

U.S. COPYRIGHT OFFICE

+ + + + +

PUBLIC ROUNDTABLE ON THE RIGHT
OF MAKING AVAILABLE

+ + + + +

MONDAY
MAY 5, 2014

+ + + + +

The Roundtable met in the Rayburn
House Office Building, Room 2226, Washington,
D.C., at 9:00 a.m.

PRESENT

ALLAN ADLER, Association of American
Publishers

SANDRA AISTARS, Copyright Alliance

JONATHAN BAND, Library Copyright Alliance

GREGORY A. BARNES, Digital Media Association

JOHN C. BEITER, SESAC, Inc.

GEORGE M. BORKOWSKI, Recording Industry
Association of America

ANDREW P. BRIDGES, Attorney

SOFIA CASTILLO, Copyright Alliance

EUGENE DeANNA, Library of Congress

JOSEPH J. DiMONA, Broadcast Music, Inc.

CHRISTIAN GENETSKI, Entertainment Software
Association

JANE GINSBURG, Columbia University School of
Law

MITCH GLAZIER, Recording Industry

Association of America
JIM HALPERT,
Internet Commerce Coalition

TERRY HART, Copyright Alliance

LAWRENCE A. HUSICK, Delaware County IP
Roundtable

LEE KNIFE, Digital Media Association

KEITH KUPFERSCHMID, Software & Information
Industry Association

GLYNN LUNNEY, Tulane University School of
Law

PATRICE A. LYONS, Corporation for National
Research Initiatives

PETER MENELL, University of California -
Berkeley School of Law

SAM MOSENKIS, American Society of Composers,
Authors and Publishers

LAURA MOY, Public Knowledge

JAY ROSENTHAL, National Music Publishers'
Association

MATTHEW SCHRUERS, Computer & Communications
Industry Association

BEN SHEFFNER, Motion Picture Association of
America, Inc.

STEVEN TEPP, Global Intellectual Property
Center, U.S. Chamber of Commerce

NANCY WOLFF, PACA: Digital Media Licensing
Association

STAFF PRESENT

MARIA A. PALLANTE, Register of Copyrights
and Director of the U.S. Copyright
Office

KEVIN AMER, Counsel for Policy and
International Affairs, U.S. Copyright
Office

JACQUELINE CHARLESWORTH, General Counsel and
Associate Register of Copyrights, U.S.
Copyright Office

MARIA STRONG, Senior Counsel for Policy and
International Affairs, U.S. Copyright
Office

KARYN A. TEMPLE CLAGGETT, Associate Register
of Copyrights and Director of Policy
and International Affairs, U.S.
Copyright Office

AARON WATSON, Attorney Advisor for Policy
and International Affairs, U.S.
Copyright Office

C-O-N-T-E-N-T-S (CONTINUED)

Session 1 (Continued)

Panelists (Continued)

Terry Hart
Director of Legal Policy
Copyright Alliance

Professor Glynn Lunney
Tulane University
School of Law

Professor Peter Menell
University of California - Berkeley
School of Law

Sam Mosenkis
Vice President, Legal Affairs
American Society of Composers,
Authors and Publishers

Matthew Schruers
Vice President of Law & Policy
Computer & Communication Industry
Association

Nancy Wolff
PACA: Digital Media Licensing
Association

Opportunity for Audience Comments. 110

C-O-N-T-E-N-T-S (CONTINUED)

Session 2. 124
Existing Exclusive Rights under
Title 17 (Part Two)

Introductions

Participants:

Jonathan Band
Counsel
Library Copyright Alliance

Joseph J. DiMona
Vice President, Legal Affairs
Broadcast Music, Inc.

Jim Halpert
Internet Commerce Coalition

Lawrence Husick
Delaware County
IP Roundtable
(On behalf of himself)

Lee Knife
Executive Director
Digital Media Association

Keith Kupferschmid
General Counsel and
Senior Vice President
Intellectual Property, Software
& Information Industry
Association

Patrice A. Lyons
General Counsel
Corporation for National
Research Initiatives

C-O-N-T-E-N-T-S (CONTINUED)

Session 2 (Continued)

Panelists (Continued)

Laura Moy
Staff Attorney
Public Knowledge

Jay Rosenthal
General Counsel
National Music Publishers'
Association

Ben Sheffner
Vice President, Legal Affairs
Motion Picture Association of
America, Inc.

Steven Tepp

Global Intellectual Property

Center

U.S. Chamber of Commerce

Opportunity for Audience Comments. 215

C-O-N-T-E-N-T-S (CONTINUED)

Session 3. 221
Benefit of Clarification/Possible
Changes to U.S. Law

Introductions

Panelists:

Allan Adler
General Counsel and
Vice President for
Government Affairs
Association of American
Publishers

Sandra Aistars
Chief Executive Officer
Copyright Alliance

Jonathan Band
Counsel
Library Copyright Alliance

Gregory A. Barnes
General Counsel
Digital Media Association

John C. Beiter
SESAC, Inc.

Andrew P. Bridges
Attorney

Mitch Glazier
Senior Executive Vice President
Recording Industry Association of
America

Keith Kupferschmid
General Counsel and
Senior Vice President
Intellectual Property, Software
& Information Industry
Association

C-O-N-T-E-N-T-S (CONTINUED)

Session 3 (Continued)

Panelists (Continued)

Patrice A. Lyons
General Counsel
Corporation for National
Research Initiatives

Professor Peter Menell

University of California - Berkeley

School of Law

Laura Moy

Staff Attorney

Public Knowledge

Nancy Wolff

PACA: Digital Media Licensing

Association

Opportunity for Audience Comments. 295

C-O-N-T-E-N-T-S (CONTINUED)

Session 4. 321
Foreign Implementation and
Interpretation of the WIPO [World
Intellectual Property Organization] Internet
Treaties

Introductions

Panelists:

Sofia Castillo
Legal Fellow
Copyright Alliance

Joseph J. DiMona
Vice President, Legal Affairs
Broadcast Music, Inc.

Christian Genetski
Senior Vice President and
General Counsel
Entertainment Software
Association

Professor Jane Ginsburg
Columbia University
School of Law

Professor Glynn Lunney
Tulane University
School of Law

Jay Rosenthal
General Counsel
National Music Publishers'
Association

Matthew Schruers
Vice President of Law
& Policy
Computer & Communications
Industry Association

C-O-N-T-E-N-T-S (CONTINUED)

Session 4 (Continued)

Panelists (Continued)

Steven Tepp

Global Intellectual Property

Center

U.S. Chamber of Commerce

Opportunity for Audience Comments. 365

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P-R-O-C-E-E-D-I-N-G-S

9:02 a.m.

MS. CLAGGETT: Good morning.

Welcome to the Copyright Office Roundtables on the Making Available Right.

We are going to start off with some brief remarks audifrom Register Maria Pallante, and then, we will get into the logistics of the actual roundtable discussions today.

So, I will turn to Maria for her opening remarks.

Thanks.

MS. PALLANTE: Good morning, everyone.

And for those who don't know, that was the indefatigable Karyn Temple Claggett, who is the Associate Register of Copyrights and Director of Policy and International Affairs.

So, a warm welcome to everybody.

I know my staff and I are very much looking

1 forward to this discussion. It is an
2 important one. It is not one that we have had
3 for a long time in the United States.

4 I especially want to welcome all
5 of our panelists, but especially those who
6 have come from other cities to join us today.
7 And a very warm welcome to our professors who
8 are here as independent scholars, and a very
9 important part of our debate.

10 So, as all of you know, but I will
11 say it for the transcript, the Copyright
12 Office is undertaking this study at the
13 request of Congress to assess the state of
14 U.S. law recognizing and protecting making
15 available and communication to the public
16 rights for copyright owners.

17 When the United States implemented
18 the WCT [WIPO Copyright Treaty] and WPPT [WIPO
19 Performances and Phonograms Treaty], we did so
20 under the permissible umbrella approach,
21 confirming that our exclusive rights under
22 Section 106, taken in combination, adequately

1 protect copyright owners in accordance with
2 the treaty obligations.

3 In the ensuing 15 years, I think
4 we can all agree that the online environment
5 has evolved rapidly. There is no question
6 that some courts have struggled in applying
7 the statute to current technologies and
8 activities. There has been some confusion
9 about the evidence necessary to establish an
10 infringement claim, based on the activity of
11 making a copyrighted work available online
12 without authorization.

13 Today we will explore a number of
14 questions -- the degree to which Section 106
15 continues to adequately cover the rights of
16 making available and communication to the
17 public. For example, does our law
18 sufficiently, today, provide for the actual
19 distribution of the work and the offering of
20 the work for download? And does our law
21 provide for the actual transmission of a work
22 to members of the public and the offering of

1 that work for access?

2 We will look at whether and how we
3 should clarify U.S. law to confirm our treaty
4 obligations and the protections that they
5 require. We will look at how foreign laws
6 have addressed these rights in the past 15
7 years. And as always when discussing
8 exclusive rights, we are interested in the
9 application of appropriately tailored
10 limitations and exceptions.

11 My legal staff and I have read all
12 of the public comments and, obviously, the
13 legislative history and all of the relevant
14 court opinions. We are very thankful for both
15 your focus on the past as well as your
16 concerns about the future, and we welcome the
17 discussion today. To the extent possible, we
18 would like to encourage everybody to speak
19 with as much legal detail as possible, as this
20 is, after all, a complex legal discussion.

21 Thank you very much, and enjoy the
22 day.

1 (Applause.)

2 MS. CLAGGETT: Thank you, Maria.

3 Good morning.

4 As Maria mentioned, I am Karyn
5 Temple Claggett, Associate Register of
6 Copyrights and Director of the Office of
7 Policy and International Affairs.

8 Before we actually begin with our
9 formal sessions, I would like to go over just
10 a few logistical points for our roundtable
11 discussion today.

12 First, the roundtable sessions
13 will be moderated by us here at the table up
14 front. As you are aware, we are in a House
15 Committee briefing room, and all of the
16 participants are sitting on the raised
17 platform behind us.

18 Participant remarks will be the
19 focus of our discussion today with guidance
20 and questions from the Copyright Office
21 moderators, seated at the front table. We do
22 apologize that our backs will be to the

1 audience because we will be focused on the
2 participants, and that, as I said, will be the
3 focus of the discussion.

4 Given the number of panelists that
5 we have for each of our four sessions and our
6 desire to hear from all participants, we are
7 going to ask that participants please be
8 mindful of other people speaking. And tip
9 your card -- if you guys are familiar with
10 international negotiations, you know this
11 process very well -- but tip your card when
12 you would like to make a comment or ask a
13 question, rather than simply jumping in, so
14 that we can easily moderate the discussion.
15 We will, then, formally call on you to signal
16 it is your turn to speak. Otherwise,
17 obviously, things would be very unwieldy very
18 quickly.

19 We also ask that all participants
20 focus your comments and responses to our
21 specific questions that we raised in our NOI
22 [Notice of Inquiry] or additional follow-up

1 questions that we are going to pose to you
2 today. And given time constraints and the
3 number of panelists that we do have, we do ask
4 that you limit your responses to our questions
5 for each panelist to no more than about two to
6 three minutes.

7 And I want to reiterate that
8 point. I do apologize profusely in advance,
9 but if you are going over the time, we will,
10 unfortunately, have to cut you off. So,
11 please be very flexible and understanding of
12 our very real time constraints and our need to
13 hear from a broad range of viewpoints.

14 Our final session of the day
15 invites comments from the audience and, time
16 permitting, additional comments from the
17 participants. For the audience, there will be
18 a sign-up sheet available during the lunch
19 break, and comments made in that session will
20 also be limited to two minutes.

21 Second, as you can see, today's
22 discussion is being videotaped by the Library

1 of Congress. Participants, hopefully, you all
2 received a video release form by email. If
3 you have not signed that, please do so. We
4 need to have those before the end of the
5 session today.

6 For audience members, there will
7 be a short question-and-answer period,
8 hopefully, at the end of each session, in
9 addition to our audience participation
10 session. So, if you decide to participate in
11 that question-and-answer period, you are
12 giving us permission to include your questions
13 or comments in future webcasts and broadcasts
14 of this event.

15 At this time, I would like to ask
16 everyone in the audience and the participants
17 to please turn off your cell phones or
18 electronic devices that might interfere with
19 the recording of this event. It is actually
20 not our Copyright Office policy, but our
21 friendly ITS policy, just to make sure that
22 they don't have any interference with the

1 videotaping.

2 We also, as you can see, have a
3 court reporter who is transcribing the
4 proceedings. We will not have opening remarks
5 from the participants in the sessions, and the
6 participants already know this, but we will
7 just briefly ask everyone up on the platform
8 to identify themselves by their name and
9 affiliation.

10 If any of the participants or
11 audience members who are not actually
12 participants today have additional comments
13 after the meeting, we definitely have an open-
14 door policy in the Copyright Office. So, we
15 would be happy to separately meet with you on
16 any of the issues that were raised today.

17 We also may potentially seek
18 additional comments--written comments--to
19 respond to some of the questions and
20 discussions that we talk about today. If we
21 do so, we will provide a formal NOI notice.

22 Are there any questions in terms

1 of logistics before we begin the discussions
2 today, either from the audience or the
3 participants?

4 (No response.)

5 Okay. So, we will get started
6 with the first session. I am just going to
7 read what the first session will discuss, and
8 then, I will sit back at the table to ask some
9 questions.

10 The first roundtable will explore
11 how the exclusive rights in Title 17 cover the
12 making available and communication to the
13 public rights in the context of digital on-
14 demand transmissions, such as peer-to-peer
15 networks, streaming services, and music
16 downloads, as well as more broadly in the
17 digital environment. This session will also
18 address evidentiary issues in infringement
19 actions, and we will also carry on this
20 discussion for the second session.

21 I am going, before we start, to
22 introduce or ask my Copyright Office

1 colleagues to introduce themselves briefly,
2 and then, we can go around the platform for
3 all the participants.

4 We will start here.

5 MR. AMER: Kevin Amer, Counsel for
6 Policy and International Affairs.

7 MS. STRONG: Good morning.

8 Maria Strong, Senior Counsel for
9 Policy and International Affairs.

10 MS. CHARLESWORTH: Jacqueline
11 Charlesworth, General Counsel.

12 MR. WATSON: Aaron Watson,
13 Attorney Advisor for Policy and International
14 Affairs.

15 MS. CLAGGETT: Okay. Thank you
16 very much.

17 And so now, I am going to ask for
18 everyone on the panel just to simply state
19 your name and your affiliation, if you are
20 here representing an organization or someone
21 else. I will start with John Beiter.

22 And just one other logistical

1 thing. You have to push the button and the
2 green light will show up if the microphone is
3 on.

4 MR. BEITER: So, again, my name is
5 John Beiter. I am with the Law Firm of
6 Shackelford, Zumwalt & Hayes in Nashville,
7 Tennessee, here today representing SESAC, one
8 of the three performing arts organizations.

9 MR. BRIDGES: My name is Andrew
10 Bridges. I am an internet and copyright
11 litigator in San Francisco and Silicon Valley,
12 speaking on my own behalf.

13 MS. CLAGGETT: Thank you.

14 MR. BORKOWSKI: George Borkowski,
15 Senior Vice President of Litigation and Legal
16 Affairs at the Recording Industry Association
17 of America.

18 MR. DeANNA: Good morning.

19 I'm Eugene DeAnna. I am head of
20 the Recorded Sound Section at the Library of
21 Congress.

22 PROFESSOR GINSBURG: Jane

1 Ginsburg, Columbia Law School.

2 MR. HART: Terry Hart, Director of
3 Legal Policy at the Copyright Alliance.

4 PROFESSOR LUNNEY: I'm Glynn
5 Lunney. I'm at Tulane University School of
6 Law.

7 PROFESSOR MENELL: Peter Menell,
8 University of California at Berkeley.

9 MR. SCHRUEERS: Matt Schruers, Vice
10 President, Law and Policy, Computer and
11 Communications Industry Association.

12 MR. MOSENKIS: Sam Mosenkis. I am
13 with ASCAP, the American Society of Composers,
14 Authors, and Publishers.

15 MS. WOLFF: Nancy Wolff with
16 Cowan, DeBaets, Abrahams & Sheppard. And I am
17 here on behalf of -- actually, we have
18 modernized -- it is PACA, the Digital Media
19 Licensing Association, since images have gone
20 from transparency to files.

21 MS. CLAGGETT: Thank you very
22 much, everyone.

1 For our first question, before we
2 actually explore our current state of the law,
3 we wanted to focus a little bit on the past,
4 and specifically the legislative history of
5 Title 17. So, we wanted to explore whether
6 the legislative history regarding the
7 evolution of the right of distribution in
8 Section 106(3) of the Copyright Act sheds any
9 light in terms of how we should currently
10 construe U.S. implementation of its
11 international obligations to have a making
12 available right.

13 So, generally, what is the role or
14 should be the role of legislative history of
15 the 1976 Act in determining the U.S.
16 implementation of the right of making
17 available? Does our legislative history
18 provide any direct information in terms of the
19 scope of the distribution right under our
20 current law?

