



**The Haim Striks
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**RECONSIDERING CRIMINAL ENFORCEMENT OF COPYRIGHT
AND THE RISE OF CIVIL ENFORCEMENT IN THE DIGITAL AGE**

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C-IP2 Conference

September 23, 2022



AGENDA

Background

Copyright Crisis

Centrality of Enforcement

Criminal Enforcement

Challenges to Criminal Enforcement

Expansion of Legal Frameworks

Enforcement in Practice

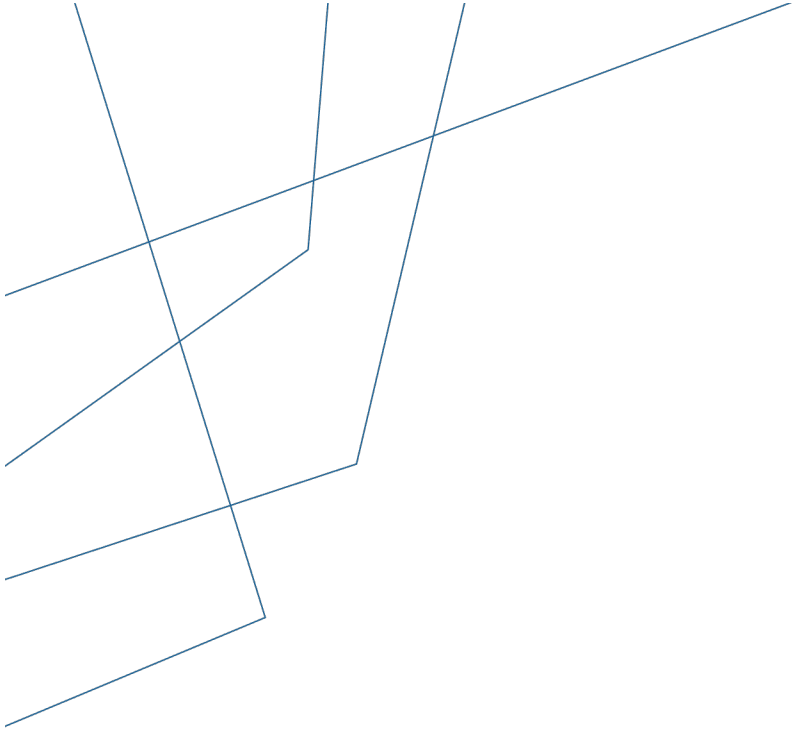
The Rise of Civil Enforcement

Expansion of Civil Enforcement Frameworks

Algorithmic N&T and Statutory Damages in Practice

A Powerful Package

Reconsidering Criminal Enforcement



BACKGROUND



COPYRIGHT CRISIS

COPYRIGHT LAW IS IN CRISIS:

- Accused of **not** promoting a **fair, balanced** and **efficient** outcome.
- Copyright “wars” between right-holders, intermediaries and users.



COPYRIGHT CRISIS

WAYS TO EASE THE CRISIS:

➤ **Redefinition of rights**

➤ **A remedial path**



Enforcement as a key factor



**CRIMINAL
ENFORCEMENT**

CHALLENGES TO CRIMINAL ENFORCEMENT

Challenges to Criminalization of **IPR** Infringement

- Intangible assets – not as intuitive as theft of tangible assets
- Moral wrongfulness is not consensual
- Damages are difficult to assess

