardsr> (last visited Jan. 21, 2017). See generally Matthew Belloni, ‘*Hateful Eight*’ Pirated Screener Traced Back to Top Hollywood Executive (*Exclusive*), THE HOLLYWOOD REP. (Dec. 22, 2015), <http://www.hollywoodreporter.com/news/hateful-eight-pirated-screener-traced-850899>.

¹⁹⁰ *Id.*

¹⁹¹ Kate Greene, *Preventing Movie Piracy*, MIT TECHNOLOGY REVIEW (July 5, 2006), <https://www.technologyreview.com/s/406063/preventing-movie-piracy/>. Apparently, these artifacts manipulate the image perceived by the human brain in comparison to the image picked up by the camcorder. *Id.* Accordingly, “[i]n the technique that’s furthest along, extra frames—with the words ‘illegal copy,’ for instance—are inserted into the film. These warning words flicker by at a frequen-

this case, the company inserts ‘artifacts’—extra frames, flashes of light, or pixelated grid patterns—into a movie during its digital processing phase, before it’s shipped to theatres.”¹⁹² The purpose of this effort is to disfigure the image that camcorders pick up without altering the image that patrons view at a movie theatre. However, although piracy through the use of camcorders in theatres is an important matter, Thomson’s effort does not appear to solve the extensive level of piracy that often begins online and without a camcorder.

VI. CONCLUSION

The case of copyright infringement pertaining to *Dallas Buyers Club* is a microcosm for the damages associated with copyright infringement and particularly, film piracy. A significant issue here is speculative damages due to inconsistent box office revenues and the inability of studios to guarantee the financial performance of a film prior to its release. Regardless, these economic losses can be mitigated by greater U.S. and international enforcement. Each government has motivation to effectively enforce its intellectual property because greater prosecution can result in economic growth on a global scale.

cy too fast for the human brain to process—yet they appear in a camcorder recording.” *Id.*

¹⁹² *Id.*