21 And I am actually going to direct
22 -- sometimes we will direct questions;

1 sometimes we will not -- this time I am going
2 to direct a question specifically to Peter
3 Menell, who already has his flag raised.
4 Because I was just reading your law review
5 article last night, so I wanted to direct a
6 question to you in terms of any insight about
7 the legislative history of our evolution of
8 the digital distribution right under our law.

9 Thank you.

10 PROFESSOR MENELL: Thank you.

11 Well, as you know from the article
12 and from the Copyright Office's work 50 years
13 ago, the terminology in the statute derives
14 from 1960s discussions, probably in rooms like
15 this, involving people like us trying to
16 update a statute, the 1909 statute.

17 And there were many discussions
18 about word choice. What really struck me as
19 I was reading and teaching about the issue
20 surrounding internet file sharing was why
21 Congress changed the words "publish" and
22 "vend" to "distribute." It seems like an

1 interesting question. In fact, the 1961
2 Register Report used the word "publish."

3 As I discovered in documents that
4 have not gotten a lot of attention, there was
5 a very specific reason. The article spells
6 that out.

7 But what I want to highlight here
8 is just that judges routinely consider the
9 Copyright Act's legislative history, even when
10 the words appear at first blush to be clear.
11 Even common words can have multiple dictionary
12 meanings. As we see whenever we open
13 Webster's, there are several different
14 choices.

15 Many provisions of the 1976 Act
16 were crafted during a largely analog era. And
17 so, therefore, judges, including, for example,
18 Judge Gertner in the London-Sire decision,
19 refers to legislative history in trying to
20 sort these issues out.

21 And so, in trying to understand
22 this issue, I peeked behind the curtain. I

1 wanted to see what was going on, and, in fact,
2 there are express reasons why they chose the
3 word "distribute," and it had nothing to do
4 with narrowing. In fact, the General Counsel
5 of the Copyright Office, Abe Goldman, says the
6 purpose was to broaden. And as Ed Sargoy, the
7 ABA [American Bar Association] representative,
8 explains, it was largely to avoid confusion
9 that had arisen around publication as a
10 trigger for whether copyright could be
11 forfeited for improper notice.

12 And so, that is really what I
13 think the article was trying to do, was to
14 explain that story, which is quite
15 interesting.

16 I will note that one of the
17 comments by Mr. Sanders questions my
18 exploration of legislative history, suggesting
19 that it is improper to consult legislative
20 history predating the enacting Congress. And
21 I will note merely that the Supreme Court
22 didn't get that message. If you read

1 Kirtsaeng, Tasini, CCNV, Abend, Dowling, and
2 Sony, they all refer to pre-legislative
3 session legislative history.

4 In fact, courts will even refer to
5 the CONTU [Commission on New Technological
6 Uses of Copyrighted Works] Report in
7 interpreting the statute, which is really
8 outside of the legislative bounds. It is
9 about trying to understand these issues.

10 And so, that was my purpose, was
11 in exploring that history.

12 Now I want to note one side piece
13 of research that I did.

14 MS. CLAGGETT: Briefly, please,
15 then.

16 PROFESSOR MENELL: Okay. I came
17 across a brief filed 15 years ago in an
18 important copyright case in which the attorney
19 contended that the plain language of the
20 Copyright Act was clear and governed and, yet,
21 proceeded to invoke the statute's legislative
22 history more than 20 times in that brief.

1 I commend that attorney's use of
2 what is suggested is a violation of the
3 cardinal principle of statutory
4 interpretation. And we are fortunate to have
5 that intrepid attorney right here among us,
6 and his name is Andrew Bridges. The case was
7 RIAA v. Diamond Multimedia.

8 And the only thing I want to add
9 is that the Ninth Circuit referred to that
10 legislative history in correctly construing
11 the statute, in favor of Mr. Bridges's client.

12 So, the contention that it is
13 improper to look at legislative history is not
14 one that is, I think, respected. I think it
15 is common, and I would say every opinion that
16 is trying to grapple with bringing the analog
17 era Copyright Act into the digital age,
18 engages in that process.

19 MS. CLAGGETT: Thank you

20 And I will open it up to others.
21 So, is that the answer? Does the legislative
22 history of Title 17 answer the question for us

1 and establish that we do have this broad
2 making available right? And if anyone wants
3 to comment in terms of the legislative history
4 showing, or not showing, whether publication
5 or to publish is synonymous with distribution,
6 you can answer that question as well.

7 I will go Mr. Bridges, who might
8 want to respond specifically and, then, to Mr.
9 Lunney.

10 MR. BRIDGES: By the way, the
11 brief at issue there, for RIAA v. Diamond
12 Multimedia related to the Audio Home Recording
13 Act of 1992, which contained a statutory
14 provision involving something called a "serial
15 copy management system," the definition of
16 which had been amended out of the statute
17 during the legislative process. So, when you
18 have a statute referring to language that has
19 been amended out before the bill became law,
20 there is a bit of a requirement to look at
21 legislative history.

22 The same issue does not apply to

1 the distribution right. The statute itself is
2 clear about the fact that the distribution
3 right applies to copies and phonorecords of a
4 copyrighted work being distributed to the
5 public "by sale or other transfer of
6 ownership, or by rental, lease, or lending."

7 Now the concern is Section 101 of
8 the Copyright Act defines "copies" and
9 "phonorecords" as material objects. The
10 definition is in the statute. So, it requires
11 not only a distribution; it requires a
12 distribution of material objects. And it
13 requires not only a distribution of material
14 objects, but it requires a distribution of
15 material objects by sale or other transfer of
16 ownership or rental, lease, or lending.

17 So, when that is clear -- it may
18 be counterintuitive to people, but that is
19 because these are defined terms; they are
20 defined terms -- when it is clear on its face,
21 why go to legislative history to try to vary
22 the clear terms of the statute?

1 And I think that here I am just
2 going to wrap up briefly. I think this
3 touches on a fundamental question of respect
4 for copyright law in our society, because when
5 the law says what the law says pretty clearly,
6 but there is a sense that there is a private
7 industry consensus, and we are going to go
8 look at arcane materials and do decades of
9 research to contradict the obvious, it is no
10 wonder that the public believes that copyright
11 law is rigged in favor of certain participants
12 in the process.

13 MS. CLAGGETT: Thank you, Mr.
14 Bridges.

15 I am sure we might have some
16 responses to your position with respect to
17 whether you think a download can constitute a
18 distribution under our Copyright Act, but I
19 want to see, first, whether there are any
20 responses broadly in terms of the legislative
21 history, and specifically with respect to
22 whether a publication is synonymous with

1 distribution, given the legislative history.

2 So, I am going to turn to Mr.
3 Lunney, and then, I will let any others who
4 want to respond to Mr. Bridges' point about
5 material objects respond as well.

6 PROFESSOR LUNNEY: So, just a
7 brief clarification to start, it is Lunney.

8 MS. CLAGGETT: Lunney. Thank you.
9 Sorry.

10 PROFESSOR LUNNEY: That's okay.

11 I would reiterate Mr. Bridges'
12 point in terms of resorting to legislative
13 history when statutory language is clear.

14 I would also point out that, in
15 terms of the legislative history, even if you
16 can equate the distribution with the
17 publication right, it is not all that clear
18 under the 1909 Act that a mere offering of a
19 copy for distribution or lending in a library,
20 for example, would have constituted
21 publication. Certainly, there are no cases
22 where a library was held guilty of copyright

1 infringement or liable for copyright
2 infringement simply by making it available
3 under the 1909 Act.

4 So, we don't have a clear
5 definition of publication in the infringement
6 context where we can use that definition from
7 infringement cases in the 1909 Act to define
8 the scope of the distribution right under the
9 1976 Act, even if we thought they were meant
10 to be equivalent.

11 MS. CLAGGETT: Thank you very
12 much.

13 I am going to go with Matt and,
14 then, Mr. Menell.

15 MR. SCHRUERS: I think Professor
16 Lunney said a fair amount of what I was going
17 to say. If the interpretation of publications
18 offered is actually sound, we would expect to
19 see like a pre-1976 Hotaling. And I'm not
20 aware of any. So, until we see a case that
21 offers that interpretation, I am not sure I
22 would put a whole lot of stock in that.

1 Secondly, a further point -- and
2 maybe I'm just repeating what Andrew said
3 regarding statutory construction -- but it is
4 one thing very much to refer to legislative
5 history to either reinforce the apparent
6 interpretation, and I think I am as guilty as
7 anyone of sort of looking to another sort of
8 source to sort of back up the interpretation
9 that already appears manifest.

10 It is a very different thing to
11 say this is the language that is clear on its
12 face, the requirement of sale or transfer, and
13 then, to resort to the legislative history to
14 reach an outcome that contradicts the language
15 that seems pretty self-evident.

16 So, I think it is sort of a common
17 understanding in law schools that sort of
18 legislative history is sort of our resource of
19 last resort. And that applies with particular
20 force when you are trying to offer an
21 interpretation that is at odds with what we
22 have in the statute.

1 MS. CLAGGETT: Thank you.

2 And maybe, Mr. Menell, you will
3 have some response to that and whether the
4 legislative history actually contradicts the
5 plain meaning.

6 PROFESSOR MENELL: Yes. No, I do.
7 I mean, if it was so clear, we would have a
8 hard time explaining Judge Gertner's decision
9 exactly to the contrary. She comes to exactly
10 the contrary conclusion. And this is an
11 opinion that Mr. Bridges praises.

12 So, I find it rather remarkable
13 that we could call it clear when a district
14 judge who has heard these arguments comes to
15 the conclusion that the legislative history is
16 useful and reaches the exact opposite
17 conclusion.

18 But I want to look back just a
19 week. The Supreme Court rendered a decision
20 interpreting the word "extraordinary" as it
21 relates to the award of attorney fees under
22 Section 285 of the Patent Act last week in a

1 case called Octane Fitness.

2 Justice Sotomayor wrote for a
3 unanimous Court, with the caveat that Justice
4 Scalia, and only Justice Scalia, did not join
5 footnotes 1 through 3. The Court ultimately
6 ruled that, quote, "Its analysis begins and
7 ends with the text of Section 285."

8 So, what did those footnotes
9 discuss? The statute's legislative history.
10 Thus, even when the Supreme Court is assessing
11 statutory text that appears clear on its face,
12 eight of the nine Justices considered it
13 appropriate and useful to review legislative
14 history.

15 MS. CLAGGETT: Thank you very
16 much.

17 Professor Ginsburg?

18 PROFESSOR GINSBURG: I wanted to
19 address the second point about whether a copy
20 has to be a physical object.

21 MS. CLAGGETT: Do we have any
22 other comments in terms of the legislative

1 history before we move on to that second point
2 about material objects?

3 (No response.)

4 Okay, Professor Ginsburg?

5 PROFESSOR GINSBURG: I think if
6 you look at 106(3) alone, one might draw that
7 conclusion. But, given the number of times
8 that the phrase "digital phonorecord delivery"
9 appears in the Copyright Act, a subsequent
10 amendment -- and a "digital phonorecord
11 delivery" is defined as a digital
12 transmission, and the phrase appears many
13 times in conjunction with the words "reproduce
14 and distribute" -- I think it is pretty clear
15 at this point that the thing that is
16 "distributed" can be a digital object that is
17 not in a freestanding physical medium.

18 MS. CLAGGETT: Great.

19 Mr. Borkowski?

20 MR. BORKOWSKI: Thank you.

21 Yes, I was actually going to make
22 that point and a couple of others.

1 If we are talking about not even
2 looking at legislative history, but just
3 talking about the explicit language of the
4 statute, there are a couple of parts of the
5 statute that are interesting. You know, you
6 look at the definition of "publication," which
7 says it is "the offering to distribute copies
8 or phonorecords." And then, it says
9 publication is "distribution of copies of
10 phonorecords."

11 And then, when you look at Section
12 115, which Professor Ginsburg just mentioned,
13 it is explicit that a digital phonorecord
14 delivery is each individual delivery of a
15 phonorecord by digital transmission of a sound
16 recording.

17 And then, later on, it talks about
18 that, without authorization of the copyright
19 owner, the owner -- let me just read the part
20 of the language here -- "the owner of the
21 copyright in the sound recording or the entity
22 making the digital phonorecord delivery has

1 obtained a compulsory license under this
2 section or has otherwise been authorized by
3 the copyright owner of the musical work to
4 distribute or authorize the distribution, by
5 means of a digital phonorecord delivery, of
6 each musical work embodied in the sound
7 recording." That is explicitly plain
8 language.

9 Clearly, this notion that a
10 digital file, when it is sent from point A to
11 point B, is not a distribution is just not
12 supportable. And no court has ever recognized
13 that. No court has ever said that.

14 To say that, when I buy something
15 on iTunes and I buy the file, and it is sent
16 to me over the internet into my hard drive on
17 my computer, that that process is totally --
18 the Copyright Act does not apply to that
19 process, it just makes no sense. It
20 absolutely makes no sense.

21 And if you were talking about the
22 plain language of the statute, I think Section

1 115 talking about digital phonorecord
2 delivery, you can't read that language out of
3 the statute.

4 MS. CLAGGETT: Thank you very
5 much.

6 And I am sure Mr. Bridges will
7 have a response. But I think I know where he
8 is going to go with that and maybe reference
9 other aspects of exclusive right perhaps.

10 But I was going to follow up and
11 ask a question to the panelists in terms of
12 the case law on this issue, whether there was
13 any case law, in fact, suggesting that a
14 download was not a distribution. And maybe,
15 Mr. Bridges, you had said, "No, there isn't."

16 Mr. Bridges, do you have any
17 response to that?

18 MR. BRIDGES: A download is a
19 reproduction. Why we have to double-count,
20 triple-count acts under different distinct
21 rights in order to essentially -- I'm a trial
22 lawyer. The reason people want to allege

1 [violation of the] distribution right and not
2 violation of the reproduction right is that
3 they think that they can justify, to a jury,
4 massive damages for distribution that sound
5 egregious in the context of mere downloads, as
6 in the case of Jammie Thomas-Rasset, where
7 they wanted to go after her for distribution
8 to justify a \$1.5 million jury verdict for 24
9 downloads.

10 That is part of the rationale
11 here. It is double-counting, to slip it into
12 a more inflammatory sounding violation.

13 Actually, 115 I believe does not
14 refer to distribution, that digital
15 phonorecord delivery is not delivery of
16 copies; it is distribution of works. Now what
17 distribution of works means, I'm not sure.
18 But I know that Section 106(3) is distribution
19 of copies or phonorecords, which are material
20 objects. And if somebody thinks that they are
21 not material objects in Section 101, I would
22 like to know what the legislative history is

1 for that to vary from that text.

2 Moreover, it is not just
3 distribution of copies or phonorecords. It is
4 "by sale or other transfer of ownership, or by
5 rental, lease, or lending." Now "transfer of
6 ownership" means, when Person B gets it from
7 Person A, Person A no longer has it. What do
8 you call it when Person A has it and shares it
9 with Person B? You call that a
10 "reproduction."

11 MS. CLAGGETT: Thank you.

12 I'm going to go with Professor
13 Menell and, then, Professor Ginsburg and,
14 then, Mr. Borkowski.

15 Although, I will say we don't want
16 to spend too much time on this particular
17 topic because I will say, quite frankly, we
18 thought it was fairly well-settled, but it
19 apparently is not quite as well-settled as we
20 thought.

21 But I will go over it first with
22 Mr. Menell.

1 PROFESSOR MENELL: Well, I think
2 it is completely settled, at least as far as
3 judicial opinions. There are no decisions
4 that come to the conclusion that Mr. Bridges
5 refers to.

6 And Judge Gertner's 2008 opinion,
7 which he praises, is I think the clearest. In
8 that case, the defendant's counsel, EFF
9 [Electronic Frontier Foundation], made the
10 very same argument that Mr. Bridges presents
11 here. Rather than endorse that argument,
12 Judge Gertner concludes unequivocally at page
13 173, quote, "An electronic file transfer is
14 plainly within the sort of transaction that
15 Section 106(3) was intended to reach,"
16 precisely because it does implicate, quote, "a
17 material object" and because it focuses on the
18 result of that transaction, which is that
19 there is a transfer.

20 Now I would say that Mr. Bridges's
21 point is certainly a plausible point. You can
22 make that argument. My article goes through

1 how you sort of fit it in and I say there is
2 ambiguity here, and that is why I think the
3 legislative history is useful.

4 When you read Judge Gertner's
5 opinion, she completely agrees with that. I
6 mean, she goes through the legislative
7 history.

8 And I'll note, because Mr. Bridges
9 in his filing says that I don't address this,
10 I want to point him and the Committee -- or
11 the Copyright Office to --

12 (Laughter.)

