# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey




# Impact of Piracy on the Entertainment Industry in the US


Ayush Mishra[a]

[a]NMIMS, Mumbai, India



*Received* 17 September 2022; *Accepted* 25 September 2022; *Published* 03 October 2022



*This article looks into the deeper aspects of the impact of* ***piracy*** *on the* ***entertainment industry*** *in the US, how the same impact affects other industries & economies, particularly the US, and how the US has tried to overcome this problem with the* ***law****. The US economy suffers a lot due to digital piracy in the Entertainment industry, this would eventually toil down the economy,* ***employment rate****, and growth, etc., the laws in place against* ***digital piracy*** *such as the Digital Millennium Copyright Act, 1998*[1] *sets out illegal and allows digital owners to sue those who pirate on their owned copyright. The article would progress from the* ***beginning*** *of piracy to the impacts & finally the legal ways to tackle it. There are* ***findings and suggestions*** *as per the analysis. An important insight is that the process has begun and it is progressing but there should be an overlooking department over the activity of piracy.*



**Keywords:** *piracy, entertainment industry, law, employment rate, digital piracy, beginning.*


## INTRODUCTION

Piracy is an illegal process of an unauthorized replication of content that is protected under copyright laws and then sold at sub-standardized cost by the bagman for their sole benefit. Consumers want entertainment at sub-standardized rates or free of cost and illegal suppliers pirate the content that is most in demand and puts it up in the grey market for sale. Either way,

[1] Digital Millennium Copyright Act 1998

a country like the US - the hub of gaming software developing companies, where the highest honor of the Grammy Awards & the Oscar award and the glorious Hollywood originates, suffers a great loss to its economy after all of these products of entertainment that are developed or produced by companies and artists are pirated and available to consumers as a free pie.

Not only does piracy decreases the profit & growth of an economy by an exponential amount but it also affects the employment rate in an economy and even leads to drastic events such as — the latest video games being shut down, considered unsuccessful; most affected are those in the entertainment business of movies, music, and software. The Digital Millennium Copyright Act[2] was added to 17 U.S.C. 1201-1205 to protect copyrighted works from piracy and promote electronic commerce by criminalising evading an access restriction, whether or not there is actual copyright infringement. DMCA also increases online copyright infringement fines. If convicted, a defendant may be fined up to $500,000, imprisoned for up to five years, or both. For future violations, a criminal may be fined up to $1,000,000, imprisoned for up to 10 years, or both. The No Electronic Theft Act[3] (NET Act), introduced in 1997, allows criminal prosecution of copyright infringers under specific situations, even if there is no monetary profit or commercial advantage. Five years in jail and $250,000 in fines are the maximum punishments.[4]

**BEGINNING OF DIGITAL PIRACY**

The MP3 file format, which debuted in the late 1980s, is used to compress music as well as graphics data. This simplified the process of downloading music files and copying them using a computer and a CD "burner." Soon after, people began posting unlicensed music on their websites for anybody to download. This practice is comparable to file sharing. 1999 saw the beginning of a significant surge in illicit music downloads. A college or university student created a system that enables users to rapidly find and download MP3 music files from the internet. To disseminate its material, Napster used a mechanism known as "peer-to-peer" file sharing. The music file database was housed on computer servers given by Napster to its customers.

[2] Public Law 105-304
[3] No Electronic Theft Act 1997
[4] *Ibid*

Users may download songs from the database for free, organize them into various categories, and build their own CD music albums. Napster gained popularity quickly, particularly among younger people. The term "rip, mix, burn" entered the lexicon of these younger Napster users. By 2001, Napster had a worldwide user base of 70 million individuals who downloaded around 300 billion songs per year. A federal lawsuit was filed against Napster by the music business. Following the court's ruling that the downloading was a violation of copyright, Napster ceased operations and shut down its servers in 2002. (In 2003, Napster was reborn as a genuine download-for-fee business.) Other peer-to-peer file-sharing systems, such as KaZaA, quickly replaced Napster as the industry norm. These websites functioned independently of Napster. They did away with centralised servers in favour of direct connections between each user's machine. As a consequence, all users' computers became a source for automatically uploading music files to other users' computers. According to the findings of a 2003 poll, 52 percent of Internet users between the ages of 18 and 29 had downloaded music without authorization.

