

DEPARTMENT OF COMMERCE

Office of the Secretary

United States Patent and Trademark Office

National Telecommunications and Information Administration

[Docket No. 100910448-0448-01]

RIN 0660-XA19

Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy

AGENCY: Office of the Secretary, U.S. Department of Commerce; Patent and Trademark Office, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Department of Commerce’s Internet Policy Task Force is conducting a comprehensive review of the relationship between the availability and protection of online copyrighted works and innovation in the Internet economy. The Department, the United States Patent and Trademark Office (USPTO), and the National Telecommunications and Information Administration (NTIA) seek public comment from all interested stakeholders, including rights holders, Internet service providers, and consumers on the challenges of protecting copyrighted works online and the relationship between copyright law and innovation in the Internet economy. After analyzing the comments submitted in response to this Notice, the Internet Policy Task Force intends to issue a report that will contribute to the Administration’s domestic policy and international engagement in the area of online copyright protection and innovation.

DATES: Comments are due on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties are encouraged to file comments electronically by e-mail to copyright-noi-2010@ntia.doc.gov. Submissions should be in one of the following formats: HTML, ASCII, Word, rtf, or pdf. Paper comments can be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, Room 4725, 1401 Constitution Avenue, NW, Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including “Overnight” or “Express Mail”) is subject to delivery delays of up to two weeks due to mail security procedures. Paper submissions should also include a CD or DVD in Word, WordPerfect, or pdf format. CDs or DVDs should be labeled with the name and organizational

affiliation of the filer, and the name of the word processing program used to create the document. Comments filed in response to this notice will be made available to the public on the Internet Policy Task Force web page at <http://www.ntia.doc.gov/internetpolicytaskforce>. For this reason, comments should not include confidential, proprietary, or business sensitive information.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact: Dennis Amari, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4725, Washington DC 20230, telephone (202) 482-1880; or Michael Shapiro, Office of External Affairs, United States Patent and Trademark Office, U.S. Department of Commerce, Madison Building, 401 Dulany Street, Alexandria, VA 22314, telephone (571) 272-9300; or send an email to copyright-noi-2010@ntia.doc.gov. Please direct media inquiries to NTIA's Office of Public Affairs at (202) 482-7002; or USPTO's Office of Public Affairs at (572) 272-8400.

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of the Internet to U.S. prosperity, education, and political and cultural life, the Department has made it a top priority to ensure that the Internet remains open for innovation. The Department has assembled an Internet Policy Task Force whose mission is to identify leading public policy and operational challenges in the Internet environment. The Task Force leverages expertise across many bureaus at the Department, including those responsible for domestic and international information and communications technology policy, international trade, cybersecurity standards and best practices, intellectual property, business advocacy, and export control. This is one in a series of inquiries from the Task Force. The Task Force is conducting similar reviews of information privacy,¹ cybersecurity,² and the global free flow of information goods and services. The Task Force may explore additional areas in the future.

Background: Prior to releasing this Notice of Inquiry, the Task Force held listening sessions with a wide range of stakeholders to understand the current and most vexing questions related to online copyright protection as well as the broader impact of content issues on innovation in the Internet economy. The Task Force also convened a public meeting on July 1, 2010, to air these issues further.³

Over the course of this dialogue, the Task Force has identified a dual public policy imperative – to combat online copyright infringement more effectively and to sustain innovative uses of information and information technology. By way of this Notice and a follow-on report, the Task Force seeks to identify policies that will: 1) increase benefits for rights holders of creative works accessible online but not for those who infringe on those rights; 2) maintain robust information flows that facilitate innovation and growth of the Internet economy; and 3) at the same time,

¹ See Notice of Inquiry, Information Privacy and Innovation in the Internet Economy, 75 Fed. Reg. 21,226 (Apr. 23, 2010). This notice and all documents related to the Task Force initiative are available at <http://www.ntia.doc.gov/internetpolicytaskforce.gov>.

