

Meta Description: On December 21, 2020, the US Congress passed the long awaited coronavirus relief and government spending bill, approving a mammoth \$2 trillion for disbursement. But ensconced deep within the 5,000-page legislation were a few copyright-related provisions most didn't see coming.

Congress Includes Surprise Provision in COVID Relief Bill - Makes Illegal For-Profit Streaming a Felony

On December 21, 2020, the US Congress [passed](#) the long awaited coronavirus relief and government spending bill, approving a mammoth \$2 trillion for disbursement. But ensconced deep within the 5,000-page legislation were a few copyright-related provisions most didn't see coming.

As part of the spending package, Congress passed the Protecting Lawful Streaming Act 2020, led by Senators Thom Tillis and Patrick Leahy. The Act makes illegal streaming of copyrighted works a felony, including jail terms that may rise up to 5 years for an initial offense, and 10 years for a repeat offense.

Understandably, news of the enactment was met with discomfort by streamers, both casual and professional. Currently, streaming is arguably the most popular way through which people distribute and consume content via the internet. And considering the murky waters of copyright ownership and DMCA activities, we can see why streamers, especially YouTubers and [Twitch users](#), did a double take.

However, the sponsors of the Act [have taken pains to clarify](#) that the new measures are specifically targeted at those who willfully and illegally stream copyrighted content for commercial purposes. Despite this, it makes sense to understand exactly what the Act does, the scope of the changes included, and who may be affected by the new measures introduced by Congress.

The problem of illegal streaming

First, it's important to understand the context that is considered to have made the Act necessary, and how it addresses these problems. With the rise of content giants such as Netflix, YouTube, and the like, streaming has become a very important gateway to creative content around the internet. But as experts also point out, streaming has provided lucrative opportunities for digital piracy, and this is costing the US dearly.

Reports [cited by Senator Tillis](#) suggest that digital video piracy costs US businesses nearly \$30 billion yearly, and the US Copyright Office agrees. In a response to the senator's request for policy input from the agency, the Copyright Office stated that



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digital piracy and illegal streaming result in lost revenues of between \$30-\$71 billion every year.

Although current federal laws exist that sufficiently penalize violation of copyright in protected works, it was argued that these laws are not consistent across board. Currently, US federal law makes unauthorized distribution and publication of copyrighted works a felony. Acts that may fall here include downloading copyrighted content without permission and/or distributing that content to others, or enabling these.

But as it relates to public performance infringement, the highest punishment under the law treats the offense as a misdemeanor. Streaming arguably falls more within the right of public performance, since consumers only view the content without necessarily having the ability or authorization to collect or produce copies.

Felony offenses are punished with jail terms of 1 year or more, and substantial fines. Misdemeanor offenses attract jail terms of less than 1 year, and lower fines. Therefore, the reasoning is that the law does not provide comprehensive enforcement tools against illegal streaming, since anyone charged faces potentially less strict penalties. Enter, the Protecting Lawful Streaming Act.

Scope of the Protecting Lawful Streaming Act

The Act was first introduced into the Senate in July 2019. Under its provisions, large-scale businesses that pirate copyrighted streams for profit will face stiffer punishment than was available under previous laws. The Act specifically states that it is unlawful to “willfully, and for purposes of commercial advantage or private financial gain”, to offer or provide illegal streams that are:

- Primarily designed or provided to publically perform copyrighted works via a “digital transmission” without proper authority;
- Have no “commercially significant purpose or use” apart from public performance of copyrighted works via a digital transmission, without proper authority; or
- Intentionally marketed to facilitate the public performance of copyrighted works via a digital transmission without proper authority.

Anyone who violates these provisions faces up to 3 years in jail. Where the offense concerns a work “being prepared for commercial public performance”, the punishment is up to 5 years in jail. These includes works which have an expectation of commercial public performance, and were not publicly available at the time of the offense. Repeat offenses will attract up to 10 years’ imprisonment.

Who will the Act affect?

Clearly, effort has been made to avoid the consequence that people who access pirated content will be caught up in these provisions. According to the sponsors,



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“The Protecting Lawful Streaming Act will apply only to commercial, for-profit streaming piracy services. The law will not sweep in normal practices by online service providers, good faith business disputes, noncommercial activities, or in any way impact individuals who access pirated streams or unwittingly stream unauthorized copies of copyrighted works. Individuals who might use pirate streaming services will not be affected.”

So, it's clear that the focus of the Act is those who make illegal streams available, and even in this regard, it is important to clarify the likely extent of the impact. The goal seems to be to deter the most egregious violations of the copyright laws. This means, while the Act appears to performance of any copyrighted content via streams (including video games), the focus may be more on sophisticated setups that pirate content like one-off events, latest movies, and protected music.

Despite this, you should know that the Act does not necessarily distinguish between these. Neither does it set a dollar amount for the violation, meaning there's no financial threshold for liability - any applicable violation may be prosecuted. But we may not really expect enforcement to go against small-scale isolated incidences, unless the authorities are in a really bad mood.

Does the bill solve the problem of illegal streaming?

It would be very optimistic to say that it does. While increasing the penalties for illegal streaming may help would-be infringers think twice about violating copyrights, it's not certain that it will put much of a dent in piracy efforts. Often, the important tradeoff for these individuals is the potential reward, compared to the risk (\$30 billion is a lot of money).

As a result, so long as there is a market for pirated content, there will always be those who believe the risk/reward balance favors them. Perhaps, this means the better solution may be to look more towards targeting the roots of piracy by liberalizing access. If more people have access to legitimate streams at affordable prices (across the social spectrum), or if there are fewer barriers to accessing these streams, then there may be less of a market for illegal streams.

Regardless, it's clear the new measure has broad-based support. The National Association of Broadcasters has said that it “strongly supports” the Act, and Public Knowledge, a consumer advocacy group, expressed their appreciation for the law and how it “prevent[s] risk to end users and legitimate streamers and streaming platforms.”



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