**HOW PIRACY AFFECTS THE ENTERTAINMENT INDUSTRY?**

*"[T]he battle against file sharing has become the entertainment industry's version of the War on Drugs, an expensive, protracted, apparently ineffective and seemingly misguided battle against a contraband that many suggest does little harm."*

Piracy is a problem that is deeply rooted, and the issues here are not just the financial or legal aspect that piracy infringes with the rights & profits of the owner of the copyright of a work but

- That it undermines the hardworking aspect of the performers/producers and,
- It jeopardizes the work in the entertainment industry as there have been instances when such works have been taken down due to overload on servers or losses taken up by the company (Battle Dungeon — a game shut down due to piracy)
- Entertainment Industry (Singers, companies, movie houses, etc.) suffer losses every time a new work is up on the market.
- It impairs the economy brutally not because it deeply impacts the entertainment industry but it also affects other industries.

## LOSSES IN THE ENTERTAINMENT INDUSTRY

Piracy Impairing Copyright Industry in the US - Copyright Industries in the US that have 4 core entertainment industries affected by piracy in this study are motion pictures, sound recordings, packaged software, and video games.

- Motion Picture & Video Industry generated revenue of $ 73.4 billion (approx.) in 2005.
- The Sound Recording industry earned revenue of $ 18.7 billion (approx.) in 2005.
- Software Companies earned revenue of $ 18.7 billion (approx.) in 2005.
- Software Companies earned revenue worth more than the combined other 3 industries - $ 119.6 billion (approx.) in 2005.
- Retail sales of video game software were $ 7 billion in 2005 rising to the $ 7.4 mark in 2006
- Revenue earned through foreign sales was $ 110 billion.

MPA & L.E.K. report directed the losses incurred by Motion Pictures - $ 6.1 billion while the other 3 core industries added up bringing to an estimated loss of nearly $ 17 billion. During the 1990s, US music business sales were $40 billion a year, but in 2013 they dropped to $15 billion due to piracy, according to RIAA[5]. Due to sound recording piracy, at least 70,000 jobs and $2 billion are lost yearly (sound recording industry[6] & downstream retail business in a 60.40 ratio), while the US economy loses roughly $10 billion in unpaid taxes as the product is stolen and brought in free internationally. Just piracy in the sound recording sector causes huge losses, and this amount grows when other sections of the US entertainment industry are included.

Retail store owners (Blockbuster, Best Buy, Wal-Mart, etc.) buy legitimate licenses for sales of these CDs, DVDs, etc. but after pirated content for entertainment (video games, songs, movies, etc.) becomes available to consumers, their customers stop buying cassettes since they can get same work for free or at lower costs. Bulking up a commodity for sales but due to piracy, this plan fails to lead these retail companies to incur losses. Data from the same literature shows the losses by the retail sector due to piracy are approximately $ 2.5 billion.

---

[5] 'The true cost of copyright industry piracy to the U.S. economy: IPI' (*RIAA*, 3 October 2007) <https://www.ipi.org/ipi_issues/detail/the-true-cost-of-copyright-industry-piracy-to-the-us-economy> accessed 16 September 2022

[6] *Ibid*

Approx. $17 billion + $ 2.5 billion = $19 billion (Approximate Loss due to Piracy in Entertainment industry in 2005).

**FALL OF THE ECONOMY THAT IT BRINGS**

Entertainment, software, singers, investors, workers, and federal, state, and municipal governments lose tax money due to piracy. When piracy hits an industry's work, it affects employment in two ways: either it increases employment for the sake of generating new revenue to cope with existing loss, which increases the tax burden and workload on the industry, its employees, and the industry it had contracted for miscellaneous or input material, OR it cuts existing employees to cover the losses by forgoing the existing contract of a number of employees to exempt themselves from paying up the New content releases affect GDP, employment rate, and export in the US economy. The US is on top for its Entertainment Industry's music, movies, games, software, etc. being pirated, most users consuming pirated material yearly, and the greatest economic effect from piracy.