13 MS. CLAGGETT: It feels very
14 formal in here today.

15 PROFESSOR MENELL: -- Section
16 8.11(d)(4)(a)(I) of Nimmer on Copyright, which
17 I coauthored, and it so indicates, in which
18 we, David Nimmer and I, discuss Judge
19 Gertner's opinion at length and we make
20 exactly the point that is alleged that I don't
21 deal with. So, it is set forth there.

22 And I would just say that that

1 decision directly contradicts this point that
2 Mr. Bridges is making. And I am not going to
3 say that his point isn't a plausible point.
4 I am going to say that it has been raised, it
5 has been addressed, and in terms of where the
6 state of the law is, that Judge Gertner's
7 opinion is, I would say, the most thorough
8 analysis that we have in a reported decision.

9 MS. CLAGGETT: Thank you very
10 much.

11 I think Professor Ginsburg was
12 next, then, Mr. Borkowski, and Mr. Bridges.
13 Did you want to go ahead? Yes.

14 Oh, okay, you agree with what
15 Professor Menell said.

16 Mr. Borkowski?

17 MR. BORKOWSKI: Yes, I just wanted
18 to address a point about the distribution
19 argument with Section 115 that Mr. Bridges
20 made a moment ago.

21 Section 115 is entitled
22 "Compulsory License for Making and

1 Distributing Phonorecords." It is a
2 limitation on the Section 106(3) distribution
3 right.

4 If a digital phonorecord delivery
5 were not a distribution, there would be no
6 need to limit that right through a compulsory
7 license. There would be no need for a
8 compulsory license because the right wouldn't
9 exist. The text of the statute I think is
10 plain.

11 And on this "or other transfer of
12 ownership" point that Mr. Bridges makes in his
13 filing also just now, the transfer of
14 ownership is the transfer of ownership of the
15 copy. It is quite simple, and that is what it
16 is.

17 MS. CLAGGETT: Mr. Bridges, do you
18 have any brief response to that?

19 MR. BRIDGES: Well, the point is,
20 it is for the making and distributing of
21 phonorecords, and the "making" seems evident.
22 Two questions: do we need multiple rights?

1 Should a download also be a performance?
2 Should a download also be a derivative work?
3 Should we multiply violations for single acts?
4 That is what is happening here.

5 Is a copy the "making" of a
6 phonorecord? Is the transfer of a file that
7 lands on a target storage medium, is that not
8 a reproduction, so that we need to expand
9 distribution to cover it? And then, to
10 shoehorn it into this sale or transfer of
11 ownership, it is not needed, other than to
12 come up with inflammatory reasons for large
13 jury verdicts.

14 And the last thing I will say is
15 Mr. Menell sort of keeps mentioning the
16 Gertner opinion. I think the Gertner opinion
17 is the best opinion out there. I don't think
18 that any case has gotten it right. I hope
19 that the right client will hire me to make the
20 point in the right case, and that a judge will
21 feel comfortable actually reaching what feels
22 like to a judge a more radical outcome. But

1 the more radical outcome absolutely comports
2 with the statute. And if somebody has
3 contrary evidence as to why 106(3) doesn't
4 mean what it says, then I would like to hear
5 that.

6 MS. CLAGGETT: And I think you
7 have gotten some responses here today.

8 Because I do have a couple of
9 other questions that further discuss the
10 issues with respect to making available more
11 broadly, I do want to get the last couple of
12 responses that we have, and then, move on with
13 another question.

14 But I think that we had Mr.
15 Borkowski, Mr. Schruers, and then, Professor
16 Ginsburg. And then, I will go on with the
17 next question.

18 MR. BORKOWSKI: Thank you.

19 Because he has said it twice now,
20 I can't leave this point un-responded to. But
21 this notion that having a digital distribution
22 right, which I think plainly exists, to argue

1 that that is just some kind of way to gin up
2 statutory damages or large jury verdicts
3 against infringers, it just shows -- everybody
4 knows the industry and the defendants usually
5 that Mr. Bridges represents, and he does a
6 fabulous job doing that.

7 But it is those defendants who
8 want to go out of their way to make it
9 virtually impossible for copyright owners to
10 protect their works. And if you do not have
11 a digital distribution right, and if you don't
12 have a making available right, then you have
13 to track down every single download. Or if
14 you have an investigator who is an anti-piracy
15 investigator who shows that a download has
16 happened from an infringing site, and maybe he
17 or she downloads 15 works, while let's say
18 2,000 are being offered up, you know, please
19 come here and take them for free, that is
20 going to significantly negatively impact
21 copyright owners in protecting their rights.

22 There is massive, massive

1 infringement on the internet. And we need
2 more tools to combat it, not fewer tools.

3 MS. CLAGGETT: Thank you, and we
4 will get into some of the evidentiary
5 questions, I think, a little bit later.

6 I am going to go with Matt
7 Schruers, and then, Professor Ginsburg, and
8 then, John Beiter. Did I get that right?
9 Yes, okay.

10 MR. SCHRUEERS: I don't want to
11 weigh-in on the debate about material copies
12 other than to say, to some extent, the very
13 informed exchanges here do somewhat conflate
14 two separate questions, right?

15 So, material copies is one aspect
16 of 106(3), and sale or other transfer of
17 ownership is another question. So, the sort
18 of analytical framework requires satisfying
19 these two elements.

20 A lot of interesting sort of
21 brain-twisting conversations about material
22 copies, and I think that is very interesting.

1 You need to satisfy that to get to a digital
2 distribution right. You need to satisfy that
3 and sale or other transfer of ownership -- and
4 by satisfy, I mean sort of wish it away -- to
5 get to making available.

6 So, even if we establish -- and
7 there is probably good policy reasons for that
8 -- that digital distribution is distribution
9 under 106(3) because of material copies, and
10 it involves digital copies, that doesn't get
11 us to a making available right. That only
12 gets us halfway, to digital distribution.
13 Then, you also need to sort of jump that
14 second chasm to get to digital attempted
15 distribution.

16 MS. CLAGGETT: Right, and that is
17 actually why I did want to not spend too much
18 time on this early conversation, because there
19 are two aspects of the discussion. Once you
20 accept or not, or assume for purposes of our
21 discussion, that digital distribution is
22 covered under Section 106, then you do have to

1 get to the making available concept as well.

2 But I think Professor Ginsburg was
3 next.

4 PROFESSOR GINSBURG: Yes, I think
5 that that is absolutely right. I think that
6 one cannot say that Section 115 is only about
7 making copies because it says to make and
8 distribute to the public. And if you are not
9 going to distribute those copies, those
10 phonorecords, to the public, you don't get the
11 compulsory license.

12 But the point I wanted to make
13 addresses a different proposition which we may
14 develop further. Andrew Bridges says that a
15 digital distribution right is simply an
16 abusive add-on, and what is going on here is
17 reproduction.

18 Well, I think there are two
19 answers. One is we could have a real making
20 available right that stops slicing and dicing
21 everything, our current patchwork. I suspect
22 that there is not that much enthusiasm for a

1 real making available right, and that is
2 another panel.

3 But I think that it would be very
4 problematic to limit the digital communication
5 of files to a reproduction right in light of
6 Cablevision. Because under Cablevision, who
7 knows what's going to happen by the end of
8 June? But, in light of Cablevision, it is the
9 user who is, quote, "making" the copy. So,
10 the reproduction is not occurring at the level
11 of the entity that is offering the possibility
12 to make those copies.

13 A distribution right could
14 actually fill the gap created by Cablevision,
15 at least under the interpretation of Judge
16 Gertner in the London-Sire case. She says
17 that there is a transfer of ownership when the
18 copy gets made in the recipient's file, but
19 that happens because there is a distribution.
20 So, the act of distribution, at least as
21 viewed by Judge Gertner, would identify an
22 infringement at the level of the economic

1 actor that is causing those copies to be made,
2 even if one were to follow Cablevision and say
3 that the reproduction is engaged in by the
4 end-user.

5 So, I think that the distribution
6 right, far from being an abusive add-on, might
7 be the only thing that saves us from non-
8 compliance with our international obligations.

9 MS. CLAGGETT: Thank you very
10 much.

11 I am going to go to Mr. Beiter,
12 and then, Mr. Schruers.

13 But it looks like we do have now
14 two final, hopefully, flags on this particular
15 issue, because I do have a specific question
16 that I do want to get to in terms of the
17 aspect of making available.

18 But if you want to go on to have
19 some discussion in terms of the material
20 object point and digital distribution, we will
21 have final comments right now.

22 MR. BEITER: Well, I just want to

1 say I am not really here to focus on the
2 distribution right because I am here
3 representing a performing rights organization.
4 But, just observing the conversation, it does
5 seem to me that there is a certain amount of
6 agreement that the language concerning the
7 distribution right is unambiguous. It just
8 appears that there is not a lot of agreement
9 on what it means.

10 (Laughter.)

11 MS. CLAGGETT: People don't agree
12 about what it means. Thank you.

13 (Laughter.)

14 I think it was Professor Menell
15 next, and then, Mr. Schruers.

16 PROFESSOR MENELL: It is my
17 understanding that we are going to talk this
18 afternoon about policy issues. And a lot of
19 what Mr. Bridges has said on this issue, at
20 least in his most recent comments, I think go
21 directly to those questions.

22 This session I understand to be

1 about what the law is --

2 MS. CLAGGETT: Right.

3 PROFESSOR MENELL: -- how it is
4 interpreted.

5 So, I want to quote a brief
6 passage from London-Sire. Judge Gertner says,
7 "Congress wrote Section 106(3) to reach the,"
8 quote, "'unauthorized public distribution of
9 copies or phonorecords that were lawfully
10 made,'" citing the House report -- "unlawfully
11 made."

12 "That certainly includes
13 situations where, as here, an original copy is
14 read at point A and duplicated elsewhere at
15 point B." Footnote 28, "It is irrelevant that
16 such an action may also infringe the
17 reproduction right secured to the copyright
18 holder under Section 106(1). A single action
19 can infringe more than one right held under
20 Section 106."

21 So, the final sentence in this
22 paragraph is, "Since the focus of 106(3) is

1 the ability of the author to control the
2 market, it is concerned with the ability of a
3 transferor to create ownership in someone else
4 -- not the transferor's ability simultaneously
5 to retain his own ownership."

6 Now that was an interpretation. I
7 would acknowledge that we could have
8 interpreted it differently. But, if we are
9 trying to address, as this session is, what
10 courts have interpreted and how they have done
11 it, they have used legislative history and
12 they have come to this interpretation.

13 MS. CLAGGETT: Thank you.

14 And I think we have Mr. Schruers.
15 Mr. Schruers?

16 MR. SCHRUEERS: So, following on
17 Professor Ginsburg's comment earlier with
18 respect to Cablevision, I think that is only
19 correct if we assume that at no point do
20 secondary liability doctrines enter into the
21 conversation.

22 And I mention that, one, because I

1 fully expect that a lot of parties in future
2 Cablevision-like scenarios will freely resort
3 to secondary liability, and, also, because I
4 think that points out a very important aspect
5 of this conversation, which is that our broad
6 and often expanding secondary liability
7 doctrines here in the United States are part
8 of our international compliance -- I'm sorry
9 -- international treaty compliance.

10 And so, to the extent there are
11 any gaps, I think one needs to acknowledge not
12 only is there a gap with some agreed-upon
13 international interpretation, but also that
14 secondary liability does not apply in that
15 gap.

16 And seeing the frequency with
17 which secondary liability theories are
18 alleged, I am not inclined to think there are
19 many cases where plaintiffs wouldn't allege
20 secondary liability.

21 MS. CLAGGETT: Yes, and I think we
22 are going to have a few questions about the

1 secondary liability point and whether you
2 should consider that as part of the kind of
3 overall ability to satisfy the U.S.
4 obligations under a making available right,
5 the concept of a secondary liability.

6 I wanted to turn back to the text
7 of the statute in terms of focusing on the
8 actual issue of whether, putting aside again,
9 assuming for the moment that a digital
10 download is a distribution, whether the act of
11 making that download available to the public
12 is a violation of our current law, which, as
13 we have pointed out before, we have an
14 obligation to. And the Congress, as well as
15 the Executive Branch, has concluded that, in
16 fact, our law does cover making available.

17 But some of the comments mentioned
18 the phrase that is in Title 17 "to authorize"
19 the distribution as an important aspect of the
20 discussion as to whether there is a making
21 available right in the United States. And so,
22 I wanted to just get some general thoughts as

1 to what is the role of the phrase "to
2 authorize" in the opening clause of Section
3 106. And is that important for the
4 interpretation of the scope of the
5 distribution right in the United States and
6 how it relates to making available?

7 Any takers on that?

8 Mr. Schruers?

9 MR. SCHRUEERS: Since this is
10 relevant to my previous point, "authorized" is
11 frequently pointed to. Without taking this
12 position, litigants often point to
13 "authorized" as the statutory basis for
14 theories of secondary liability. And indeed,
15 commonwealth countries frequently use
16 "authorized" in their articulation of
17 secondary liability doctrines.

18 So, I think that is a perfectly
19 good segue to demonstrate that secondary
20 liability theories are going to be relevant
21 here in the context of our compliance.

22 MS. CLAGGETT: Thank you.

1 Professor Ginsburg?

2 PROFESSOR GINSBURG: Whatever "to
3 authorize" may have thought to have been meant
4 when the 1976 Act was drafted, I am not sure
5 that it has been interpreted in a way that is
6 consistent with its interpretation in
7 commonwealth countries. It has been
8 interpreted as secondary liability.

9 And I think that it is quite
10 problematic to base our compliance with a
11 making available right on secondary liability
12 because it means that the end-user is the
13 first-line infringer. And I don't think that
14 we should base a copyright system on making
15 end-users the first-line infringer.

16 MS. CLAGGETT: Mr. Bridges? And
17 then, Professor Menell.

18 MR. BRIDGES: Right. I question
19 that question that she just made, making end-
20 users the primary target, the primary
21 infringer. That was the very issue in
22 Cablevision.

1 In Cablevision it was not a
2 question as to whether a reproduction had been
3 made or not. The question was, who made the
4 reproduction? And the view was that
5 Cablevision did not make the reproduction.

6 It is what I call "thumb-based"
7 liability. You are liable for direct
8 infringement if your thumb on the remote
9 control causes the copy to be made. That is
10 the way the Second Circuit came out, and by
11 stipulation, the parties had taken fair use
12 and secondary liability off the table.

13 So it should not be seen as a
14 question as to whether there is a reproduction
15 or not. Cablevision is about who made the
16 reproduction.

17 Now it may be unpalatable to sue
18 the individuals, and that takes us right back
19 to the question of respect for copyright law
20 because if individuals are going to be held
21 liable, they may not like the state of the
22 law. But the fact is the individuals ought to

1 be the first line of attack in terms of
2 analyzing where the infringement occurs.

3 Whether it is wise to sue
4 individuals or whether individuals have all
5 sorts of fair use reasons for what they are
6 doing is a separate matter. But saying "Oh,
7 we don't want to involve the public in this
8 debate," I think, avoids the real issues going
9 on because ultimately it is a public interest
10 at stake. And the question is, are we just
11 making intermediaries and technology companies
12 the scapegoats for conduct that we really
13 don't want the public to do?

14 MS. CLAGGETT: And I think that we
15 can explore some of those broader policy
16 questions later in the afternoon in some of
17 our conversations about clarity and, then, the
18 possible benefits of clarity in our law.

19 I think we had Professor Menell
20 and, then, Professor Lunney. Lunney? Got it.
21 And then, Mr. Schruers.

22 PROFESSOR MENELL: So, the

1 detailed answer to your question is that, like
2 the term "distribute," there is legislative
3 history that tells us where the word
4 "authorize" came from.

5 But I would concur with Professor
6 Ginsburg that this is not something that
7 played much of a role in the development of
8 the jurisprudence. And I think it is largely
9 because, until around 1998-1999, until the
10 internet really became the central focus, we
11 were operating in a system in which the
12 reproduction right did carry most of the
13 power, that one could assert the reproduction
14 right and win.

15 And so, once we got into a world
16 where we had multiple layers of players, that
17 is when this question of where is, as perhaps
18 Judge Calabresi might say, you know, who is
19 the least cost-avoider? How can plaintiffs
20 who are trying to protect their rights use the
21 full panoply of rights?

22 And I would agree that that is a

1 hard question. It has not been modernized.
2 And I hope we will get to those issues later
3 today.

4 But in terms of how "authorized"
5 developed, it kind of stagnated. We just
6 didn't see that term being invoked. If you go
7 outside of the United States, I think to
8 Australia and some other countries, you will
9 see that that term did take on a broader
10 meaning and might well provide something like
11 a making available right. But it is, at least
12 at this stage, a dormant issue.

13 MS. CLAGGETT: Thank you.

14 Mr. Lunney? And then, Mr.
15 Schruers.

16 PROFESSOR LUNNEY: I just wanted
17 to say that I agree with Professors Menell and
18 Ginsburg on this, since I so rarely get the
19 chance to say that.

20 (Laughter.)

