



# MOTION PICTURE ASSOCIATION

## Opposition to HB 985 (Amprey)

The Motion Picture Association<sup>1</sup> (“MPA”) respectfully opposes HB 985 (Amprey), which would create liability for video streaming services for transmitting a commercial advertisement that is louder than the video content that accompanies the ad.

HB 985 seeks to impose standards for loudness that apply to the broadcast and cable streaming ecosystems, which are markedly different. The CALM Act codified standards for the loudness of advertising on linear broadcast and cable networks, which had been voluntarily established by the Advanced Television System Committee, a group of professional and industry stakeholders. Those stakeholders engaged in consultations to reach consensus on voluntary standards that became a “best practices” guide for the loudness of advertisements aired on broadcast and cable networks. Eventually, those standards were codified in the CALM Act. Those standards, however, are not practical for the streaming ecosystem, which is comprised of numerous entities and parties, since ad placement in the streaming ecosystem operates differently from the linear broadcast and cable environment.

Advertising that appears on linear broadcast and cable networks is a direct transaction between the advertiser (or advertising agency) and the network or local TV station. The network, station, or cable provider orders slots on programming at specified times for purchase by the advertiser, and the advertiser, network, station, or cable provider knows when and where the commercial will appear. And, notably, all viewers see the same commercials on a particular program airing at a set time.

In the streaming environment, some advertisements are sold directly by a streaming service to an advertiser to be placed during a specific program. However, much of the advertising that is placed in streaming programs comes from third-party intermediaries who have ready-to-watch commercials sourced from thousands of advertisers. Those advertisements are paired with programming via auctions, and the advertising is placed within the programming when the viewer chooses the program to watch on that streaming service.

When choosing a program, the viewer is essentially selecting a digital file, and the advertising is encoded via dynamic ad insertion with that file in real time. Most significantly, viewers who may be watching the same program are likely to be seeing different advertisements. Neither the production of the commercial nor the encoding within the program is controlled by the streaming service.

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<sup>1</sup> The MPA’s member studios are Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; Warner Bros. Entertainment Inc., and Amazon Studios LLC.



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Further, streaming services do not control the means by which viewers receive their programming. Viewers have a wide variety of devices, from tablets and smartphones to televisions, and a myriad of services by which to enjoy streaming programming on their various devices, whether a Microsoft Tablet, Apple TV, or Roku. Streaming services have no ability to regulate these devices or the services that supply content to those devices, on which viewers watch their shows.

With such a complex ecosystem, a private right of action subjecting streaming services to numerous lawsuits over ad volumes is not appropriate and would ultimately not be beneficial to consumers. At a minimum, HB 985 should be amended to specify that any enforcement should rest solely with the Attorney General, as well as clarifying what constitutes a violation and providing streaming platforms with an opportunity to cure alleged violations.

For these reasons, the MPA is opposed to HB 985. We are available to answer any questions and discuss our concerns in more detail.

Sincerely,

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