² See Notice of Inquiry, Cybersecurity, Innovation and the Internet Economy, 75 Fed. Reg. 44,216 (July 28, 2010).

³ Notice of Public Meeting, Copyright Policy, Creativity, and Innovation in the Internet Economy, 75 Fed. Reg. 33,577 (June 14, 2010). An archival webcast of the public meeting can be found on the Internet Policy Task Force web page at: <http://www.ntia.doc.gov/internetpolicytaskforce/copyright/webcast.html>.

safeguard end-user interests in freedom of expression, due process, and privacy.⁴ The report will evaluate current challenges to protecting online copyrighted works and to sustaining robust information flows, and it will analyze various approaches to meet those challenges. The Task Force is hopeful that the dialogue launched here and the research conducted pursuant to this inquiry will contribute to Administration-wide policy positions and to a global consensus to foster creativity and innovation online. This review is being coordinated with the office of the Intellectual Property Enforcement Coordinator (IPEC) in the Office of Management and Budget, Executive Office of the President, and other components of the Executive Office of the President.

E-Commerce and Copyrighted Works: E-commerce and investment in information systems continue to create new jobs in the Internet economy and to contribute to the nation's economic recovery.⁵ An important component of the growth in e-commerce is the rapid increase in the sale of digital content across the creative industries.⁶ For example, sales of digital music downloads in the United States were estimated to reach \$3.1 billion in 2009, a 19 percent increase above 2008 sales.⁷ Likewise, revenues derived from the sale of online videos were estimated to reach \$1.2 billion in 2008, and are expected to climb to \$4.5 billion by 2012.⁸ In 2009, revenues from the sale of e-books were estimated at \$313 million, 177 percent above sales from the previous year and, for the first time ever, exceeding revenues from the sale of audio-books.⁹ The popularity of online games is also on the rise, with a forecast to double 2009's \$2.8 billion in online sales by 2015.¹⁰ As these data suggest, the availability and consumption of a wide range of lawful online creative works are increasing rapidly and contribute an increasingly important component of our nation's e-commerce growth.

There are many reasons for the success that some innovators have had in selling online digital content. For one, the open end-to-end architecture of the Internet enables innovation at the "edges" of the network, making possible the introduction of such content services, the

⁴ See e.g., Remarks of Gary Locke, Secretary of Commerce, Copyright Policy in the Internet Economy Symposium, July 1, 2010, [available at http://www.commerce.gov/news/secretary-speeches/2010/07/01/remarks-copyright-policy-internet-economy-symposium](http://www.commerce.gov/news/secretary-speeches/2010/07/01/remarks-copyright-policy-internet-economy-symposium); and, Remarks of Lawrence E. Strickling, Assistant Secretary for Communications and Information, Copyright Policy in the Internet Economy Symposium, July 1, 2010, [available at http://www.ntia.doc.gov/presentations/2010/CopyrightSymposium_Remarks_07012010.html](http://www.ntia.doc.gov/presentations/2010/CopyrightSymposium_Remarks_07012010.html).

⁵ Remarks of Gary Locke, Secretary of Commerce, Privacy and Innovation Symposium, May 7, 2010, <http://www.commerce.gov/news/secretary-speeches/2010/05/07/remarks-privacy-and-innovation-symposium>.

⁶ Organization for Economic Co-Operation and Development (OECD), OECD Information Technology Outlook 2008, at 250 (2008). The fair use of copyrighted works is also believed to contribute to the Internet economy. See Computer and Communications Industry Association (CCIA), Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use, at 4, 8 (2010), <http://www.cciainet.org/CCIA/files/ccLibraryFiles/Filename/000000000354/fair-use-study-final.pdf>.