21 MS. CLAGGETT: Wonderful. We have
22 one aspect of agreement on the panel today.

1 That's great.

2 Mr. Schruers?

3 MR. SCHRUEERS: So, I want to
4 return to the question about end-users being
5 the first line of attack. It is certainly not
6 desirable for end-users to be the subject of
7 litigation if the file sharing carpet-bombing
8 that the recording industry did, you know,
9 back right after the --

10 MS. CLAGGETT: But I think that
11 there is a suggestion that the law should
12 require that.

13 MR. SCHRUEERS: So, that is where I
14 am going, right? I think making those parties
15 the litigants is not the same as making those
16 parties the infringers, right? And in the
17 same way that Sony v. Universal didn't drag
18 individual home-recorders into the court, I
19 think it is a foregone conclusion that the
20 industrial actors are going to be the
21 defendants most of the time because that is
22 where the money is.

1 And so, we don't need to sort of
2 pretend those actors are the direct
3 infringers, simply because those are the ones
4 who it is most palatable to sue. I think we
5 simply acknowledge that you are suing the
6 party who is secondarily liable for
7 infringement that an end-user is doing.

8 It is one thing to say that the
9 end-user is the infringer and another thing to
10 say that the end-user is the most desirable
11 litigant. I don't think end-users are
12 desirable litigants, for all the reasons that
13 the Thomas-Rasset case tells us.

14 But that doesn't mean that we have
15 to sort of disappear them from the whole
16 process and, then, simply assume that the
17 intermediary or the service provider or the
18 device provider is not directly liable. They
19 would be secondarily liable to the extent that
20 the end-user is liable. And simply, we
21 dispute the issue, acknowledging that that
22 party is relevant to the conversation, but,

1 also, perhaps not the most desirable litigant.

2 So, it is very important to keep
3 clear in saying who is the direct infringer.
4 It is not the same question as who do we want
5 to drag into the courtroom.

6 MS. CLAGGETT: But, even for
7 purposes of secondary liability, you would
8 have to prove direct infringement. And so, I
9 think we are going to get into some questions
10 with respect to how do you prove that in the
11 context of someone who is, for example,
12 uploading something on the internet. How can
13 you actually do that under our current law and
14 whether it is appropriately addressing that
15 issue?

16 I think we had Library of Congress
17 next.

18 MR. DeANNA: I have never been
19 called the Library of Congress.

20 (Laughter.)

21 I just want to take this
22 opportunity to mention one of several of my

1 many unintended consequences remarks. We
2 talked about unauthorized copies. I just want
3 to go on record as reminding people that
4 libraries and archives have really no
5 resources to track the historical acquisition
6 histories of materials, and that there are
7 many, probably many, many unauthorized copies
8 in the collections of libraries and archives,
9 including the Library of Congress.

10 In my area, the Motion Picture
11 Broadcasting and Recorded Sound Division, some
12 of the most historically-significant,
13 important films, television broadcasts, sound
14 recordings, radio broadcasts have come from
15 private collectors and citizen donors to the
16 collection. And these are materials that I
17 can tell you most frequently the rights-
18 holders, whether they are the creators, the
19 heirs, or the members of the industry, don't
20 hold physical copies of. So, our role to
21 acquire and preserve and sustain those stands
22 to benefit all of those people significantly,

1 and we are concerned about that.

2 MS. CLAGGETT: Thank you.

3 I think we will have Mr. Bridges
4 and, then, Professor Lunney and, then,
5 Professor Ginsburg.

6 MR. BRIDGES: One detail on the
7 question of "to authorize," and I didn't
8 research this, thinking about it for today.
9 But I think there is at least one case where
10 a plaintiff sued a defendant for licensing a
11 work that the defendant did not have the
12 rights to license. And I think it was a
13 lawsuit under the "authorize" prong, and I
14 think that the court decided that the mere
15 granting of a license did not violate the
16 "authorize" prong, that the actual
17 exploitation of a Section 106 right had to
18 have occurred in order for the plaintiff to
19 have a violation here.

20 So, I think using "to authorize"
21 as a wedge to try to get at offers or inchoate
22 action that doesn't actually result in an

1 actual exploitation of a Section 106 right
2 probably would not fly under current law.

3 Others may know contrary
4 decisions, but I do recall one decision to
5 this effect.

6 MS. CLAGGETT: And I think that is
7 mentioned in, I think, Tom Sydnor's comments,
8 I believe.

9 Professor Lunney? And then,
10 Professor Ginsburg.

11 PROFESSOR LUNNEY: I just want to
12 respond briefly to Matthew's point about
13 having the direct infringers, the consumers be
14 the direct infringers, just as a convenient
15 backdrop. I think we got into a lot of
16 trouble by using them that way. In Napster,
17 the Ninth Circuit sort of causally brushes
18 aside the direct infringement questions,
19 causally brands everyone an infringer because
20 they are not before the court.

21 And then, when it gets turned
22 around in 2003 and they start suing individual

1 file sharers, I think it is a problem. I
2 would much rather have a system that is
3 rational with respect to the people who can
4 control the infringement than going after the
5 consumers just as a hook to get those parties
6 involved.

7 Now it may be some of the
8 secondary liability standards with the sort of
9 knowledge and other aspects of it that make it
10 not so much a strict liability tort are better
11 tailored to address the copyright infringement
12 issues in this context. But I think it is
13 extremely problematic to have those consumers
14 on the hook as direct infringers as a
15 necessary sort of predicate for the secondary
16 liability standard.

17 MS. CLAGGETT: Thank you.

18 Professor Ginsburg?

19 PROFESSOR GINSBURG: I will return
20 the favor and say that I also agree with the
21 desirability of going after the economic actor
22 and not the end-user, not only as a matter of

1 litigation, but even in terms of how we want
2 to conceptualize the system.

3 But this comment goes to, will
4 basing enforcement on secondary liability
5 actually work? And I think there is a
6 significant problem with that because--again,
7 assuming that the Cablevision model remains
8 viable, so that the end-user makes the copy--
9 let's suppose the storage locker is sitting on
10 a server outside the United States, right?
11 So, where is the copy made? Is it made in
12 Vanuatu?

13 And at that point, there could be
14 a violation of Vanuatuan copyright law, but
15 under U.S. precedent, notably the Subafilms
16 case, there is no secondary liability under
17 the U.S. copyright law for enabling an
18 infringement outside of the United States.

19 So, that would, then, get one into
20 the question, first of all, is there a
21 violation of the copyright law where the
22 server is (perhaps opportunistically) located?

1 And that may certainly raise litigation costs
2 in trying to figure out what pleading and
3 proving foreign law.

4 And then, there is the problem
5 that in lots and lots of countries they don't
6 have secondary liability the way we do. So,
7 this could actually be a rather clever scheme
8 to insulate a digital-delivery business model.

9 MS. CLAGGETT: Thank you.

10 Mr. Bridges?

11 MR. BRIDGES: Thank you.

12 I wanted to go back to the issue
13 of individuals versus the "economic actors."
14 I think that the recording industry made a
15 very, very fundamental mistake when it went
16 after Napster because there were people who
17 believed that it was okay to download things;
18 it was just not okay to be Napster.

19 By not bringing enforcement
20 against individuals, the enforcement did not
21 bring home to the public that they have a
22 responsibility and they have obligations under

1 the law.

2 And I remember, I think it was at
3 a hearing in the Senate, I think Senator
4 Schumer, if I am correct, was saying that his
5 daughter was downloading music from Napster
6 "while it was still legal," was his phrase.
7 He didn't stop to think that his daughter was
8 doing anything wrong. He just thought that
9 Napster was okay until the court said it
10 wasn't okay, but that the only question was
11 about Napster's conduct.

12 So, I do think that putting the
13 public front and center in enforcement, I
14 completely agree. I don't think that it is
15 wise to go out and sue lots of members of the
16 public.

17 But that brings me to my second
18 point. A good reason to put the public front
19 and center is it is sort of like how the
20 society feels about wars maybe when there is
21 a draft instead of a volunteer army. And when
22 people think that their sons and daughters may

1 get sent off to war, they might feel a little
2 bit differently about going into war.

3 If the public thinks "we are going
4 to get sued and we are going to be held liable
5 for a \$1.5 million jury verdict for 24
6 downloads, what do we think about this
7 system?" And I think actually keeping the
8 focus on the public will help provoke the
9 public debate that is so necessary in this
10 arena.

11 MS. CLAGGETT: I see a lot of
12 raised flags in response to that. So, I think
13 we have a lot of discussion.

14 And maybe Mr. Borkowski can
15 respond to this first, because I think some of
16 this is putting perhaps some of the content
17 owners in somewhat of a Catch-22, because, on
18 the one hand, you say, well, we shouldn't have
19 these \$1.5 million statutory damage awards
20 against users, but, on the other hand, they
21 should go after the users, but, on the other
22 hand, it is not a wise thing for them to do.

1 So, Mr. Borkowski, do you have a
2 response to that?

3 MR. BORKOWSKI: I do. This is an
4 argument for essentially eliminating copyright
5 protection completely. Because what Mr.
6 Bridges is arguing is, you know, you don't
7 focus on the facilitators of the infringement.
8 What you do is you have to focus and make
9 people take responsibility for their actions.
10 Nobody really believes that.

11 The whole notion is that, you
12 know, if you go after individuals, then, all
13 of a sudden, there is going to be this huge
14 groundswell of protest. And where this
15 argument goes is that, therefore, we are going
16 to water-down the Copyright Act even more to
17 prevent true enforcement of infringement.

18 You have to go after the
19 facilitators. The facilitators are the ones
20 that cause the problems, and the Napsters of
21 the world -- I litigated that case proudly on
22 behalf of the record industry.

1 The Napsters of the world are the
2 problem. They are the facilitators. And you
3 have to go after the facilitators. This is
4 why the Supreme Court unanimously in the
5 Grokster case pulled out this notion of
6 inducement, which may or may not be part of
7 contributory infringement. Who knows? I
8 always plead it as a third cause of action
9 separate from contributory infringement.

10 It is these actors who are
11 inducing others to infringe, and they are
12 responsible, they are clearly responsible.
13 You could say that the individual is
14 responsible, sure, okay, morally, let's say.
15 But that doesn't mean that the intermediary is
16 not also responsible.

17 And it is these doctrines of
18 secondary liability which are extremely
19 important and do allow us to go after those
20 who are really creating the problem of
21 copyright infringement on the internet.

22 MS. CLAGGETT: Okay. Thank you

1 very much.

2 And I think we are going to
3 Professor Menell, then Mr. Schruers, then back
4 to Mr. Bridges, although I will want to turn
5 it back again to the making available concept
6 because I think we are talking a lot about a
7 lot of very broad, general concepts in terms
8 of secondary liability, who should we sue,
9 users, or are statutory damages too high, and
10 I do want to make sure that we focus on the
11 issue of making available. And so, we are
12 going to have some specific questions in terms
13 of, under our law, what particular activity
14 does violate Title 17.

15 But, first, we will go to
16 Professor Menell.

17 PROFESSOR MENELL: I do think that
18 we are again bleeding into what is the
19 alternate policy choices. You know, I am very
20 anxious to talk about that, but I feel that
21 would be jumping the gun.

22 The one point that I will make

1 right now is that I am feeling deja vu. In
2 April 2002, I moderated a panel at the
3 Computers, Freedom, and Privacy -- underline
4 "privacy" -- Conference that took place in San
5 Francisco. And a senior attorney at EFF made
6 exactly the point that Andrew is making,
7 although he was perhaps even more aggressive
8 in saying that you are targeting the wrong
9 people.

10 And we have recently relived that
11 because I relate that story in an article, and
12 it was disputed whether or not it was said.
13 We got the transcript; it was said.

14 But I do think that we are in this
15 sort of very delicate space where we can
16 easily make arguments on either side of how we
17 should go forward. And as my comments do
18 discuss, we are, I think, largely talking
19 about issues of remedy. I mean, remedy is
20 what is driving so much of this, that if we
21 had sensible remedies, I think the making
22 available issue is -- I'll use a term of art

1 -- a no-brainer.

2 I don't think we really want to
3 get into debates over whether someone should
4 be able to put a recently-released film into
5 a folder that is available to the public at
6 large.

7 And that relates to something that
8 Professor Lunney also raises in his comments,
9 and on which I would agree with him, that the
10 porn troll litigation that is going on is, I
11 think, very counterproductive to the entire
12 copyright system.

13 One of the advantages of having a
14 clear making available right is that we don't
15 even get into the joinder question because it
16 means that every member of the Bit Torrent
17 swarm is him or herself liable under 106(3).
18 And that would modestly improve what is, I
19 think, a very pathological part of our
20 copyright system right now.

21 I would hope that everyone on a
22 panel like this would say that was not what

1 the founders or the drafters of the 1976 Act
2 or anyone thought the copyright system should
3 be about, trying to use the threat of exposing
4 someone's private viewing habits as a basis
5 for extorting a large settlement.

6 And so, the making available right
7 actually does clarify and clean up that kind
8 of litigation. But I think we ought to step
9 back and try to rationalize more than just
10 making available in order to get past this
11 roadblock.

12 MS. CLAGGETT: Thank you very
13 much.

14 I am going to go to Mr. Schruers,
15 and then Mr. Bridges.

16 But I am going to preview my next
17 question about the making available right,
18 which is to have some focus on the discussion
19 in terms of, okay, we are assuming for
20 purposes of our discussion that digital
21 download is a violation of the distribution
22 right, but we want to now take it a step

1 further in terms of making available.

2 And the question will be to the
3 panel, first of all, just a very broad, how do
4 we implement the making available right in the
5 United States generally, to focus on? And
6 then, I am going to have some specific
7 questions in terms of particular activity.

8 But I will start now with Mr.
9 Schruers and Mr. Bridges to close off this
10 aspect of the discussion that we have right
11 now.

12 MR. SCHRUEERS: So, going back to
13 what Andrew said before and his sort of draft
14 analogy, I do think there is something
15 important to take away from the observation
16 that it is easier to have an utterly-
17 ridiculous copyright system so long as it
18 stays before the radar, right? As long as
19 nobody notices how ridiculous it is, we don't
20 really have to worry about that, right? As
21 lawyers, we can rationalize it; it is hard to
22 rationalize things to the public. And so, if

1 you are sort of afraid to have airing the
2 litigation laundry, then maybe we need to
3 think about how well the system is
4 functioning.

5 But I also want to focus on the
6 targeting the right people. I think the word
7 "target" or "attack" or "go after," these are
8 all very ambiguous. The point is --

9 MS. CLAGGETT: Sue maybe for
10 infringement?

11 MR. SCHRUERS: Right. So, I think
12 "sue" is really the best way, is the best verb
13 to use.

14 There are a lot of reasons we have
15 seen why plaintiffs want to sue the
16 intermediaries, the service providers, the
17 device manufacturers, whatever. That's fine.
18 You are the author of your complaint; you can
19 sue whom you see fit.

20 But my point is that, just because
21 it makes sense from a pecuniary standpoint and
22 from a litigation convenience standpoint to go

1 after the device manufacturer or the service
2 provider, or so on, that doesn't mean that you
3 can now pretend that that actor is the direct
4 infringer. They may well, once a burden of
5 proof has been met, be established to be a
6 secondarily-liable actor, and many remedies
7 still apply against that actor.

8 But, to the extent that is any
9 merit in the argument that we don't want to be
10 dragging end-users into the courtroom, it
11 doesn't mean you can wish the end-user away.
12 The end-user is a party to the transaction and
13 proof of direct infringement by the end-user
14 will be an element of the burden of proof
15 against the intermediary.

16 Because once we start using
17 theories such as making available to transform
18 those who were previously secondarily liable
19 into direct infringers, you have very much
20 upset existing balances in the statute. And
21 now, you may well have transferred an entire
22 third tier of tertiary-liable parties into

1 secondarily-liable parties. And I don't think
2 we have fully explored the consequences of
3 that.

4 MS. CLAGGETT: Thank you.

5 Mr. Bridges, do you have a brief
6 comment?

7 MR. BRIDGES: Very brief. I am
8 pleased to be able to agree with Professor
9 Menell.

10 And this is a little bit on a
11 tangent, but I think it is important to say it
12 here. He said that the remedy issues are
13 really driving a lot of the discussion. Let
14 me be clear: I think statutory damages are
15 the single most distorting and corrupting
16 aspect of copyright law. That should be
17 amended today. And then, when that gets
18 fixed, I actually think then is the time to
19 see what other changes to make in copyright
20 law.

21 But the discussion is so
22 distorted. In the last decade, I have not

1 defended a single case where the damages
2 claimed were less than \$1 billion. And my
3 current case right now, over 30,000
4 photographs of a soft-core porn company, the
5 claim is \$4.5 billion.

6 The LimeWire case, Judge Wood
7 pointed out that the plaintiffs were seeking
8 trillions of dollars, "more money," my quoting
9 approvingly the defense brief, "than the
10 entire revenues of the recording industry
11 since Thomas Edison invented the phonograph."