As per key findings of a study — Impacts of Digital Video Piracy on the U.S. Economy states, 'Digital video piracy not only causes lost revenues to the U.S. content production sector, it also results in losses to the U.S. economy of between 230,000 and 560,000 jobs and between $47.5 billion and $115.3 billion in the reduced gross domestic product (GDP) each year. While piracy remains a problem in the U.S., our analysis indicates that most of these losses (223,000 to 541,000 jobs and $45.7 billion to $111.1 billion in lost GDP) are due to digital video piracy of U.S. content by non-U.S. residents.' This same study is the latest as per the U. S. Chamber of Commerce and as per this entity, in 2017, US movie and television industry brought in $229 billion in domestic revenue and 2.6 billion jobs BUT more than half of the revenue is also lost due to digital piracy every year. This number has kept on increasing since the ease of technology & increase in population but there has been an increase in the number of people who understand that piracy is WRONG! View on piracy, as the creator of 'Breaking Bad', Vince Gilligan said, "Illegal downloading has helped us, certainly, in terms of brand awareness". (As cited in Spangler, 2013).

## HOW DEEP-ROOTED PIRACY IS?

INs & OUTs of Piracy in US Entertainment Industry - A survey called 'Copy Culture sponsored by The American Assembly of the Columbia University with the support of Google. An excerpt from this survey was released as a research note in 2011 by The American Assembly during the time when the Stop Online Piracy Act (SOPA) bill was being discussed in the US House of Representatives to bring awareness in people about its severity & normalize penalties for piracy. Data from the excerpt concluded that 46% of adults and 70% between the ages (18-29) consumed pirated content. 90 % of college students consumed pirated content in the US. Family & Friends that widely accepted sharing of copyright-protected content is of the percentage of 70 range & 50 range respectively.

Amount of Impact Piracy is causing - In 2014, a copy of Expendables 3 with DVD quality was released before its scheduled release, getting downloaded approximately 2.1 million times making the company lose a huge amount of profit due to piracy. A rising issue for movies voicing the LGBT community since their rarely funded for their 'Box Office Performance' leaving them to fund themselves, and when such movies are consumed no through the right-pay-and-watch way but with pirated versions, it leaves the artists, owners, and everyone who worked on this project to not get paid for what they have worked hard. Setting a fear in the mind of those who are yet to come down the same alley.

## US FIGHTING LAW BATTLES WITH DIGITAL PIRACY

In the late 1990s, major media companies that had invested extensively in music, movies, television, and software lobbied the government to strengthen copyright rules. The No Electronic Theft Act of 1997[7] makes it unlawful to distribute, even for free, unauthorised copies of music CDs, videos, DVDs, and other copyrighted digital media. The law's 28-year copyright protection length has steadily increased since 1790. Copyright lasts for the lifetime of the author plus 70 years after death. To keep up with technology, Congress passed the Digital Millennium Copyright Act in 1998. This legislation empowered digital media owners to sue those who

[7] No Electronic Theft Act 1997

illegally copied, distributed, or decoded encrypted files. This provision also permitted copyright holders to demand that ISPs erase online material that violated their rights.

The RIAA changed its attack strategy in September 2003 (just before school began). The RIAA shifted its focus from file-sharing platforms like Napster to individuals who illegally copied recordings. Internet service providers provided the RIAA with the names of the accused (including universities). Anti-piracy teams from the RIAA also monitored KaZaA's network. Since 2003, the RIAA has organised over 25,000 lawsuits. The RIAA thought that their legal effort would dissuade people from downloading music. Reports of lawsuits against minors and inaccurate names prompted outrage. Some questioned the fairness and logic of suing music fans, the industry's primary target demographic. In 2007, a civil jury found a mother of two guilties of violating copyright restrictions by spreading 24 songs on KaZaA. The judges gave each song $222,000, for a total of $9,250. The legal limit in the United States is $750-$150,000 per piece of unauthorised music. Online piracy of music, movies and other digital content is widespread in the United States and across the globe.