⁷ Joshua P. Friedlander, Recording Indus. Association of America (RIAA), *2009 Year-End Shipment Statistics*, [available at http://76.74.24.142/A200B8A7-6BBF-EF15-3038-582014919F78.pdf](http://76.74.24.142/A200B8A7-6BBF-EF15-3038-582014919F78.pdf).

⁸ Press Release, In-Stat, Explosive Growth Forecast in Online Video Market, Netflix Subscription Model Wins (Aug. 13, 2008), <http://www.instat.com/newmk.asp?ID=2373>.

⁹ Press Release, Association of American Publishers, AAP Reports Book Sales Estimated at \$23.9 Billion in 2009 (Apr. 7, 2010).

¹⁰ Press Release, Pike & Fischer, U.S. Online Game Subscribers to More than Double in Five Years, Pike & Fischer Projects (Jan. 28, 2010), <http://www.marketwise.com/press-release/US-Online-Game-Subscribers-to-More-Than-Double-in-Five-Years-Pike-Fischer-Projects-1109049.htm>.

development of new technologies and devices, and the opportunity to access distant markets. Thus, while traditional content formats and distribution channels have been disrupted, in part, by effects of the Internet on their markets and by the growing availability of content online, an increasing number of enterprises seem to be successfully adapting their business models or developing new ones, and leveraging the Internet's architecture for the distribution of creative works.

Second, the flow of content across the Internet is enabled by the carefully constructed balance of roles and responsibilities among stakeholders set forth in two key statutes. In 1996, Congress added Section 230 to the Communications Act of 1934. It grants Internet service providers, content hosting sites, and other so-called "Internet intermediaries" broad immunity from liability for all content created by third parties, as well as for actions taken in good faith to restrict access to or availability of objectionable online content posted by third-parties.¹¹ In the realm of copyright, Congress added Section 512 to the Copyright Act in 1997 via the Digital Millennium Copyright Act (DMCA). It fosters a balance of interests by enabling rights holders to enforce their rights against online infringers, while limiting the liability of Internet intermediaries for the infringing actions of their subscribers if they take certain steps aimed at combating infringement.¹² Both provisions of law are seen as having contributed significantly to expansion of the digital economy and both remain essential to promoting innovation and to protecting intellectual property online.

Despite the progress unleashed by the current policy framework, copyright infringement of works online remains a persistent and significant problem. Estimates of economic losses caused by online infringement to rights holders, the copyright industries, and the U.S. economy as a whole vary based on methodologies and assumptions used in such estimates, but are nonetheless substantial.¹³ In a word, thieves of online copyrighted works "unfairly devalue America's contribution, hinder our ability to grow our economy, compromise good, high-wage jobs for Americans, and endanger strong and prosperous communities."¹⁴

The prevalence of online copyright infringement is the primary motivation for the Task Force to seek an updated understanding of stakeholders' experiences under the current policy framework and to learn more about voluntary, cooperative efforts to address online infringement. The broader goal is to gain greater insight into the opportunities and challenges for innovation in the creative content sector of the Internet economy.

The Nexus Between Online Copyright Policy and the Department's Role: The Department has played an instrumental role in the development of policies that have helped digital commerce

¹¹ 47 U.S.C. § 230 (2006).

¹² 17 U.S.C. § 512 (2006).

¹³ See OECD, *The Economic Impact of Counterfeiting and Piracy* 71 (2008); U.S. Government Accountability Office, GAO-10-423, *Intellectual Property: Observations to Quantify the Economic Effects of Counterfeit and Pirated Goods* 15, 24-25 (2010), <http://gao.gov/new.items/d10423.pdf>. See also, 2010 Joint Strategic Plan on Intellectual Property Enforcement, Intellectual Property Enforcement Coordinator (Joint Strategic Plan) at 5 (June 2010), http://www.whitehouse.gov/omb/assets/intellectualproperty/intellectualproperty_strategic_plan.pdf (noting that "[t]hese thieves impose substantial costs.").