12 When that gets fixed, a lot of the
13 other discussions here can be put into a
14 different light.

15 MS. CLAGGETT: And that is, I
16 think, some of the discussion we will discuss
17 a little bit later in terms of benefits of
18 clarity and how that might look. But we don't
19 want to have a specific discussion exclusively
20 about statutory damages.

21 So, I want to go back to the
22 question that I previewed in terms of going

1 back to making available -- how does the
2 United States implement the making available
3 right in its law? We talked a little bit
4 earlier about legislative history and the fact
5 that legislative history, or at least some of
6 the recent legislative history that was
7 uncovered suggests that Congress did, in fact,
8 intend to very clearly cover a making
9 available right.

10 We talked about the fact that
11 publication was very broad under the 1909 Act,
12 and distribution was simply seen in some
13 people's views as synonymous with publication
14 or to publish.

15 And then, we discussed briefly
16 whether "to authorize" would be another hook
17 to talk about the act of making available
18 under United States law.

19 So, I wanted to broadly have the
20 question about U.S. law, how do we implement
21 the making available right? And then, I want
22 to go through just a couple of brief examples

1 of particular conduct. For example, the act
2 of a person simply putting a digital file in
3 their shared folder on their computer, is that
4 the act of making available, and does that
5 violate, in and of itself, U.S. law?

6 So, I will start with Professor
7 Ginsburg.

8 PROFESSOR GINSBURG: I think we
9 might need to start by seeing if we all
10 understand what "making available" is in the
11 same way. Because, as I read the comments, I
12 think that there might not be full agreement.

13 MS. CLAGGETT: That is a very good
14 question, actually, because -- and we might
15 discuss this more a little bit later on when
16 we talk about how different countries have
17 implemented it. But it seems like there was
18 a large consensus that, yes, we do have a
19 making available right, but, then, different
20 people disagreed as to whether that right, for
21 example, would cover the activity of just
22 offering something for sale --

1 PROFESSOR GINSBURG: Exactly.

2 MS. CLAGGETT: -- offering a
3 download.

4 PROFESSOR GINSBURG: So, I believe
5 that the making available right covers not
6 only the actual transmission or delivery, but
7 also the offering, whether it is offering a
8 download or offering a stream. The standard
9 in the WIPO Copyright Treaties is clear in
10 that respect, but I think we will probably
11 defer that issue to the last panel.

12 But if one starts from the
13 position that the making available right
14 includes not merely actual communications,
15 downloads or streams, but offers to download
16 or stream, then the next question is: Was
17 Congress right in saying that, under the so-
18 called umbrella solution, we actually had a
19 sufficient patchwork of rights?

20 And that, in turn, requires an
21 understanding of both the public performance
22 right as covering the offering or the proposal

1 to communicate a performance or a display of
2 the work, and also of the distribution right
3 as covering the offer to distribute.

4 So, in that respect, I agree that
5 the steps there, the question is whether, as
6 a matter of positive law, we have filled in
7 all those steps. I think that the cases on
8 the digital distribution right are a little
9 all over the map. So, while the PTO Green
10 Paper says, somewhat hopefully perhaps, that
11 our positive law does recognize a digital
12 distribution right --

13 MS. CLAGGETT: And we have said
14 that as well.

15 PROFESSOR GINSBURG: Right.
16 Excuse me. And the Copyright Office has also
17 said that. I suppose there is some room for
18 doubt, although I agree with Professor Menell
19 that the better interpretation would reach
20 both the actual distribution of a file and the
21 offer to distribute a file.

22 I had thought that, at least on

1 the public performance right side, we were in
2 compliance. But, as a result of Cablevision
3 and Aereo, I am less confident of that
4 conclusion because of the nifty trick of
5 turning everything into a private performance
6 by virtue of an intermediate consumer-made
7 copy that is the source of the communication.

8 So, I suppose that it is possible
9 to interpret the extant copyright law in a way
10 that would cover what I think is the full
11 scope of the making available right, but I
12 think that there are divergent
13 interpretations. And so, it would be
14 necessary to have a consistent interpretation.

15 On your question about putting a
16 file in a shared folder, I think that if the
17 sharees are sufficiently numerous, they are a
18 substantial number of persons beyond a family
19 and its circle of social acquaintances, then
20 I think that that would be a making available
21 to the public.

22 MS. CLAGGETT: And just to follow

1 up really quickly before I turn it over to the
2 others, you mention that, if interpreted
3 correctly, our law, you know, our extant
4 rights would cover making available. And
5 could you just explain in terms of how the law
6 would work in that regard if it is, in fact,
7 interpreted in that way, and whether there are
8 courts that have so found that with respect to
9 the current state of our law.

10 PROFESSOR GINSBURG: So, I think
11 that Judge Gertner's decision comes closest on
12 the distribution right side, through the
13 evidentiary device of presuming that an actual
14 transmission or an actual distribution has
15 taken place. But I don't think it should be
16 necessary to do that.

17 The Elektra case, by going with
18 the publication right -- and I defer to Peter
19 on this -- maybe comes closest, although I
20 suppose there is not complete agreement on
21 publication.

22 And with respect to the public

1 performance right, I think that the language
2 of the definition of public performance is
3 actually quite close to the formulation of the
4 making available right.

5 The principal problem I think is
6 not necessarily doctrinal. I mean, I think
7 that the bits and pieces are there, but it is,
8 rather, one that a couple of people have
9 alluded to, which is right now the way the
10 business slices up the rights, it runs the
11 risk of having to get multiple clearances, and
12 that doesn't seem desirable. Now some of this
13 may be slowly being worked out, but an
14 advantage of a making available right is that
15 it would sort of force a simplified clearance
16 process. But, even if we remain with the
17 current patchwork, I think it will be
18 necessary to find ways to not make people pay
19 more than once.

20 The last thing I would say in that
21 respect concerning the patchwork and, also,
22 who owns which rights, is that we have thought

1 that we could tell the difference between a
2 download and a stream; we could tell the
3 difference between a reproduction
4 distribution, on the one hand, and a public
5 performance, on the other hand. That is the
6 "ringtones" case. But I think that the court
7 there was looking at two ends of the spectrum
8 when they invoked the metaphor of the record
9 store for a download and the radio for a
10 stream. That ignores that there may be a
11 whole lot of activity in between those
12 extremes whose characterization as a public
13 performance or as a distribution, as a digital
14 distribution of a copy or a phonorecord, may
15 not be so obvious. And that, again, raises
16 the question of, are we going to be making
17 people pay twice for what economically should
18 be a single operation?

19 MS. CLAGGETT: Thank you very
20 much.

21 I am going to go with Professor
22 Menell, then Professor Lunney, then Mr.

1 Bridges. Lunney. Why do I want to keep doing
2 that? Professor Lunney, then Mr. Bridges, and
3 then Ms. Wolff.

4 So, Professor Menell?

5 PROFESSOR MENELL: The question
6 you ask is one that I think built into it is
7 how courts have gone about this process of
8 adjudicating these different skirmishes. And
9 if you look across all of those, there are
10 these waves and patterns.

11 And I think that is why many of
12 the comments reflected a degree of, everyone
13 was clear, as my fellow panelist said, on the
14 statute being clear; it is just they disagreed
15 on what it meant.

16 (Laughter.)

17 And that is because district
18 judges are not experts in copyright law. They
19 rely almost entirely upon the briefs that
20 lawyers file in the cases, that the clerks are
21 typically not trained at the sort of level of
22 research that would have to go into the

1 archeology of 1960s legislation. And so, what
2 you get depends on whether that judge has a
3 particular approach to reading a statute or
4 the amount that is put into the briefs.

5 What shocked me, when I went back
6 and when I started this research, I pulled the
7 briefs in every single case that adjudicated
8 the distribution right in a file sharing
9 context, and none of them found any of these
10 materials that I found. And it surprised me
11 in part because I would have expected the
12 record companies and some of the motion
13 picture studios, who were paying very top law
14 firms to find the answers to these questions,
15 I would have expected them to do this.

16 And what I learned -- and this is,
17 I think, sort of true across a lot of area of
18 copyright -- is that people often stop at the
19 House report. And if the House report doesn't
20 -- and I am talking about the House report
21 that issued at the final legislative term
22 where the law issued -- if it doesn't have

1 much on it, you don't see that in the briefs.

2 Well, I believe that when courts
3 start to look at this richer trove of
4 material, they will come to a coherent
5 analysis. I think Professor Ginsburg has
6 woven it together. I think Judge Gertner did
7 an amazing job, given that she didn't have all
8 of that information.

9 The one case that did was the
10 Tenth Circuit Diversey case. That is the only
11 case that has confronted this issue at an
12 appellate level since at least my research was
13 available.

14 And I don't know that the court
15 fully read and agreed with everything. It
16 cites that work. And in my work with David
17 Nimmer, I think we tried to come to a coherent
18 analysis that is faithful to what Congress was
19 trying to do and the passage of time and
20 development of technology.

21 Congress can put a finer point on
22 this right now. I mean, this is, I think,

1 worthwhile, given that we have a lot of money
2 being spent litigating cases. And I have no
3 doubt that there will be further skirmishes.

4 So, the answer, I just don't put a
5 lot of faith in decisions, even Judge
6 Gertner's decision, just because she didn't
7 have the evidence. So, when you don't have
8 good evidence, you don't often get the correct
9 answers.

10 I do believe that courts like this
11 evidence, not everyone. Justice Scalia,
12 probably being the extreme example, wouldn't
13 look at it. But most judges I think do care
14 about trying to be faithful to this
15 institution.

16 When I think about how Congress in
17 the 1960s would look at this issue, I think
18 they would find this to be, as I said earlier,
19 a no-brainer, that making a file available to
20 the public at large -- so, let's just take one
21 term from the 1909 Act, "to vend" -- "to
22 vend," that was an expressed right.

1 So, do you think that, if a
2 bookseller had unauthorized, illegal copies of
3 a book in the window with a price tag on it,
4 that an investigator would have to photograph
5 someone actually purchasing the book or they
6 would have to go and get evidence of someone
7 who bought a book? No. I think that you
8 would bring a lawsuit. You would say,
9 "They're vending it," just as today I think we
10 could talk about putting it in a file-share
11 folder is making it available to the public,
12 which is the concept of publication.
13 Publication doesn't require a reception.

14 And so, we are just trying to kind
15 of come to common-sense approaches. What
16 makes it not common sense is what Andrew and
17 I do agree on, which is that I think the
18 remedies are also out of step, but we can talk
19 about that later.

20 MS. CLAGGETT: Yes. Thank you
21 very much.

22 I am going to go to Professor

1 Lunney.

2 PROFESSOR LUNNEY: Thank you.

3 So, I wanted to start where Jane
4 started, and that is we really don't know what
5 the treaties require, right? So, we have
6 language from the treaties, but we have no
7 authoritative source interpreting it.

8 And so, when she made certain
9 statements in her comments about this is what
10 the right means, I was curious to know what
11 she would cite. And, of course, she goes to
12 the Court of Justice for the European Union
13 and some other states that have implemented,
14 but they are not binding; their
15 interpretations are not binding on us. And
16 certainly, in those states where it has been
17 adopted, it has been inconsistently applied.

18 There's at least some decisions
19 that she has acknowledged that come out the
20 same way as Cablevision, other than making
21 available language.

22 So, when I look at our law, and

1 particularly the P2P file sharing context or
2 file sharing more generally today, the
3 difference in litigation between having to
4 prove a download and not having to prove a
5 download is relatively small. If you see a
6 file listed in a share folder, how do you know
7 it is really that file? Not everything on the
8 internet is what it says it is; that may
9 surprise you. But you actually have to
10 download it, and then, when the investigator
11 has downloaded it, that often, at least in the
12 courts' opinions -- the litigators have argued
13 this, but the courts have come out and said
14 that is enough to show the download.

15 So, as a practical matter, that
16 sort of minor technical difference in the
17 evidentiary requirement seems to me is not
18 going to put us out of step. Whether we
19 require proof of download or don't as part of
20 the prima facie case, it is still going to be
21 an element you are going to have to show to
22 prove that it was, in fact, the work that you

1 are claiming it was that was made available.

2 So, it seems impossible to me that
3 that would put us out of step with our treaty
4 obligations. And so, that is where I want to
5 start.

6 MS. CLAGGETT: Thank you very
7 much.

8 I am going to go to Mr. Bridges
9 now.

10 MR. BRIDGES: Thank you.

11 I want to criticize a casual,
12 shorthand, paraphrased approach to copyright
13 law. Our Copyright Act is like the Internal
14 Revenue Code, and you could say we are going
15 to tax acquisitions at such-and-such a rate,
16 and you could have this general concept of
17 acquisition or you can distinguish between a
18 sale of assets and reverse triangular merger,
19 and all sorts of gymnastics that corporate
20 lawyers do so well to guide themselves through
21 the tax code to minimize taxes.

22 There is no distribution right in

1 American law. There is a distribution right
2 of distributing "copies or phonorecords to the
3 public by sale or other transfer of ownership.
4 . . ." That is the right. It is the right to
5 distribute certain things in certain types of
6 transactions.

7 Now that we have been talking
8 about the making available right -- the making
9 available right we have heard referred to a
10 number of times -- I disagree with Professor
11 Lunney and Professor Ginsburg about whether it
12 is clear as to what the making available right
13 is. Let me read to you from the WIPO
14 Copyright Treaty, Article 6.

15 It's "the making available to the
16 public of the original or copies of works
17 through sale or other transfer of ownership."
18 That is not just "making available"
19 disembodied from these particular aspects.

20 And the Agreed Statement to
21 Article 6 of that provision of the,
22 quote/unquote, "making available right"

1 explains that the term "copies" that are
2 subject to that making available right refers
3 "exclusively to fixed copies that can be put
4 into circulation as tangible objects."

5 So now, there is another form of
6 making available that comes in under the right
7 of communication, and that is different. That
8 corresponds to our performance and display
9 rights. But when we talk about the making
10 available right, let's use the very, very
11 terms that the treaty has, if we mean to be
12 referring to the right that the treaty
13 describes.

14 MS. CLAGGETT: Thank you very
15 much. And I will just point out that we
16 referenced, for example -- and Professor
17 Ginsburg might have some response on this as
18 well -- WCT Article 8, because we were
19 actually talking about the on-demand,
20 interactive context and the digital context.

21 MR. BRIDGES: Right, and I am
22 dividing up the distribution and performance

1 prongs. Distribution corresponds to Article
2 6, and performance corresponds to Article 8.
3 So, we are coming back to the 106(3). That is
4 Article 6.

5 MS. CLAGGETT: Okay. I want to
6 turn to Ms. Wolff next.

7 MS. WOLFF: Sort of a segue,
8 because the aspect I was interested in is the
9 communication right, in particular, the right
10 of display. Because I think if you are
11 looking at that right, and if you look at the
12 106 rights, that we do have the right to
13 publicly display works.

14 But I think the courts have
15 misinterpreted, and they have done what Andrew
16 Bridges has said; you know, we should be
17 separating now distribution from display. The
18 courts, unfortunately, have tied reproduction
19 to display, and I think they have
20 misinterpreted the display rights, such that
21 visual artists really don't have a making
22 available right with works once they are

1 online.

2 And I think it started with the
3 Perfect 10 v. Amazon case, where they limited
4 the process in which you communicate a visual
5 work to one in which it is served on that
6 particular server. So, I think the server
7 test, unfortunately, couples the reproduction
8 right with the display right. And I think
9 that too narrowly interprets the right of
10 display, which deals with the right to
11 transmit or otherwise communicate the display
12 of the work to the public by means of any
13 device or process.

14 So, what happens is, if you use
15 clever technology devices, you can essentially
16 cut and paste an image and do inline linking
17 or framing. So that the end-user, the one who
18 is viewing the communication just sees now
19 even a large high-res image which doesn't even
20 now relate back to the original site where it
21 came from.

22 So, by not having it on the

1 server, there is no actual copying. So, you
2 never have any direct infringement. And
3 unfortunately, it creates the actors who are
4 making available images, and in many cases now
5 not even the thumbnails that were in the
6 Perfect 10 case, but high-res, large images to
7 the public. And it is causing very decreased
8 traffic to the site which has legally
9 authorized the display of the image and has a
10 very high increase in piracy, when it is very
11 easy just to right-click a high-res image.

12 So, that is where I think that the
13 courts have really taken some missteps in
14 looking at the display right and requiring
15 that there has to be a copy on a server of the
16 direct infringer.

17 MS. CLAGGETT: Thank you very
18 much.

19 And I was just going to say that
20 we have about 10-15 minutes left. We did want
21 to get an opportunity to see if there were any
22 audience questions or comments, rather. So,

1 I am going to really just end with the last
2 number of flags that we have up, and then, we
3 will turn it to the audience in case anybody
4 from the audience has some remarks that they
5 would like to make in response to any of the
6 questions we raised in the first panel.