Challenges to Criminalization of **Copyright** Infringement

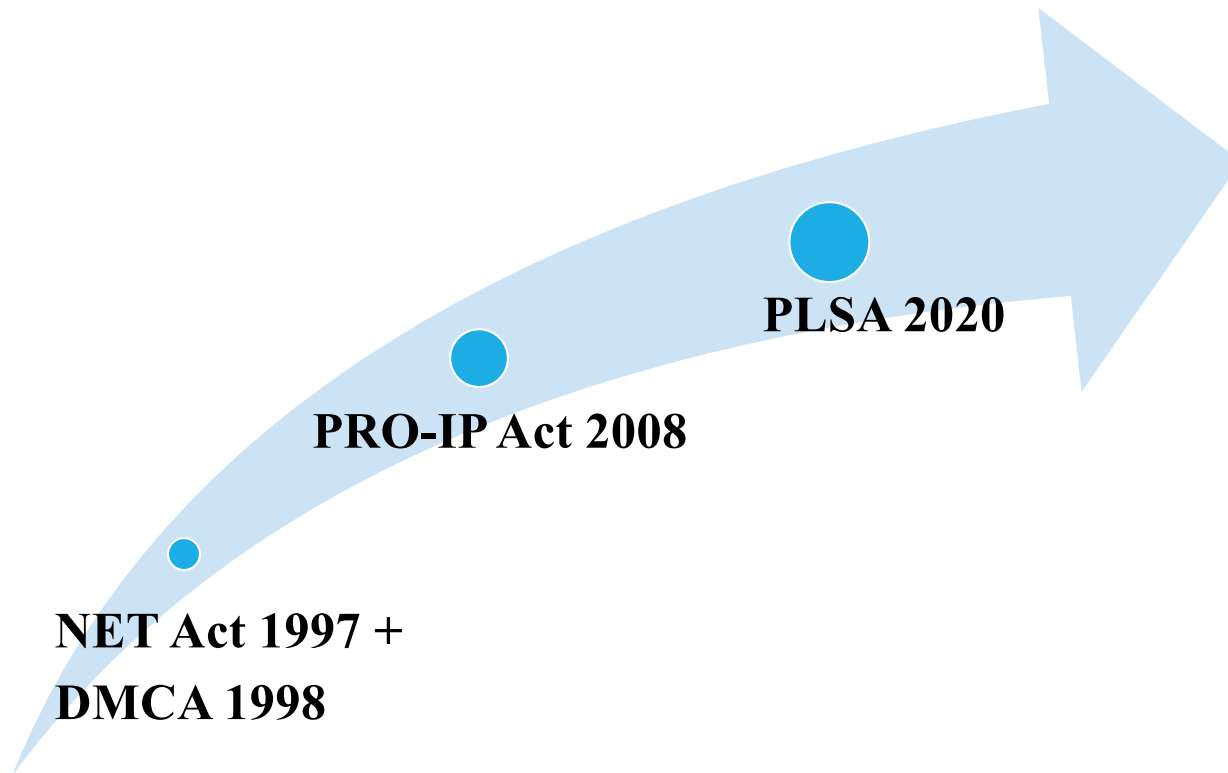
- Expressive assets – harder to perceive infringement as theft
- Copyright uncertainties regarding permitted uses foster public perception that infringement is not morally wrong
- Chilling effect on freedom of speech



Criminal Offence



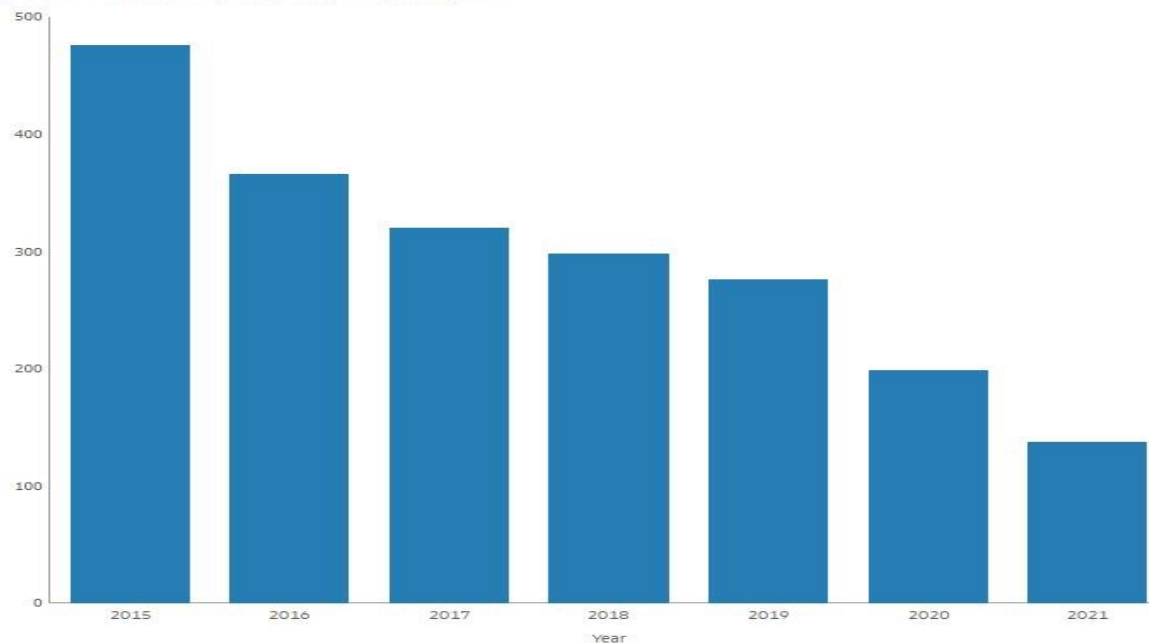
EXPANSION OF CRIMINAL MEASURES



CRIMINAL ENFORCEMENT IN PRACTICE

Number of Offenders Over Time

Fiscal Year 2015,2016,2017,2018,2019,2020,2021



The figure includes the 2,069 cases reported to the Commission. Cases missing information necessary to complete the analysis were excluded from this figure.