¹⁴ *Id.*

flourish. Included among these policies is explicit recognition of the legitimate rights and commercial expectations of those whose creation and distribution of digital works strengthen our economy, expand our exports, and create jobs in America. Our ongoing challenge and commitment is to align the flexibility needed for innovation in the Internet economy with effective means of protecting copyrighted works that are accessible online.

USPTO serves as the advisor to the President on national and international intellectual property policy issues.¹⁵ USPTO's attention to the protection of online copyrighted works began in 1993 when it chaired the Working Group on Intellectual Property Rights, one of the three working groups established by the White House Information Infrastructure Task Force. The Working Group examined and made recommendations to address copyright protection and other intellectual property rights in the context of digital interactive services.¹⁶ Subsequently, USPTO participated in negotiations on the two World Intellectual Property Organization (WIPO) treaties known as the "WIPO Internet Treaties"—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty—that established new standards for international protection of copyright and related rights in the digital age.¹⁷ USPTO played a key role in the enactment of the DMCA in the United States which included a new Section 512 of the Copyright Act and provisions implementing the WIPO Internet Treaties in the United States.¹⁸

NTIA serves as the President's principal advisor on telecommunications and information policy matters and pursues the adoption of policies that facilitate and contribute to the full development of competition, efficiency, and the free flow of commerce in domestic and international telecommunications markets.¹⁹ In this role, NTIA has been a lead contributor to the development of Internet policy in the Executive branch and played a key role in devising the first comprehensive Internet policy strategy, the *Framework for Global Electronic Commerce*, published by the White House Information Infrastructure Task Force in 1997. The Framework set forth five principles to guide government support for the evolution of Internet commerce and made a set of recommendations for international discussion to foster increased business and consumer confidence in the use of electronic networks for commerce.²⁰ Among its recommendations, the Framework acknowledged the imperative of protecting intellectual property rights in electronic commerce and identified adoption of the WIPO Internet Treaties as one of the Administration's top intellectual property policy objectives.²¹

¹⁵ American Inventors Protection Act of 1999, Pub. L. No. 106-113, app. I, § 4001, 113 Stat. 1501, 1501A-552 (1999) (amended 2002 and codified in scattered sections of title 35 of the U.S. Code).

¹⁶ Information Infrastructure Task Force, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* (1995), <http://www.uspto.gov/web/offices/com/doc/ipnii>.

¹⁷ U.S. Government Accountability Office, GAO-04-912, *Intellectual Property: U.S. Efforts have Contributed to Strengthened Laws Overseas, but Challenges Remain* 17 (2004), <http://www.gao.gov/new.items/d04912.pdf>.

¹⁸ Digital Millennium Copyright Act, Pub. L. No. 105-304, § 103, 112 Stat. 2860, 2863 (1998) (codified at 17 U.S.C. §§ 1201-1205 (2006)).

¹⁹ Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533 (codified in scattered section of titles 47, 28, and 15 of the U.S. Code).

²⁰ See President William J. Clinton and Vice President Albert Gore Jr., *Framework for Global Electronic Commerce* (1997), <http://clinton4.nara.gov/WH/New/Commerce/> (pagination not available).

²¹ *Id.*

Among the other Commerce Department bureaus engaged on intellectual property rights issues, the International Trade Administration (ITA) administers the Trade Agreements Program to monitor foreign country implementation of multilateral and bilateral trade agreements. This program also serves to identify access and other barriers to trade, including those related to intellectual property rights. Within ITA's Market Access and Compliance unit, the Office of Intellectual Property Rights investigates allegations of trade agreement violations and encourages policies by foreign governments to enhance and protect intellectual property rights for U.S. firms and artists. This office also develops trade programs and tools with other federal agencies to help U.S. businesses and citizens enforce and protect their intellectual property rights in foreign markets.