7 I am going to go to Mr. Borkowski
8 first.

9 MR. BORKOWSKI: Thanks. I will
10 try to be brief. Just a couple of points I
11 wanted to make.

12 Since we are talking about the
13 language of whether it is the treaties or
14 whether it is the Copyright Act, putting aside
15 the legislative history, Section 506(a)(1)(c)
16 of the Copyright Act imposes criminal
17 penalties for the distribution of a work being
18 prepared for commercial distribution by making
19 it available on a computer network accessible
20 to members of the public. That could not be
21 clearer. The Copyright Act already recognizes
22 making available explicitly.

1 And also, if you look at the
2 definition -- and I said this at the very
3 beginning of this panel -- the definition of
4 publication, or Section 101 of the Copyright
5 Act, publication is "the offering to
6 distribute copies or phonorecords." And then,
7 publication is further defined as "the
8 distribution of copies or phonorecords." So,
9 the offering to distribute is already
10 recognized by the Copyright Act.

11 I think it is clear that, if an
12 online user puts something in his or her share
13 folder, that volitional act is enough to be
14 making available, whether she deliberately
15 enables it or does not change the default that
16 is usually to share, which is usually what the
17 intermediary, secondary infringers try to get
18 people to do.

19 I am just going to wait. This
20 isn't directly relevant. I will be one
21 minute.

22 I have to say that I do disagree

1 with Mr. Bridges and even Professor Menell.
2 Statutory damages are one of the most
3 important tools that copyright owners have.
4 They have a deterrent effect, and they are
5 critical to enable us to fight large-scale
6 online piracy.

7 The Rasset-Thomas case is always
8 used as this example of, oh my God, look what
9 happened. Well, three separate juries of her
10 peers found her liable for lots and lots of
11 money.

12 Talk about individual
13 responsibility. A jury of peers, three
14 separate times. I just want to make that
15 crystal clear.

16 And by the way, the amount that
17 was awarded per infringement was substantially
18 less than \$150,000. I am not aware of any
19 large-scale infringement case in which any
20 jury has come close to awarding the maximum.

21 So, whatever is pled in complaints
22 by plaintiffs' lawyers, you know, billions of

1 dollars, Dr. Evil, whatever, it is not
2 realistic. The awards are never nearly close
3 to maximum.

4 MS. CLAGGETT: Thanks.

5 MR. BORKOWSKI: All right.

6 MS. CLAGGETT: I am going to go to
7 Mr. Schruers, Mr. DeAnna, Professor Ginsburg,
8 and then, end with Mr. Beiter.

9 Thank you.

10 MR. SCHRUEERS: So, regarding the
11 language in Section 506 that Mr. Borkowski
12 quoted, I think that is actually a limitation
13 on the language, right? It is one particular
14 modality by which it might be distributed.
15 That doesn't mean that that modality satisfies
16 the distribution.

17 So, you know, if it had said
18 distributing it by throwing it out of an
19 airplane, that wouldn't mean that every time
20 somebody threw something out of an airplane
21 that violated the distribution right. I mean,
22 you still have to satisfy all the other

1 elements.

2 In fact, I think that is
3 dispositive in the other direction. It shows
4 that when Congress wants to say making
5 available, they say making available.

6 If you look in Chapter 9 regarding
7 semiconductors, when referring to
8 "distribute," we do define "distribute" there
9 to include distribution or offers to
10 distribute. So, the language is pretty clear
11 when it needs to be.

12 Ultimately, I think what some of
13 the previous commenters indicated, this is
14 just about litigation burden and the
15 allegation that it might be harder to prove
16 actual distribution than it is to prove making
17 available.

18 And yet, some of the end-user
19 cases that we are looking at, making available
20 is viewed in some of these cases as sufficient
21 evidence to satisfy a civil liability burden
22 that distribution actually happened.

1 So, ultimately, the use of all of
2 this legislative history, which we don't
3 actually know the parties didn't find -- all
4 we know is that they didn't find it or they
5 didn't see fit to cite it, right? -- to come
6 to an outcome that is supposed to make an
7 alleged evidentiary burden more convenient I
8 don't think is very persuasive.

9 If we are going to go pointing to
10 places where the evidentiary burden is outside
11 some acceptable standard deviation, you know,
12 you can just as easily make the same case
13 about statutory damages. In statutory
14 damages, the evidentiary burden is very easy.
15 One is required to make no evidence of injury.

16 So, given that that hasn't been
17 sufficient, hasn't provided sufficient
18 motivation to change statutory damages, I
19 don't see why an allegedly elevated burden on
20 the allegation in the cause of action with
21 respect to just actual distribution is that
22 onerous or at least so onerous as to require

1 a change.

2 MS. CLAGGETT: Thank you very
3 much. And I think we will get a chance to
4 explore those in a little bit more detail in
5 the next panel, which addresses some of these
6 same issues, because we didn't get a chance to
7 explore those issues fully in this panel.

8 I am going to go next to Mr.
9 DeAnna.

10 MR. DeANNA: Thanks.

11 I just want to quickly note that
12 in the case of Diversey a library was found to
13 have infringed by simply cataloguing this item
14 that was in their collections. And if that,
15 in fact, is something that is going to hold or
16 continue, the impact on what we do, that is,
17 preserve, preserve things for the future,
18 sustain them while they are in copyright and
19 beyond their copyright protections, is very
20 much at risk. Because the cataloguing
21 process, the documenting of these items in a
22 catalogue system is an absolutely essential

1 step prior to digitizing these in libraries
2 and archives for preservation. You take that
3 out and you have chilled the whole act of
4 preservation, and you have a collection of
5 analog materials deteriorating.

6 And I will say that a lot of these
7 issues will continue into the digital realm as
8 materials are produced and distributed -- I
9 shouldn't even say that -- digitally, that
10 libraries and archives will continue to have
11 these collections there that are no longer
12 marketplace items that they need to sustain.
13 And so, being able to catalogue them and have
14 metadata on them is an essential aspect of
15 what we do.

16 Thank you.

17 MS. CLAGGETT: Thank you very
18 much.

19 I'll go to Professor Ginsburg
20 next, and then, Mr. Beiter. And then, we will
21 end with Mr. Menell, actually, because he did
22 have his -- and then, if there are no audience

1 participants, I will go to Professor Lunney.

2 PROFESSOR GINSBURG: Yes, I think
3 Nancy made an important point about another
4 gap in the positive law, that it is not clear
5 that the display right, which is part of the
6 making available right, is fully covered by
7 virtue of decisions like Perfect 10.

8 And this gets into a topic which
9 perhaps you had intended to raise as a
10 concrete example and was addressed by a number
11 of the comments, which is, is linking a making
12 available? In the international panel we can
13 talk about ECJ's [European Court of Justice]
14 recent decision.

15 I want to refer particularly to
16 the comments of the Digital Public Library of
17 America because it is absolutely true that
18 linking is a very important function, in the
19 library context, very important public
20 benefits.

21 Does it follow that if linking
22 were to be considered a form of making

1 available, that would be the end of libraries,
2 and so forth? And I think not because we have
3 Section 512(d). I don't think any of the
4 comments referred to Section 512(d), which
5 states that "A service provider," which that
6 term has been interpreted so extremely broadly
7 in the case law, that I think it would pretty
8 clearly cover a library. "A service provider
9 shall not be liable for monetary relief, or,
10 except as provided for, injunctive or other
11 equitable relief, for infringement of
12 copyright" -- so distribution right; display
13 right, excuse me -- "by reason of the provider
14 referring or linking users to an online
15 location containing infringing material or
16 infringing activity, by using information
17 location tools, including hypertext link, if
18 the service provider" then complies with the
19 notice and takedown provisions.

20 So, I think that if one were to
21 say that at least certain kinds of linking,
22 such as the framing that occurred in the

1 Perfect 10 case, was a form of making
2 available, that is I think not necessarily a
3 problem because that is what Section 512(d) is
4 for.

5 MS. CLAGGETT: Thank you very
6 much.

7 I am going to actually have to
8 close it with Mr. Beiter, so that everybody I
9 saw earlier -- and then, I am going to open it
10 up to the audience for a few minutes, if they
11 have any final responses to some of our
12 questions. If you do, please line up now at
13 the podium, and then, we will have about five
14 minutes of audience remarks. And if we have
15 any time, which I doubt we will do, we will go
16 back to any participants that I wasn't able to
17 call on. And obviously, in the next panel we
18 will be able to continue our exploration of
19 this issue.

20 Mr. Beiter?

21 MR. BEITER: Well, speaking now
22 specifically about the public performance

1 right, I think we are in agreement that
2 Congress did express the idea that it believed
3 that the rights then extant in the copyright
4 statute were sufficiently broad to encompass
5 the making available right. Unfortunately
6 from the public performance standpoint, the
7 courts have since interpreted that right more
8 narrowly. Generally, it involves decisions
9 that are not technologically neutral, going
10 back to the ASCAP AOL decision in the rate
11 court, where there was a bright line set
12 between downloads which are distributions and
13 streaming which is public performance.
14 Although that may stand as precedent, as my
15 son informs me, the technology has overtaken
16 that decision, and that there is
17 contemporaneous ability to listen as you
18 download, as we all know now.

19 And then, the more recent
20 Cablevision and Aereo cases, again, not
21 technologically neutral, which I believe is a
22 hallmark of the WIPO Treaties when it comes to

1 making available right, the focus again being
2 on the technology by which the end-user avails
3 him or herself of the work, and determining
4 that one transmission, each transmission being
5 private, even though there would be maybe
6 multiple transmissions, an entire business
7 model, built upon multiple transmissions.

8 So, from SESAC's perspective, the
9 public performance right has been narrowed,
10 and the question of whether it still
11 encompasses its share of the making available
12 right under the treaties is in question.

13 One other thing I wanted to say,
14 the terminology in the panel and the papers
15 today, there has been reference to end-users
16 and I think, alternatively, to consumers. You
17 know, words are important, and I think
18 definitions are important. And I think my
19 sense, as a non-legalistic sense, a consumer
20 is somebody, in my mind, who pays for
21 something, pays for the end-product, pays for
22 the service.

1 And although these end-users, not
2 all of these end-users may be consumers, and
3 I think there is a certain patina of
4 legitimacy and benevolence in being a
5 consumer, and I don't think that that is
6 necessarily to be applied to all end-users.

7 MS. CLAGGETT: Thank you very
8 much.

9 And I want to thank all of the
10 participants.

11 We actually are a little bit over
12 time as well. So, I don't think we have any
13 time to go back to any of the participants,
14 but we will have an audience session at the
15 end of the day in which we can explore these
16 issues further.

17 Do we have anybody from the
18 audience who wants to make remarks in response
19 to anything that was raised?

20 (No response.)

21 All right. We will have a very,
22 very short 15-minute break and come back at 11

1 o'clock with our next session.

2 Thank you very much.

3 (Whereupon, the foregoing matter
4 went off the record at 10:48 a.m. and went
5 back on the record at 11:02 a.m.)

6 MS. STRONG: Thank you, everybody,
7 for joining us for panel two of today's
8 hearing.

9 As you heard in the first panel,
10 the discussion is about the existing rights
11 under Title 17, and this is part two of that
12 same panel, the same objectives.

13 What I would like to do right now
14 for the record is if we can just go around the
15 dais and the platform, and if you would just
16 introduce your name and your affiliation?

17 Thank you.

18 MR. BAND: I'm Jonathan Band for
19 the Library Copyright Alliance.

20 MR. DiMONA: I'm Joe DiMona, Vice
21 President of Legal Affairs with BMI, the music
22 licensing company.

1 MR. HALPERT: I'm Jim Halpert.
2 I'm General Counsel to the Internet Commerce
3 Coalition.

4 MR. HUSICK: I'm Lawrence Husick.
5 I'm a member of the Delaware County,
6 Pennsylvania IP Roundtable, here speaking
7 solely on my own behalf.

8 MR. KNIFE: I'm Lee Knife. I am
9 the Executive Director of the Digital Media
10 Association.

11 MR. KUPFERSCHMID: Keith
12 Kupferschmid, General Counsel and Senior Vice
13 President for Intellectual Property, for the
14 Software and Information Industry Association.

15 MS. LYONS: Patrice Lyons, General
16 Counsel, Corporation for National Research
17 Initiatives.

18 MS. MOY: Laura Moy, Staff
19 Attorney at Public Knowledge.

20 MR. ROSENTHAL: Jay Rosenthal,
21 Senior Vice President and General Counsel at
22 the National Music Publishers' Association.

1 MR. SHEFFNER: Ben Sheffner, Vice
2 President, Legal Affairs, the Motion Picture
3 Association of America.

4 MR. TEPP: Steve Tepp, on behalf
5 of the Global IP Center at the U.S. Chamber of
6 Commerce.

7 MS. STRONG: Thank you all very
8 much.

9 We look forward to this panel,
10 which will cover much of the similar issues,
11 at least in terms of questions, that you heard
12 on the first session. However, of course, we
13 have a different panel; we have different
14 roles of expertise. So, we look forward to an
15 engaging question and discussion.

16 But I would like to start off this
17 panel with the same question that we presented
18 in Panel 1, which is exploring the role of the
19 legislative history. What should that role
20 be, especially as we have seen and have heard
21 from the prior panel about the courts'
22 difficulty in either accessing or

1 understanding some of the legislative history
2 involving the 1976 Act as amended.

3 So, with that, I open the floor
4 for, what should the role of legislative
5 history be?

6 Mr. Band?

7 MR. BAND: So, just to kick things
8 off, my father is a professor of comparative
9 literature. And so, I grew up in a household
10 where no text was clear; everything had levels
11 of meaning. And so, I think, as a practical
12 matter, the plain language means what it says
13 when you agree with what you think it says,
14 and, otherwise, you would want to always look
15 at the legislative history.

16 So, I think, as a practical
17 matter, you are always going to look at
18 whatever sources of information that are there
19 to help you interpret what you are looking at.
20 And then, as a litigator, you will either use
21 what is helpful and whatever that is not
22 helpful you will say is not authoritative or

1 is somehow not worthy of being looked at.

2 MS. STRONG: Thank you.

3 Mr. Kupferschmid?

4 MR. KUPFERSCHMID: Thank you.

5 I'm far from an expert on
6 legislative history, and I sort of defer in
7 that regard to the folks on the first panel.

8 But some of the statements said
9 there, for instance, that terms we are talking
10 about here were created, were drafted at a
11 time where we didn't really envision the
12 digital landscape, the environment that we are
13 in today.

14 And so, I think by the very nature
15 you see us trying to apply terms that were
16 created in the analog world to a digital
17 world. And by their very nature, there is
18 going to be some ambiguity. How do you apply
19 those? What do those mean in this context?

20 And because of that, I think
21 legislative history plays a big role to find
22 out what the intent behind those terms is.

1 So, where somebody says, "Well, you know, this
2 term is clear on its face," well, it might
3 have been clear on its face back in the analog
4 world, but I don't think you can say that
5 anymore, given how much has changed between
6 now and the 1976 Act.

7 MS. STRONG: Ms. Lyons?

8 MS. LYONS: Yes. Well, having
9 been around at the 1976 Act, I notice that
10 some terminology goes well before. They talk
11 about publication under 1909, which was
12 clearly the dividing line between whether you
13 made copies available, and that was physical,
14 because they distinguished that from
15 broadcasting.

16 Now, with the 1976 Act, we did,
17 with all due respect, get into digital because
18 we had actually had many experiments going on.
19 We had the whole holding up of some of them at
20 the last minute, some of the considerations.
21 And then, we had the special consideration
22 afterwards for what it meant to be a computer

1 program.

2 So, I would say that in the
3 computer program/computer database, it was
4 clearly coming up in the last days of the 1976
5 Act. And then, it was spot-on for the
6 discussions just following.

7 MS. STRONG: Thank you.

8 Mr. Tepp?

9 MR. TEPP: Thanks.

10 We heard some claims in the prior
11 panel that the statute is utterly clear and
12 requires no reference to the legislative
13 history. And the interpretation that was
14 offered, curiously enough, is contrary to the
15 interpretation that for the past 15-plus years
16 has been taken by the Copyright Office, the
17 successive Administrations, and Congresses,
18 through control of different political
19 parties.

20 So, it seems that there is,
21 indeed, some difference of opinion. There is
22 certainly a legislative and statutory basis to

1 conclude that the distribution right, which is
2 I think the central issue here, does cover or
3 is implicated by acts of making available.
4 That could be through the term "to authorize,"
5 qualifying the 106 text, as well as through
6 the definition of "publication."

7 But the fact that the United
8 States Government, writ all, has accepted both
9 in terms of its implementation of the WIPO
10 Internet Treaties as well as successive free
11 trade agreements, that that is what U.S. law
12 covers, and we did not yet get into the
13 Charming Betsy Doctrine, which, of course,
14 instructs where there is some question of
15 statutory interpretation of domestic law, the
16 interpretation that keeps the United States in
17 compliance with its international obligations
18 is the strongly preferred interpretation. And
19 that is a quite venerable doctrine, dating
20 back nearly to the founding of the Republic.

21 All those mitigate at the very
22 least to look at the legislative history, and

1 probably much further, to conclude that U.S.
2 law does, in fact, at this time, and has all
3 along, included a making available right as an
4 element of the distribution right.