FILTER:

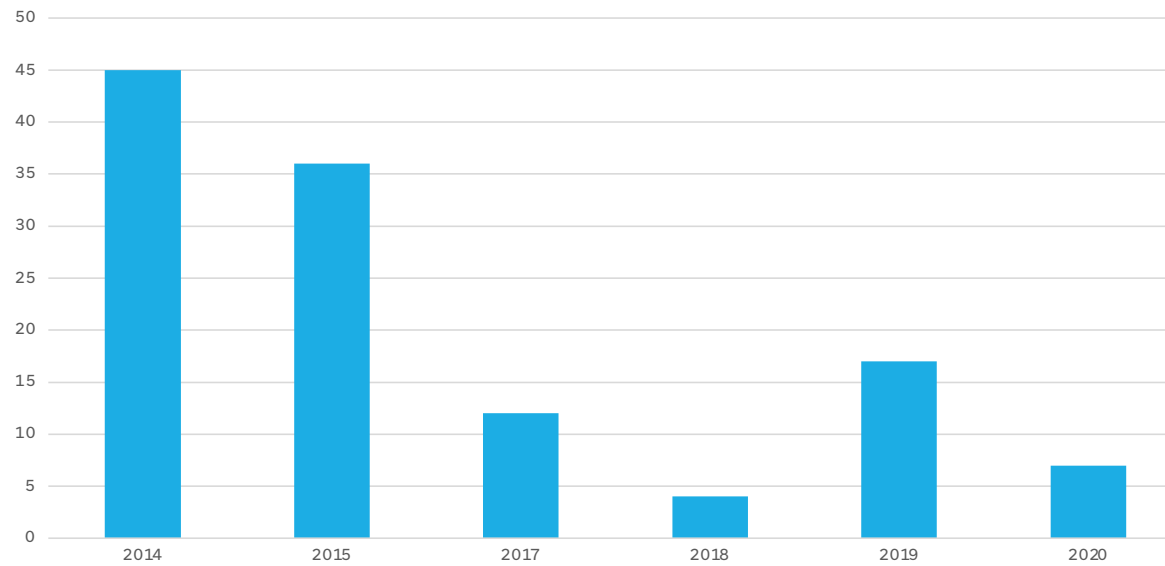
Fiscal Year: 2015,2016,2017,2018,2019,2020,2021; Circuit: All; State: All; District: All; Race: All; Gender: All; Age: All; Citizenship: All; Education: All; Crime Type: Forgery/Counter/Copyright; Guideline: All; Drug Type: All; Criminal History: All; Career Offender Status: All