Across the federal government, the Department works closely with the Office of the U.S. Trade Representative (USTR) and other agencies to establish, on a bilateral and multilateral basis, workable treaty commitments and trade agreements that address intellectual property rights. For example, the Department collaborates with USTR in negotiations to establish the Anti-Counterfeiting Trade Agreement (ACTA), in the "Special 301" annual reviews of intellectual property protection and market access practices in foreign countries, and in negotiation and implementation of the intellectual property chapters of free trade agreements – all of which address online copyright issues in foreign jurisdictions. The Department also works with the Department of Justice to develop proportionate, deterrent penalties for commercial scale counterfeiting and piracy around the world. Additionally, the Department works with the National Intellectual Property Rights Coordination Center, led by U.S. Immigration and Customs Enforcement, to leverage resources, skills and authorities to provide a comprehensive U.S. Government enforcement response to intellectual property rights infringement. Through these and other work streams, the Department is committed to effective systems that protect intellectual property rights at home and abroad.

REQUEST FOR COMMENT:

The questions below are intended to assist in identifying issues relevant to the Department's Task Force and should not be construed as a limitation on the scope of comments parties may submit. Intellectual property law and policy affects almost every aspect of Internet content and technology. And, because the digital economy is intrinsically international in scope, most policy questions need to be understood within both a domestic and an international context. Therefore, in addressing these questions, commenters should identify what they consider lessons learned from other jurisdictions.

Comments that contain references, studies, research, and other empirical data that are not widely published should include copies of the referenced material with the submitted comments. Comments filed in response to this notice will be made available to the public on the Internet Policy Task Force web page at <http://www.ntia.doc.gov/internetpolicytaskforce>. For this reason, comments should not include confidential, proprietary, or business sensitive information.

1. Rights Holders: Protection and Detection Strategies for Online Infringement

During the listening sessions, the Task Force heard that online copyright infringement is depriving U.S. copyright owners of their rights and compensation, and causing substantial economic harm to the copyright industries, their employees, independent authors and artists, and the U.S. economy as a whole. The Task Force also heard that the use of peer-to-peer (P2P) file-sharing technology to engage in unauthorized distribution of copyrighted works is still a significant problem, but that other technologies, such as cyber lockers and streaming, are becoming increasingly prevalent as means for illegal online copying and distribution.²² Stakeholders indicated that in some cases, unauthorized distribution of copyrighted works over the Internet originates in other countries and that web sites facilitating online infringement have become more sophisticated in order to mislead consumers into believing they are legitimate.

To address the problem of online piracy, stakeholders rely on a number of technologies to detect infringing content on the Internet.²³ Stakeholders have also developed an array of online content services using various business models to offer consumers legitimate access to music, films and television programming, games, books, and other creative works. Partnerships among copyright owners and online service providers to distribute content are increasingly common. Still, rights holders continue to face challenges in detecting online infringement, in curbing infringement, and in attracting users to legitimate sources of copyrighted content.

What are stakeholders' experiences and what data collection has occurred related to trends in the technologies used to engage in online copyright piracy, and what is the prevalence of such piracy? What new studies have been conducted or are in-process to estimate the economic effects of this piracy? What assumptions are made in such studies on the substitution rates among the different forms of content? What technologies are currently used to detect or prevent online infringement and how effective are these technologies? What observations, if any, have been made as to patterns of online infringement as broadband Internet access has become more available? Is litigation an effective option for preventing Internet piracy? Consistent with free speech, due process, antitrust, and privacy concerns, what incentives could encourage use of detection technologies by online services providers, as well as assistance from payment service providers, to curb online copyright infringement?

