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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

Via Electronic Transmission

December 10, 2019

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons:

We write to you today because we are increasingly concerned about the overall harm to the economy caused by illicit streaming and the risk to unsuspecting American consumers who don't realize that by clicking a link for an illicit streaming service they are putting their personal information at risk. Hackers are enticing American consumers with the promise of "free" or cheap content, but at the cost of illicit access to consumer devices and networks. Illicit streaming also has a substantial negative impact on the creative industries in America. We are very concerned about this problem and welcome your input on ways to ensure Americans are better informed about these risks and how to avoid them.

On May 2, 2019, the Federal Trade Commission (FTC) published a blog post titled "Malware from illegal video streaming apps: What to know."¹ This post alerted American consumers about the dangers of illicit streaming and malware including theft of credit card information and log in credentials for banks and e-commerce sites, the sale of these credentials to hackers, and the use of infected computers to commit crimes. We are encouraged by your attention to this issue. However, this seems to be the only public notice on the serious consumer safety risks posed by illicit streaming websites. We believe this issue calls for more than a blog post.

Content creation and digital streaming services are a cornerstone of the American creative economy. There are approximately 250 million global subscribers currently using streaming services.² As the legal market for streaming services continues to expand, an emerging threat is developing from the illegal market for streaming services. Digital pirates offer free content as bait to consumers, and then go on to hack into consumers' computers and networks. Once hackers have gained access to consumer computers and networks, they have the ability to engage in fraud schemes of varying impact.

¹ FTC Blog Post - <https://www.consumer.ftc.gov/blog/2019/05/malware-illegal-video-streaming-apps-what-know>

² "Fishing in the Piracy Stream: How the Dark Web of Entertainment is Exposing Consumers to Harm", Digital Citizens Alliance, April 2019, p. 6

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According to a report by the White House Council of Economic Advisers, the FBI's Internet Crime Complaint Center "received nearly 300,000 individual complaints of cybercrimes, with an estimated total cost in excess of \$1.3 billion."³ Recently, the Department of Justice (DOJ) arrested eight individuals who allegedly operated illicit streaming sites that claimed to have more content than Netflix, Hulu, Vudu, and Amazon Prime Video.⁴ At least one of the sites operated by these individuals obtained the infringing television episodes from pirate websites such as The Pirate Bay, and Torrentz.⁵

Through these illicit sites, hackers are able to gain access either through hardware or through online websites and apps. Hardware generally comes in two forms: Kodi boxes or "jail-broken" devices which can be purchased online. While consumers may unintentionally find an illicit streaming site just by searching a specific movie or book in their preferred search engine.

Kodi boxes are devices which been pre-loaded with the open-source software Kodi and associated apps. Alternately, consumers can purchase mainstream devices such as the Apple TV, Amazon Fire Stick, or Google Chromecast which have been jail-broken. These devices have had their internal software altered to give consumers access to apps which offer "free" illegal streaming services.

Hackers will frequently use this "free" content as a way to install malware on the consumer's computer or network. When the consumer plugs one of these devices into their home network, they risk that any malware spread to the full network and potentially gain access to other connected devices. The Digital Citizens Alliance reports that almost 10% of homes in North America use a Kodi device, and that almost 70% of Kodi boxes are loaded with apps offering access to unlicensed content and exposing the consumer to significant risk.⁶

Illicit websites make it possible for consumers to illegally pirate many different forms of copyrighted content. For example, the book industry suffers from mass ebook piracy. As with audiovisual content, malicious actors lure consumers to malicious websites with promises of free or subscription-based unlimited "ebooks." Despite the book industry expending extensive resources to stop pirating each year it is still pervasive. According to Digimarc, the leading provider of anti-piracy services to publishers, approximately 70% of all malicious links it tracked in 2018 were phishing sites. Often as a pre-requisite to access, these phishing sites ask consumers to input personal information such as credit card numbers, names, addresses, and e-mail accounts.

Other illicit websites bait consumers into clicking on an "infected" link or downloading an infected app or program. These infected links expose unsuspecting consumers to the same risks as streaming

³ "The Cost of Malicious Cyber Activity to the U.S. Economy," The White House Council of Economic Advisers, February 2018, p. 36; <https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf>

⁴ Lauren Berg, *Illegal Streaming Services Dwarfed Netflix and Hulu, Feds Say*, Law360, August 27, 2019, <https://www.law360.com/articles/1193192/illegal-streaming-services-dwarfed-netflix-and-hulu-feds-say>.

⁵ *Id.*

⁶ "The Cost of Malicious Cyber Activity to the U.S. Economy" at 5.

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devices. Once consumers have offered access to hackers, there are several types of malware, which hackers employ to achieve their illegal ends. These include Trojans, Remote Access Trojans (RATs), Adware, Botnet, and Exploit. Illicit websites are search-engine-optimized to appear higher in search engine results, and use sophisticated algorithms to cull book covers, blurbs, and other book identifiers from legitimate websites to give the appearance of legitimacy.

These illicit schemes targeting American consumers put unsuspecting consumers at substantial risk at a time when data privacy is a growing concern. According to the White House Council of Economic Advisers, "malicious cyber activity cost the U.S. economy between \$57 billion and \$109 billion in 2016."⁷ It is critically important that we find ways to crack down on this growing form of crime so that we can protect the public from this criminal activity. Given the significant economic and security implications related to these issues, we ask that—by no later than January 20, 2020—you answer the following questions:

1. What risks does illicit streaming pose to American consumers?
2. What is the FTC currently doing to make consumers aware of the serious risks to consumer privacy and safety posed by illicit streaming? Does the FTC anticipate doing more blog posts or other advocacy to better inform consumers of the risks posed by illicit streaming?
3. Are there any administrative, regulatory, or enforcement actions the FTC can take to address this issue? If not, why not?
4. Does the FTC need additional tools, resources, or legal authorities to combat this issue?
5. What opportunities are there for the FTC to form partnerships with content creators to address this risk?
6. What could Congress do to raise awareness or mitigate the risks posed to American consumers by illicit streaming?

We look forward to your answers to these questions. We believe they are important to addressing the significant economic risks content theft and malware poses to the American economy. As always, we are committed to working with you to protect American consumers and our nation's innovation economy. If you have any questions, please do not hesitate to contact either Brad Watts with Senator Tillis at brad_watts@tillis.senate.gov, Jeff Hantson with Senator Hirono at Jeff_Hantson@hirono.senate.gov, or Ellen McLaren with Representative Deutch at Ellen.McLaren@mail.house.gov.

Sincerely,



Thom Tillis
United States Senator



Mazie K. Hirono
United States Senator

⁷ "The Cost of Malicious Cyber Activity to the U.S. Economy," p. 1.

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Theodore E. Deutch
United States Representative