5 Thank you.

6 MS. STRONG: Mr. DiMona?

7 MR. DIMONA: Thanks, Maria.

8 I would like to bring this around
9 to the public performing right. I know a lot
10 has been talked about the distribution right
11 this morning already, but BMI represents the
12 performance rights in music.

13 I think the legislative history is
14 very important and helpful and instructive in
15 the public performing right. I think we have
16 a number of things that happily come together.

17 We have a very, very broadly-
18 worded public performing right. We have
19 legislative history that supports that broad
20 ruling and amplifies on it greatly. And we
21 have a very broadly-worded international
22 treaty that also agrees.

1 The problem is a couple of the
2 courts have come out with decisions that don't
3 agree with any of those things, and those
4 decisions arise primarily in some commercial
5 context, which I hope we will have the
6 opportunity to talk about a little bit later
7 in the course of this panel.

8 But I think the legislative
9 history is helpful. I also want to bring out
10 the fact that some of these commercial
11 contexts, where we think the performing right
12 has been unduly curtailed, have their root in
13 people complaining that, "Well, there
14 shouldn't be two fees for one act," or, "There
15 shouldn't be a multiplicity of rights."

16 I think fundamental to the 1976
17 Act was the idea that, yes, there are multiple
18 copyright rights. They can be separately
19 alienated. They can be bundled in different
20 fashions. And so, that is an important part
21 of this where Congress said, yes, there can be
22 multiple rights. And there's plenty of

1 instances in commercial reality where more
2 than one right is paid for one seeming
3 activity or bundle of activities. And
4 hopefully, we will get into that.

5 But the short answer is, yes, the
6 legislative history is quite important.

7 MS. STRONG: Thank you.

8 Continuing on, I guess, to follow
9 on again some of the earlier discussions,
10 could we have your views on that relationship
11 between publication and distribution in our
12 law and as the terms are used? I think we
13 heard some discussion on that this morning.
14 To the extent a lot of the players here on
15 this particular dais also represent
16 corporations, not just the academic community,
17 I would like to particularly know if you have
18 any legal views that have affected your
19 ability to generate new business models.

20 Ms. Lyons?

21 MS. LYONS: Yes, and I am going to
22 come back on this periodically because I have

1 been working with the internet community now
2 for almost 30 years or so and watched the
3 evolution of the technology and the difficulty
4 between the copyright law and the patent law.

5 And some of the concepts -- for
6 example, you have a software program that
7 performs a method, all right? And some of
8 them argue -- I remember I was on this one --
9 you were talking about, and I will try to keep
10 focused on your question, publication versus
11 distribution. If you are looking at what it
12 means to publish in that environment, it is a
13 process. So, it is not like you have
14 something that you, then, put from here to
15 there. It is a process. It is a software
16 process.

17 So, if you look at some of the
18 discussion this morning -- and I will stop
19 here -- it is that you have to look at what
20 you are talking about. There seemed to be a
21 notion that you downloaded, say, a file.
22 Well, a file is just a logical way of linking

1 through a concept or a tag, which just happens
2 to be called a folder or file. But you are
3 not really talking about running the file.
4 You perform or run the program in which works
5 may be embodied.

6 Just to give you a brief comment,
7 I was on this copyright subcommittee for one
8 of the bar associations that are
9 participating. And there is a big copyright
10 case out in California between two major
11 corporations, and they chose to leave all the
12 patent claims out. Well, you know, if you
13 went to back and, then, you tried to compare
14 the two, it might have really helped.

15 But, okay, we looked at the
16 copyright. And I had a so-called Subcommittee
17 on Copyright. It got down into somebody
18 saying on the phone call, "Well, a book is a
19 copyright work." And I said, "Well, how many
20 copyright lawyers are on the call?" It was
21 like a dozen folks. They were all patent
22 lawyers. Okay?

1 And so, I said, all right, let's
2 look at the copyright statute. You have
3 literary works and, then, you have the
4 expression of that work, and you have it
5 structured. And in the old days, the old days
6 of print on paper, that used to be English
7 fixed on paper and print. But, if you get rid
8 of that and you have the value, and you are
9 managing that value, and you are representing
10 it in some digital form of expression, then I
11 said, let's start the dialog. "No, no, no, a
12 book is a copyright work." I chose to
13 disagree.

14 MR. AMER: Just to follow up a
15 little bit on this question about the
16 relationship between publication and
17 distribution, do any of you see any
18 significance to the language in 101, the
19 definition of "publication," which says that
20 "the offering to distribute copies or
21 phonorecords" constitutes publication. Does
22 that suggest that Congress intended the two to

1 have different meanings?

2 I guess Mr. Band.

3 MR. BAND: Well, I guess the main
4 focus of our concern, which is my client's
5 concern, in this whole area has to do with
6 some of the cases that were mentioned in the
7 previous panel, the Hotaling decision and the
8 Diversey decision, and whether simply having
9 a book on the shelf constitutes a distribution
10 and, therefore, can contribute to liability,
11 and that really becomes a problem as a
12 practical matter.

13 And where you see those cases, the
14 reason those cases came up was really because
15 of a statute of limitations problem. I mean,
16 there had been probably an infringing
17 reproduction, but that may have happened many
18 years ago. And so, there was an effort to
19 say, well, okay, we want to hold someone
20 liable. How are we going to hold them liable?
21 And they sort of jerry-rigged this notion that
22 somehow, by having a book on the shelf, that

1 is sort of like this ongoing distribution
2 that, then, contributes to liability.

3 And so, getting back to your
4 question, I mean, I think the concern here is
5 that you have certain -- you know, there is a
6 structure of rights and, then, there is also
7 a notion of limitations, where it is
8 exceptions or in this case the statute of
9 limitations, to confine the scope of those
10 rights and the ability to bring actions
11 against it.

12 And so, so much of what is going
13 on here is trying to find a way around what is
14 really going on. So, it is either to find a
15 way to assess liability after the statute of
16 limitations or to find liability when it is
17 hard to prove the infringement and you are
18 trying to lessen the evidentiary burden.

19 And so, I think we need to really
20 say, what's going on here and what are we
21 really trying to do? So, in terms of saying,
22 what did Congress intend, well, Congress

1 didn't intend anything. We all know that. It
2 is sort of what comes out of -- I think we can
3 say that in this room here, too.

4 (Laughter.)

5 I mean, it is sort of like what
6 comes out of a process of bargains and
7 negotiations and deals that happen over time
8 and that leads to all kinds of inconsistencies
9 that, then, are thrown in the lap of the
10 court. And the court has to sort of figure
11 out, well, how do I -- so, the notion of you
12 have one definition and another definition,
13 and they don't necessarily make sense. To
14 think that there was some overriding
15 intelligence that sort of said that they do
16 make sense and they are clear -- we know they
17 aren't clear here. And so, we don't need to
18 pretend that they are. It is a matter of
19 trying to figure out how do we make the best
20 we can out of the sausage or, more
21 importantly, figure out what is the best way
22 going forward.

1 MR. AMER: And I think definitely
2 we are going to talk about the statute of
3 limitations implications, if not in this
4 panel, then in the afternoon.

5 I think Mr. Kupferschmid.

6 MR. KUPFERSCHMID: Thank you.

7 And before I address your
8 question, actually, I think I will go back and
9 answer a little bit of Maria's question as
10 well. I just have one sort of caveat for my
11 comments on this panel and the next panel I
12 will be on, which is that SIIA [Software &
13 Information Industry Association] represents
14 technology companies that make software and
15 information products, sort of the serious side
16 of copyright, if you will.

17 (Laughter.)

18 MS. STRONG: As opposed to the --

19 MR. KUPFERSCHMID: Entertainment
20 side. Sorry. The entertainment side.

21 So, anyway, in terms of what I
22 will be talking about, it is really focused

1 more on the distribution right because it is
2 pretty darned hard to perform software or an
3 information product, for that matter.

4 So, with that in mind, let me try
5 to answer the question. If you look back at
6 the legislative history, both the Senate and
7 the House reports, where they considered the
8 terms "distribution" and "publication," it was
9 pretty clear they considered them to be
10 synonymous.

11 If you look at the language of the
12 report, and I will quote here, they refer to
13 "the exclusive rights of reproduction,
14 adaptation, publication, performance, and
15 display." So, they don't say "distribution";
16 they use the word "publication" instead.

17 And there's other references in
18 the report in that regard as well. So, they
19 thought, I think, that they were or they used
20 them synonymously. And that is why I think
21 the definition is, Kevin, as you point out, I
22 think it is significant, because there is no

1 definition of "distribution," but there is of
2 "publication." And so, that is kind of all we
3 have to rely on, and that definition of
4 "publication" does include offers to
5 distribute.

6 As Jonathan mentioned, at the end
7 of the day, all we have is what is in front of
8 us and the language we have to interpret the
9 best we can. I think he was not assuming a
10 level of intelligence. I will assume there is
11 a level of intelligence here and try to
12 interpret what those terms meant or mean.

13 MR. AMER: I think Mr. Husick --
14 am I saying that right? -- was next.

15 MR. HUSICK: Yes. My impression,
16 having read the legislative history, is that
17 we are dealing with a problem that the
18 information industry knows all too well, the
19 problem of backward compatibility.

20 And that is that, under the 1909
21 Act what you were concerned with was
22 publication. And so, the discussion was

1 framed in terms of publication, and only later
2 did the term "distribution" come up and make
3 its way into the exclusive rights enumerated.

4 And so, it is not entirely clear
5 in reading the legislative history or in
6 referring to any of the other preexisting
7 materials, dating all the way back to the
8 early 1960s, that anyone had any idea that
9 those two were different, but, more
10 importantly, that they had any idea that they
11 could be different in the digital domain.

12 And so, if we are faced with the
13 conundrum of what they thought, we need to
14 face up to the idea that they may not have
15 thought about it at all, and that it is,
16 therefore, up to us to think about it
17 carefully and, if appropriate, call on
18 Congress, maybe not to reword the statute, but
19 just maybe to give us a little bit more
20 legislative history and tell us, if it is even
21 conceivable, tell us what the sense of
22 Congress might be.

1 MR. AMER: Mr. Tepp?

2 MR. TEPP: Thank you.

3 I think the last two comments
4 illustrate clearly what is obvious to anyone
5 who looks at the history of copyright, which
6 is that the notion of distribution, the notion
7 of publication are inextricably intertwined.
8 So that, when on the previous panel certain
9 panelists quoted, and repeatedly, the language
10 of the distribution right, "sale or other
11 transfer of ownership by rental, lease, or
12 lending," well, that is, of course, also the
13 definition of publication. And the definition
14 of publication, as we have just been saying,
15 also explicitly includes offering to
16 distribute copies.

17 Now, in the statute, publication
18 is different from distribution. In the
19 history, they are probably not. At the very,
20 very least, this, again, is good cause for the
21 Office to look into the legislative history to
22 achieve better clarity where the statute lacks

1 that clarity.

2 And in terms of practical effects
3 here, what I would like to note is that the
4 harm of the current situation, where we have
5 a split in the courts, where we have the
6 Copyright Office, the Administration, and
7 Congress saying one thing, we have
8 commentators and some courts saying another
9 thing, that is not good for the copyright
10 system generally.

11 We will never have absolute
12 clarity, but improved clarity would be
13 beneficial to everyone with a stake in these
14 issues. To the extent that the Copyright
15 Office's previous statement on this was of a
16 relatively informal nature, certainly, this
17 proceeding and whatever results of it would be
18 an opportunity to provide a repetition of the
19 Copyright Office's views but within a more
20 formal document with a more vibrant analysis
21 behind it that would be more likely to be
22 given deference in future court cases; and,

1 thus, give us better clarity.

2 Thank you.

3 MS. CLAGGETT: Thank you.

4 And I have a quick follow-up
5 question, but I know there are a couple of
6 people waiting in terms of the publication
7 versus distribution and the legislative
8 history about that evolution.

9 Is there anything in the
10 legislative history that suggests that
11 Congress somehow was intending to limit
12 distribution in some way, more so than the
13 understanding of publication or to publish at
14 the time, or, as we had discussed before, were
15 those really intended to be synonymous? Is
16 there actually anything suggesting that there
17 was an intent to limit distribution in a
18 manner that "to publish" was not limited?

19 MR. AMER: Ms. Lyons?

20 MS. LYONS: Yes. There has been
21 some confusion. I remember the publication
22 cases, because if you published without notice

1 of copyright, it was the dividing line; it was
2 a bright line. But it wasn't so bright; there
3 was fuzziness along the edges. As in any
4 human endeavor, nothing is crystal clear.

5 So, particularly in the
6 broadcasting area, what did it mean? And
7 there was some uncertainty. You know, the
8 limited publication, the publication to the
9 general public, what did that mean?

10 So, in the legislative history,
11 particularly the House report -- somebody was
12 mentioning life ends with the House report --
13 well, it was pretty authoritative, as I
14 recall. They do have a specific provision
15 with respect to broadcasting. They clarified
16 that point, that distribution, in the sense
17 that if no copy changes hands -- and they
18 meant copy in the physical, tangible sense --
19 if no copy changes hands, there is not a
20 publication, as I recall. I don't have the
21 wording before me. I would have to look it
22 up.

1 MS. CLAGGETT: Were there any
2 responses to that or was there anybody else
3 waiting to respond to that initial question,
4 the previous question that Kevin just asked?

5 MR. AMER: Oh, Mr. Halpert?

6 MR. HALPERT: Steve was kind
7 enough to speak about practical effects. And
8 I think while the legislative history is what
9 it is, and there is a pretty strong argument
10 that the statute is ambiguous here, one needs
11 to be mindful, also, of having an offer to
12 make content available producing under the
13 current statutory damage regime a massive,
14 massive liability that would probably violate
15 due process.

16 So, even if one were to accept the
17 premise that the legislative history should
18 apply and this right should exist, we need to
19 think practically what that effect will be.
20 And the Copyright Office should not make a
21 recommendation that unequivocally says
22 offering works for a download, per se becomes

1 a trigger for starting to calculate what would
2 be astronomical statutory damages, without any
3 requirement that the rights owner actually
4 prove their case that works actually were
5 downloaded or streamed to a different source.

6 It is easy enough to do that by
7 going to the site or source and obtaining
8 works through, basically, an enforcement test.
9 But if one all of a sudden wipes away that
10 element of proof, under the huge statutory
11 damages that exist now and the very, very long
12 term of copyright, it winds up being quite a
13 different calculus and I think would put some
14 pressure on the overall structure of the Act.

15 That is not to say that, if
16 somebody does upload a work, for example, for
17 download, that they shouldn't be subject to
18 injunctive relief or some other remedy. But
19 simply mechanically applying this could
20 produce some absurd results down the road.

21 MR. AMER: Thank you.

22 So, I think it was Ms. Lyons.

1 MS. LYONS: Yes, please.

2 I believe my colleague here
3 mentioned something about a book on the shelf.
4 You don't download a book. You have a
5 copyright work that may be expressed in the
6 form, and the data structure is the print on
7 paper, but if you get rid of that, you have
8 the value.

9 Over the recent years, since the
10 nineties, when we were working with the
11 Association of American Publishers, and later
12 with the International Publishers Association,
13 and we helped them stand up the International
14 DOI [Digital Object Identifier] Foundation,
15 which has now been joined with the movie and
16 cable folk, you represent that information as
17 a data structure, and a machine-independent
18 data structure that can be persistently
19 identifiable. And then, you can perform
20 operations on it.

21 And so, most of the discussion is
22 not perform or distribute. You access to

1 perform stated operations on a sequence of
2 bits, so the performance of operations. And
3 then, you get smack-dab into, well, what is
4 the structuring of this information? Are
5 there patents involved? And are you
6 performing somebody's patented method?

7 So, it would be very interesting
8 to brief you on some of these newer methods.
9 This goes back to when Pat Schroeder was
10 leading the Association of American
11 Publishers, and I see Allan Adler. He could
12 probably share some more information about
13 that with you.

14 MS. STRONG: Just a follow-up
15 there before we move on, just so I am clear on
16 your point, because it sounds like you are
17 talking a lot about data structures. Is it
18 your contention that an electronic or digital
19 copy of a book is not a copyrighted work?

20 MS. LYONS: Well, first of all, a
21 copy is a physical object in the law, all
22 right, except if you are talking about copy as

1 a reproduction. And that has always been
2 confusing to folks.

3 You know, you have this
4 definition. All right? And if you tie it
5 back to distribution of a copy, in my humble
6 opinion, they meant physical object.

7 And in the WIPO Treaties and the
8 comment to Article 6, they say tangible
9 object.

10 So, they have been dancing around
11 the need, really, to address what is actually
12 happening now in the internet environment,
13 because that is what has gotten people really;
14 it has gotten their interest.

15 I have now gone into many
16 discussions about how you would apply this in
17 other areas. Copyright really was the first
18 one out of the gate to address this. Now you
19 have banking and health and whatever.