What challenges have the creative industries experienced in developing new business models to offer content online and, in the process, to counteract infringing Internet downloads and streaming? Can commenters make any generalizations about the online business models that are most likely to succeed in the 21st century, as well as the technological and policy decisions that might help creators earn a return for their efforts? (Again, keeping in mind free speech, due process and privacy concerns.) How can government policy or intellectual property laws

²² See Cisco, *Visual Networking Index: Forecast and Methodology, 2009-2014*, at 1-2 (2010), http://www.cisco.com/en/US/solutions/collatetal/ns341/ns525/nr537/ns705/ns827/white_paper_c11-481360.pdf (forecasting a higher amount of Internet video traffic than P2P traffic by the end of 2010, the first time that P2P will not be the largest type of Internet traffic since 2000; but also forecasting continued growth in the overall volume of P2P traffic).

²³ Technologies known to be in use for purposes of identifying online copyright infringement include watermarks, fingerprinting, and content filtering. See In the Matter of a National Broadband Plan for Our Future, Comments of the Motion Picture Association of America, Inc., in Response to the FCC Workshop on the Role of Content in the Broadband Ecosystem, GN Docket No. 09-51, at 21 (Oct. 2009).

promote successful, legitimate business models and discourage infringement-driven models? And, how can these policies advance these goals while respecting the myriad legitimate ways to exchange non-copyrighted information (or the fair use of copyrighted works) on the Internet?

2. *Internet Intermediaries: Safe Harbors and Responsibilities*

As described earlier, Section 230 of the Communications Act and Section 512 of the Copyright Act limit the liability of Internet intermediaries for content made available on their services. Section 512 provides online service providers of transitory communications, caching, storage, and data location services a qualified safe harbor in cases of online infringement. The safe harbor is predicated on a “notice and takedown” regime in which the provider must act expeditiously to remove or disable access to allegedly infringing content upon notice by the copyright owner. Stakeholders in listening sessions also described collaborative efforts to reduce online infringement. For example, a large number of stakeholders are collaborating to develop a common digital standard to facilitate the authorized and efficient distribution of content to any device.²⁴ In addition, the Task Force heard from stakeholders about a collaborative effort to establish comprehensive guidelines for user-generated content designed to protect copyrighted works and to bring more content to consumers through legitimate channels.²⁵ Cooperative efforts by the private sector such as these are explicitly encouraged in the Joint Strategic Plan (Plan) on Intellectual Property Enforcement, released by the office of the U.S. Intellectual Property Enforcement Coordinator in June 2010.²⁶

What are stakeholders’ experiences with the volume and accuracy of takedown notices issued for allegedly infringing content across the different types of online services (i.e., storage, caching, and search) and technologies (e.g., P2P, cyber lockers, streaming, etc.)? What processes are employed by rights holders to identify infringers for purposes of sending takedown notices? What processes do Internet intermediaries employ in response to takedown notices? Are Internet intermediaries’ responses to takedown notices sufficiently timely to limit the damage caused by infringement? What are the challenges of managing this system of notices? What are stakeholders’ experiences with online copyright infringement by users who change URLs, ISPs, locations, and/or equipment to avoid detection? What challenges exist to the identification of such systematic infringers? What are stakeholders’ experiences with Section 512(i) on the establishment of policies by online service providers to inform subscribers of service termination for repeat infringement? What are stakeholders’ experiences with the framework in Section 512(j) for injunctive relief to prevent or restrain online infringement? Would stakeholders

²⁴ The “Digital Entertainment Content Ecosystem” (DECE) is a consortium of entertainment, software, hardware, retail, infrastructure and delivery companies. DECE has developed a common file format with copy protection and remote file storage to be used by participating content providers, services, and devices enabling consumers to download legal content. DECE announced that “UltraViolet” will be the brand name for associated offerings. Press Release, Digital Entertainment Content Ecosystem, Digital Entertainment Content Ecosystem Unveils UltraViolet Brand (July 20, 2010), http://www.uvvu.com/press/UltraViolet_Brand_Launch_Release_07_20_2010_FINAL.PDF.

²⁵ Principles for User Generated Content Services, <http://www.ugcprinciples.com> (last visited May 27, 2010).