So far, the music, film, and software industries have sued non-profit P2P file sharers. The United States Department of Justice investigates and prosecutes black-market businesses that offer bootleg digital products. To apprehend digital thieves, the FBI collaborates with US and foreign law enforcement. A federal court sentenced a man to almost a year in prison and a $120,000 fine in 2004 for illegally duplicating and selling 11,000 live musical recordings. Criminal prosecutions are uncommon. Over a third of all music albums sold throughout the world are pirated. 90% of CDs and DVDs in China are counterfeit. The United States government has accused China of failing to enforce international copyright norms.

## FINDINGS AND SUGGESTIONS

*These are the key findings are listed below*:

- The data collected in so many ways did provide the government and victims to look in the right direction & to dig out a way to solve this problem when Digital Millenium Copyright Act was passed and when Stop Online Piracy Act (SOPA) bill[8] was introduced

[8] Stop Online Piracy Act Bill 2011

in 2011. If this data was never collected, then there would be many movies, games, songs, etc. That would have gone down the drain since there would be numerous piracy sites and ways that were either brought down or banned or given an injunction.

- The most important detail was that there are not enough details on the impacts of piracy on the entertainment industry in the US, the data that had been surveyed each year is insufficient because there is no efficient method to track down how much is lost due to piracy and only collected by surveys conducted which is not a credible source of information.
- The outcomes of piracy do not only affect the financial side of the US economy and that is mostly missing in the above literature — the social mindset, social & employment growth, and a talk for legal framework not just to punish the ones who have committed piracy but to also stop it in the first place. More than 50% percent of people's mindset is fine with pirating the content or consuming it and the consumers & piraters both know piracy is a crime but they do not deem it so. The employment rate is an important factor and it sure is discussed in the research paper but not given the focus. There are laws determining punishments for those convicted of piracy but there are no mechanisms or laws from stopping it in the first place.

*There are some measures that may be suggested as per the findings*:

- The problem is not just that people pirate copyrighted content and consume but it is also not considered wrong in most cases and any act that is not considered wrong by the mindset of the people, there will always be a reason for them to justify themselves and not consider themselves guilty. So, there should be a program or class in the US that should be conducted from the basic level in the basic language moving up the ladder to explain to people how exponentially it is hurting their entertainment industry and economy so that they at least start considering this wrong and think before committing this crime.
- Just as said before, there are no mechanisms in the US for piracy to not happen in the first place, and even if the measures are being taken then they are not in the right direction because, piracy happens and it does not usually start from the outside of the bubble but

inside. Netflix has an excellent mechanism that stops users to take screenshots or screen records while streaming and it blackens the screen so that no pictorial content can be pirated.

- There is no specific body to look over and collect data on piracy to supervise and control it. As it may seem like a part of copyright violation but piracy has now developed to a level that there needs to be a body in the US to look over, collect data on piracy, and control it and it is important to not let piracy hurt US Entertainment Industry & economy at a such exponential level.
- Continue to pursue cyber pirates and the file-sharing networks that support them. The current approach of the major media firms is to sue users of peer-to-peer file-sharing networks. They are only able to suit a tiny percentage of those who download copyrighted music and other material. However, the exposure may cause others to reconsider accepting the risk of having to pay thousands of dollars for "free" music and movies. Defeating file-sharing networks like KaZaA is difficult since they often operate from other nations.

**CONCLUSION**

Piracy had been a nightmare to all the creators for decades and the data stated in all the literature above proves that. There has been research, surveys, data collection, legal proceedings, and law-making all revolving around the problem of piracy and it is still going on. US Entertainment & Copyright Industry is deeply affected due to piracy further leading to exponential impacts on the US economy's Gross Domestic Product and employment rate. Though the pace is slow in our victory against piracy it is not stagnant. Before the problem of piracy was not taken seriously by consumers but now since there are apps offering streaming services and people understand the cruel impacts of piracy had now increased the likelihood of not consuming pirated content even though figures are all-time high but on the brighter side there are also figures rising standing against piracy. It is a long war but battles are now starting to sway on our side, it will take time but as it is moving, piracy will no longer be a threat to the US entertainment industry or economy in long run.