Source: <https://ida.uscc.gov/analytics/saw.dll?Dashboard>



CRIMINAL ENFORCEMENT IN PRACTICE

Criminal Charges in Copyright Cases - 2014-2020



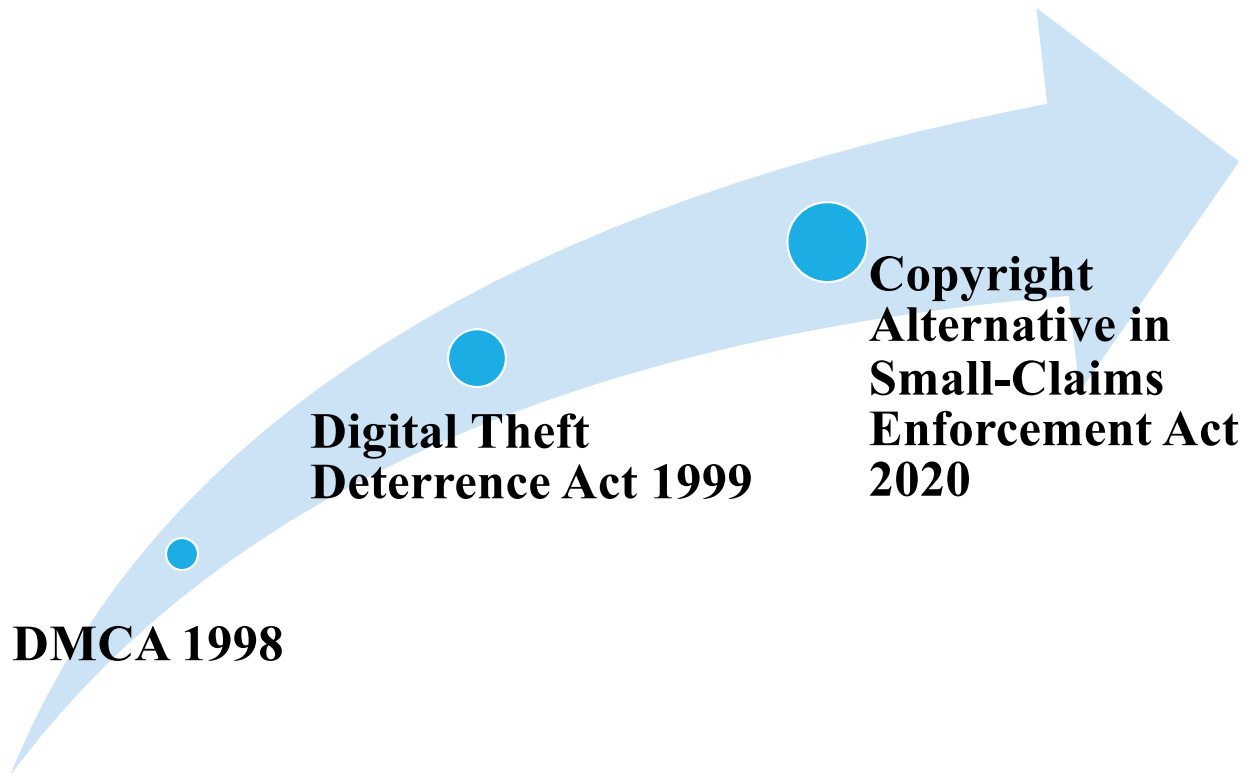
Source: United States Department of Justice PRO IP Act Annual Reports 2014-2020



**THE RISE OF
CIVIL ENFORCEMENT FRAMEWORKS**



EXPANSION OF CIVIL ENFORCEMENT FRAMEWORKS



CIVIL ENFORCEMENT IN PRACTICE

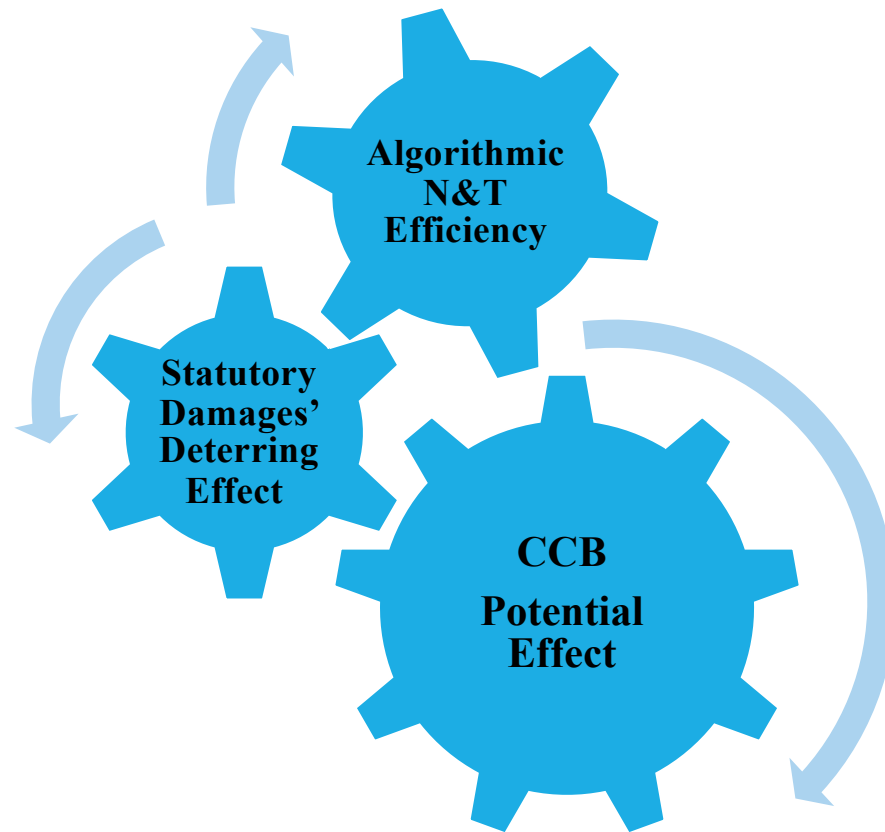
DMCA § 512 Notice & Takedown

- **Algorithmic N&T proven to be effective (e.g. YouTube Content ID)**
- **Mandatory proactive monitoring and takedown framework in the EU (§ 17 CSM Directive)**
- **Controversial due to over-blocking**