²⁶ The Plan calls upon content owners, Internet service providers, advertising brokers, payment processors and search engines to “work collaboratively, consistent with antitrust laws, to address activity that has a negative economic impact and undermines U.S. businesses, and to seek practical and efficient solutions to address infringement.” Joint Strategic Plan, *supra* note 13, at 17.

recommend improvements to existing legal remedies or even new and additional legal remedies to deal with infringing content on a more timely basis?

What are stakeholders' experiences with developing collaborative approaches to address online copyright infringement? What range of stakeholders participated in the development of such collaborative approaches? Have collaborative approaches resulted in the formulation of best practices, the adoption of private graduated response systems, or other measures to deter online infringement that can be replicated? What other collaborative approaches should stakeholders consider? How can government best encourage collaborative approaches within the private sector?

The Internet was developed by, and continues to evolve through, collaborative multi-stakeholder efforts. These efforts often have proven successful at addressing difficult challenges flowing from the growth of Internet communications and digital commerce. In confronting the challenges of online content and copyright infringement, to what extent have all relevant stakeholder groups, such as independent creators and Internet users, participated in or had a window on collaborative approaches to curb online infringement? Recognizing the inherent challenges in engaging a wide variety of stakeholders—large and small, non-commercial, multinational (among others)—in such collaborative approaches, what strategies, if any, have been used to collect third-party input and feedback or communicate the outcomes to users and other non-participating stakeholders? For those engaged in collaborative efforts to protect copyrighted works, what are the practical challenges, if any, in promoting transparency, inclusiveness, clarity in expected behavior, and fair process for end users? Are there examples of voluntary arrangements that effectively meet these challenges?

3. Internet Users: Consumers of Online Works and User-Generated Content

The 1997 *Framework for Global Electronic Commerce* was prescient in describing the future of e-commerce in stating, “Consumers will be able to shop in their homes for a wide variety of products [and] view these products on their computers or televisions, access information about the products... and order and pay for their choice, all from their living rooms.”²⁷ Indeed, as consumers and providers adapt to change, the ease and efficiency of downloading and streaming digital content over the Internet will increasingly favor this medium over more traditional methods of acquiring or delivering creative works. With increasing frequency, consumers are also turning to online services to generate and post content of their own creation (“user-generated content”) and to access such creative works, a phenomenon that has exploded in recent years. To provide a measure of balance on behalf of Internet users who access and/or create online content, Section 512 includes a counter-notification mechanism that enables Internet users to respond to takedown notices that allege online copyright infringement.²⁸

²⁷ Framework for Global Electronic Commerce, *supra* note 20.

²⁸ Through the issuance of a counter-notice to the online service provider, an Internet user can assert a good faith belief that the removal or disabling of content by an online service provider upon receipt of a takedown notice was done by mistake or misrepresentation. 17 U.S.C. § 512 (g)(3)(C).

What initiatives have been undertaken to improve the general awareness of Internet users about online copyright infringement and the availability of legitimate sources to access online copyrighted works? What are stakeholders' experiences with the awareness and appropriate use by Internet users of the counter-notification mechanism? What are stakeholders' experiences regarding inappropriate use by Internet users of the counter-notification mechanism, if any? What are stakeholders' experiences with the volume of counter-notices filed? Do current methods of detecting infringement affect consumers' ability to legally obtain copies of copyrighted works and/or share legal user-generated content? What are the experiences of universities in raising general awareness with their communities about the harms of digital piracy? What are stakeholders' experiences in foreign countries and on university campuses in reducing online copyright infringement?

In turn, are independent creators and Internet users able to fully exploit the Internet platform for the distribution of their works and, if not, what barriers have been encountered? What mechanisms are there, or should there be, for creators of user-generated content to seek compensation for their work?

Dated: _September 29, 2010_____.

Gary Locke,
Secretary of Commerce.

David J. Kappos,
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office.

Lawrence E. Strickling,
Assistant Secretary of Commerce for Communications and Information.

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