Statutory Damages

- **Proven to be an effective enforcement measure that serves as a deterrent**
- **Functions primarily as a punitive mechanism**
- **Controversial due to over-deterrence**

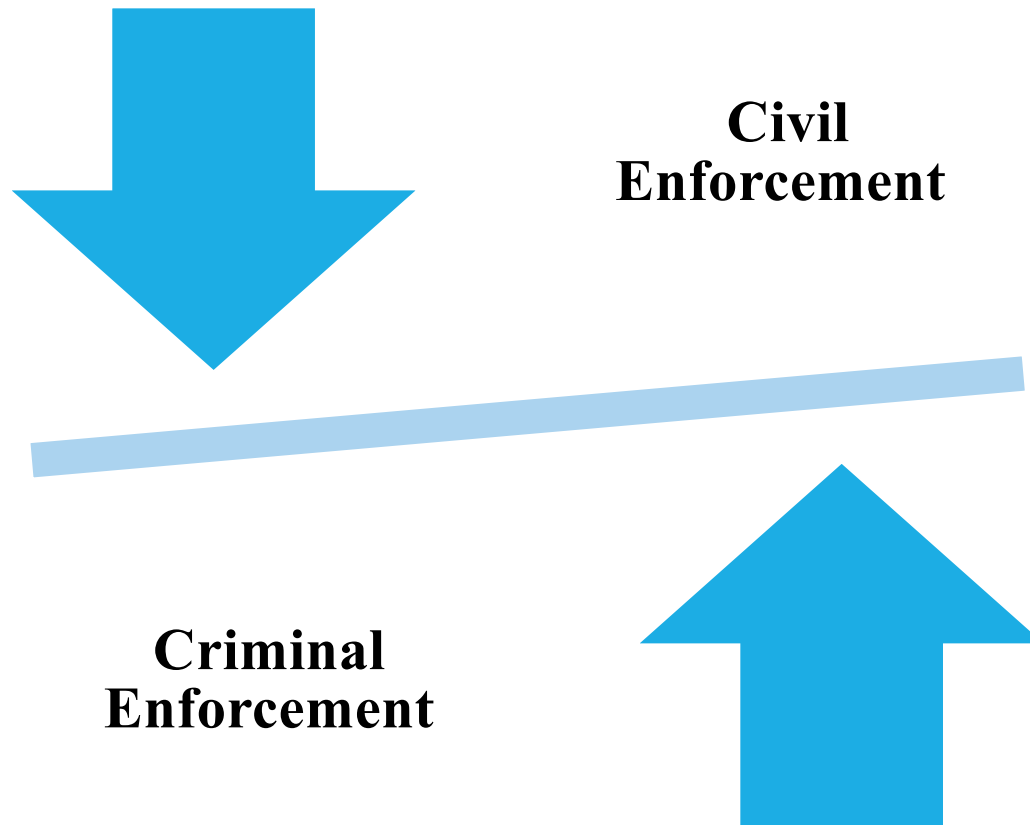
POWERFUL SYNERGISTIC CIVIL ENFORCEMENT PACKAGE



The top left corner of the page features an abstract graphic consisting of several thin, light blue lines. These lines intersect to form a series of overlapping, irregular shapes that resemble a stylized, fragmented letter 'E' or a set of parallel paths that have been slightly offset from each other. The lines are thin and light blue, contrasting with the white background.

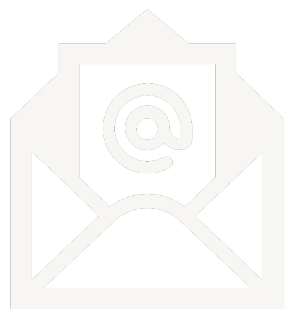
**RECONSIDERING
CRIMINAL ENFORCEMENT**

IS CRIMINAL ENFORCEMENT JUSTIFIED?

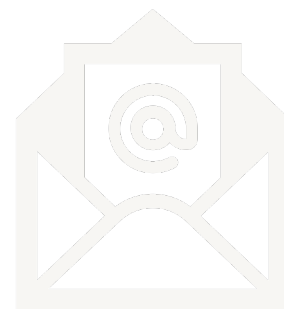




THANK YOU



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