20 So, what I am saying is that you
21 have the digital representation of information
22 of various forms, and you structure that

1 information in ways that it can be accessed
2 and processed. You can perform operations on
3 it.

4 And then, you can identify
5 different things. You can identify the target
6 of the process. And so, whether or not there
7 is a publication, making available, usually,
8 we talk about access to perform operations,
9 but that access may not be just simply a
10 download. It is interactive. You know, you
11 can perform, say, Angry Birds or a distributed
12 program. And that is really a software
13 program that is based on and incorporates
14 maybe video, graphics, music, but it is
15 basically software.

16 So, the focus of what you are
17 talking about, I would just humbly suggest
18 that maybe that could be shifted a little bit.

19 MR. AMER: Mr. Tepp? Then, Mr.
20 Sheffner, and then, Mr. Band.

21 MR. TEPP: Thank you.

22 So, just to put the focus back on

1 what the issue that the Copyright Office has
2 convened this process for is, it is the
3 threshold question of whether U.S. law
4 provides a making available right in full.
5 And there are, of course, a collection of
6 rights in U.S. law that provide elements of
7 that. The one that has gotten the most
8 attention this morning is the distribution
9 right, though, of course, not the only one.

10 Questions of statutory damages
11 that several panelists have now raised in a
12 rather polemic fashion are really not the
13 subject today. And as Professor Ginsburg on
14 the previous panel pointed out, there may well
15 be ways in which some of the concerns that are
16 being raised could be addressed.

17 If there is no threshold
18 implication of an exclusive right by making
19 available, then there is no issue; there is no
20 adequate protection; we are likely not in
21 compliance with our international obligations,
22 which I will discuss in a later panel.

1 But I don't think the Office
2 should be influenced or distracted in its
3 question that it is looking at now by claims
4 about statutory damages, with which I don't
5 necessarily agree. There are other processes
6 that this Office may undertake and that
7 another body is already undertaking to look
8 into those questions. And I will be happy to
9 prove people who disagree with me wrong in
10 those proceedings.

11 Thank you.

12 MS. CLAGGETT: Thank you, Steven.

13 That is true; we are not focusing
14 on the issue of statutory damages broadly,
15 although it has been raised in some question
16 in terms of the interrelationship between
17 statutory damages and whether there is a fear
18 of making available. But, as you point out,
19 the Patent and Trademark Office is looking
20 specifically at the issue of statutory damages
21 under the Green Paper process.

22 MR. HALPERT: If I could make one

1 point in response to that, the specific charge
2 is for feasibility of creating this right,
3 which also goes to the practical implications.
4 Again, I am not disputing the existence of the
5 right, but I think that part of the study
6 needs to examine feasibility. And simply
7 saying some other entity is undertaking in a
8 multi-stakeholder process a discussion about
9 this issue does not absolve the Copyright
10 Office of a responsibility to consider the
11 practicality, just as some of the
12 practicalities of other proposals the
13 Copyright Office does weigh. And I think it
14 is entirely appropriate here.

15 MR. AMER: Okay. Mr. Sheffner?

16 MR. SHEFFNER: Yes, I actually
17 wanted to respond to Mr. Halpert's previous
18 point, which you just reiterated, about
19 practical effects.

20 So, in determining whether the
21 current statute includes a making available
22 right, we have all these interpretative tools.

1 We start with the plain language of the
2 statute. Then, we go into legislative
3 history. Professor Menell has done a heroic
4 job in digging up a lot of material that no
5 one else had found. And as long as there is
6 only one Justice Scalia, rather than nine
7 Justice Scalias, litigators are going to cite
8 legislative history.

9 We, then, have what Steve referred
10 to earlier, the Charming Betsy Doctrine, which
11 I think is critically important in this area.
12 Basically, it says, if the statute is at all
13 ambiguous, it should be interpreted in a
14 manner consistent with our international
15 obligations.

16 And then, another thing the courts
17 will look at, another sort of interpretative
18 tool, of course, is looking at the practical
19 effects or the policy.

20 And I am also going to cite
21 Professor Menell who said something at a
22 speech, a talk I heard him give a couple of

1 years ago, which has really stuck in my mind,
2 which is, when we are thinking about this, why
3 in the world would we want a legal system
4 which says that, if you have a shared folder
5 and you have a file consisting of a recently-
6 released motion picture or song or a piece of
7 software, why in the world would we want a
8 legal system which says that is perfectly
9 okay?

10 You are sharing with potentially
11 millions of other people on this peer-to-peer
12 network. What policy reason is there to say
13 that is not violating anybody's rights? It is
14 a rhetorical question, obviously. I think the
15 answer is pretty clear.

16 And even Mr. Halpert, I think, in
17 his previous comments acknowledged that you
18 should be able to get an injunction to stop
19 somebody from having that file sit there in
20 their shared folder, which I would certainly
21 agree with.

22 But, again, there is no policy

1 justification for saying, yes, that's a
2 perfectly legal and fine activity, to be
3 having a file in their shared folder, making
4 it available to potentially millions of people
5 who are also part of that peer-to-peer
6 network.

7 MR. AMER: Thank you.

8 Mr. Band?

9 MR. BAND: So, first, just
10 responding to something that someone earlier
11 said that also was mentioned on the first
12 panel, which is sort of like, again, one of
13 these things looming in the background. I
14 think the proponents of saying that a
15 distribution covers digital transmissions, it
16 is like be careful what you wish for. Because
17 -- and this is certainly what was implicit in
18 the earlier panel -- but that, then, really
19 gets into the whole issue of digital first
20 sale.

21 I mean, if somehow, to the extent
22 that the first sale doctrine is about the

1 exhaustion of the distribution right, then
2 that would certainly suggest that, once it is
3 transmitted to me, then I have the right to
4 resell it if the copy that I got was
5 distributed to me. So, that is the first
6 point. So, that really needs to be thought
7 through: to what extent does saying that it
8 is a distribution, a digital distribution is
9 a distribution within the meaning of Section
10 106?

11 But the second point -- and this
12 gets to Ben's point -- I mean, I completely
13 agree that, if something is in the share, if
14 there is a work that is in the share folder,
15 that would certainly look like something that
16 should be actionable. But I would think that
17 that would be actionable, first and foremost,
18 under the reproduction right.

19 And this, again, gets to what we
20 were talking about in the previous -- or what
21 they were talking about in the previous panel,
22 about who is doing it. I mean, you don't have

1 to worry about the end-user who is downloading
2 it. It certainly would seem to me that the
3 person who is uploading it, who uploads it
4 into their share folder, that that is a
5 reproduction and that that, presumably, would
6 be an infringement because I can't imagine
7 that they had the right to upload that copy
8 into the share folder.

9 And to the extent that they had a
10 license, if they even bought that work under
11 the license, I am sure the license did not
12 authorize them to upload to the share folder.
13 So, that seems to me to take care of it right
14 there.

15 And, still, you get to the statute
16 of limitations. If it was just sitting there
17 for three years and no one ever accessed it,
18 then maybe we settle because the reproduction
19 happened three years ago, and that is the end
20 of it, unless there are ongoing copies being
21 made because of the nature of the way the
22 computer is working.

1 So, I think that there are ways of
2 getting to all of the rights. There are ways
3 of preventing all of the infringing activities
4 we are talking about. We just don't need to
5 start distending certain rights because, if we
6 do that, then we have all kinds of
7 implications, that some might be good for some
8 people, but they also might be very bad for
9 some people.

10 MR. AMER: I think Mr. Husick was
11 next, and then, Mr. Halpert.

12 MR. HUSICK: In response to Mr.
13 Sheffner's question, I think he has put the
14 rabbit in the hat by saying "recent." The
15 reason that we might want a regime that looks
16 like that is that copyright is for most people
17 forever, certainly in excess of their
18 remaining lifetimes.

19 And here, an analogy to patent law
20 is especially apt. I am a registered patent
21 attorney. In patents we have a requirement
22 that you file. We have a requirement that you

1 record transfers. We have a clearance system
2 that works, and we have a rights system that
3 at least arguably works.

4 I will note, parenthetically, that
5 many of the people who are on this panel with
6 me, and were on the previous panel, would in
7 a patent context be referred to as trolls
8 because they neither create the works nor
9 perform them, but merely seek to collect rents
10 for them. And we are engaged on the patent
11 side in that discussion right now.

12 The reason that we might want a
13 regime like that is because end-users -- and
14 I am the founder of several nonprofit ventures
15 and foundations where we are consumers, as
16 well as an attorney who represents producers
17 of IP -- the reason is that it is almost
18 impossible to clear certain works; that it is
19 impossible to know whether a work is, in fact,
20 still under copyright protection in many
21 contexts. And I mean economically impossible
22 because the cost of clearance far exceeds the

1 value of most of the works.

2 And so, we might well want a
3 regime that protects end-users while going
4 after the real guilty actors, in this case
5 those who facilitate mass copyright
6 infringement.

7 MR. AMER: Thank you.

8 We are going to go to Mr. Halpert,
9 then Mr. Kupferschmid, then Ms. Lyons. Then,
10 I think we will move on to another question.

11 MR. HALPERT: Actually, I will
12 pass at this time.

13 MR. AMER: Okay. Mr.
14 Kupferschmid?

15 MR. KUPFERSCHMID: I just wanted
16 to address a couple of points that Jonathan
17 made.

18 One about, first, even though
19 these aren't really copies, I am just going
20 to, for this group here -- but, on first sale,
21 obviously, that is a much longer discussion
22 here. But, of course, combining two points

1 that Jonathan made, you also do have
2 reproduction that is occurring at the other
3 end when you are making a digital transmission
4 of a work. And that needs to be considered in
5 the context of the first sale doctrine.

6 More importantly, I want to raise
7 the issue of something uploaded to a shared
8 folder which was asked. And Jonathan
9 suggested that -- or maybe not suggested --
10 said that it would be covered by a
11 reproduction right. Well, that is not
12 necessarily the case, especially in this world
13 of cloud computing now we live in, where it
14 could be a very legitimate reproduction, but
15 you may be distributing that by providing
16 access to it, making it available to a whole
17 bunch of other people.

18 So, it may not be an illegal
19 distribution. You may be sharing that access
20 code or otherwise providing access greater
21 than you have the authority to do, in which
22 case you don't have this falling under the

1 reproduction right, but it would fall under
2 the distribution right, as well as other --
3 you know, it could be an anti-circumvention
4 violation. It could be a violation of the
5 Computer Fraud and Abuse Act. There's a whole
6 bunch of other things that could come into
7 play here.

8 MS. LYONS: The whole idea of
9 files and folders, in the early internet when
10 they were doing the work to stand it up, the
11 identifier resolved to ports on machines, was
12 really the real original internet of things.
13 You had a computer, one right there. Okay?

14 So, then, Tim Berners-Lee came
15 along and did a very easy, understandable way
16 to have procedures, that you didn't have to
17 necessarily know about how to get to certain
18 information and their location.

19 So, the notion of files and
20 folders came in more with the web. If the web
21 came along today, it would probably be just an
22 app, just to put things into perspective.

1 So, the whole notion of having
2 folders and files, I think we have gone beyond
3 that with the Apple App Store and the various
4 other projects out there where you can have
5 running programs that are based on or
6 incorporate preexisting copyright works. But,
7 then, they are converted into new forms of
8 expression.

9 So, I will come back on this later
10 because the one right I find is the
11 conversion, the making of the derivative work.
12 This came up in Aereo where you had
13 transcoding. You had going from one to
14 another, and that was, in my view, making
15 derivative works.

16 And so, that is the kind of thing
17 I think really, if we are going to reconsider
18 this, and talking about the existing rights,
19 to what extent the existing right of
20 derivative work, making a derivative work, may
21 address some of the issues that you are
22 talking about and trying to pigeonhole into

1 the old copies.

2 MR. AMER: Thank you.

3 We had a mention of -- oh, did you
4 have a comment on the previous? Sorry. Go
5 ahead.

6 MS. MOY: Sorry. Yes. I just
7 wanted to respond quickly to Ben's statement
8 that there is no policy reason to not want an
9 exclusive right that would cover someone
10 placing something in their shared drive.

11 I just wanted to say that -- I
12 know others have mentioned cloud computing as
13 well -- there are situations where, for
14 example, someone working at a company might
15 back up their hard drive to a drive that is
16 accessible to others on the network, or
17 situations where someone may legally download
18 copies of articles that they have access to
19 and place that research, for example, in a
20 folder on a drive that other members of the
21 company have access to.

22 So, I just think that there is a

1 real slippery slope problem here that does
2 present a policy justification not to extend
3 a right to that situation that Ben describes.

4 MR. AMER: Okay. I think that may
5 lead us into another question. And this
6 touches, obviously, on a topic for the
7 afternoon.

8 But there was some disagreement on
9 the last panel about what it is that the WIPO
10 Treaties actually require. There seems to be
11 broad agreement that the United States is in
12 compliance, but not uniform agreement
13 necessarily about what compliance means.

14 And so, I wonder if any of you
15 have views as to whether the treaties allow
16 member states to require evidence of an actual
17 distribution or do the treaties require member
18 states to impose liability only for the
19 offering of a work?

20 Mr. Tepp?

21 MR. TEPP: Without stealing
22 thunder from myself for the last panel of the

1 day, I will just say that the term "making
2 available" has a plain meaning, and it's
3 making available.

4 MR. AMER: I think Mr. Band.

5 MR. BAND: Well, except what is
6 very interesting is, when it says "making
7 available," then, underneath it, the actual
8 text looks an awful lot like what we call the
9 distribution right about, again, distributing
10 copies. And it is very clear that they are
11 talking about making copies available.

12 And so, I think that I am sure
13 that there is a principle of statutory
14 construction out there, and if there isn't,
15 there should be, that treaties should be
16 interpreted in their narrowest possible way.

17 (Laughter.)

18 And I think that --

19 MS. STRONG: Maybe somebody will
20 answer whether there is such a doctrine.

21 MR. BAND: But it seems that it is
22 a pretty -- the language of the treaty is

1 simple, direct, pretty bare-bones. And so, it
2 seems to me that to start suggesting that the
3 treaty meant to go far beyond what is obvious
4 from its terms, and again, it seems very clear
5 that it is really in Article 6 that it is
6 talking about making copies available. The
7 simplest and the plain language to me is that
8 it is talking about making physical copies,
9 and that is all that it was applying to.

10 MS. CLAGGETT: Steve, I think you
11 have a response to that?

12 MR. TEPP: Yes, and this came up
13 in the last panel. It is a misreading of the
14 treaty. Article 6 is not the making available
15 right at issue here. It uses the term "making
16 available" in regards to what is understood
17 and the negotiating history. And I will get
18 into it in the last panel of the day.

19 It is the distribution right. And
20 they had to word it that way because of the
21 way some countries apply their distribution
22 right more narrowly than the United States

1 does. Article 8 is the making available right
2 that we are referring to for this purpose.

3 MR. BAND: What is called the
4 right to communicate, right?

5 MR. TEPP: It is a subset of --
6 in, actually, the WCT, it is explicitly a
7 subset of the communication right, yes. And
8 in the WPPT, it is set out separately from the
9 communication to the public right, where the
10 communication to the public right has more
11 flexibility in terms of national
12 implementation and there is no such
13 flexibility with regard to the making
14 available right in the WPPT, that it must be
15 an exclusive right.

16 So, Article 6 is a non sequitur
17 here.

18 MR. AMER: Mr. DiMona?

19 MR. DiMONA: Thank you.

20 And I will say that I am a little
21 bit uneasy sitting in between the library
22 representative and the internet commerce

1 representative, but I know I have got Jay and
2 Ben and Steve down at the end there.

3 MR. HALPERT: We are all here
4 seeking truth.

5 (Laughter.)

6 I am quite centrist, actually, in
7 my view. So, feel comfortable.

8 MR. DiMONA: So, my understanding
9 is that the treaty compels the right of making
10 available in both the communication right,
11 which would be the performing right here in
12 this country, and the distribution right. It
13 is very plain that making available means the
14 offering, not requiring a distribution.

15 And, you know, I just think that
16 there have been cases here. For example, my
17 colleague Sam Mosenkis from ASCAP handed me
18 the FilmOn X case, for example, which involved
19 the Aereo-type service. And the court there
20 found that FilmOn X's service violates the
21 exclusive right to perform the copyrighted
22 work by making available copyrighted

1 performances, so that any member of the public
2 can access them at any time they want.

3 So, there are courts here who have
4 agreed that the performing right in our
5 country meets this. I think it is pretty
6 clear.

7 MR. AMER: Mr. Husick? Oh, that's
8 from before?

9 Ms. Lyons?

10 MS. LYONS: Yes, I have noted in
11 the past that Article 6 definitely refers to
12 tangible copies, at least if you take into
13 account what you might consider the
14 legislative history of that provision.

15 And you would have to get into --
16 if I scratched my head, I used to work in
17 intergovernmental organizations -- the Vienna
18 Convention on the Law of Treaties, wanted to
19 take into account the legislative history, or
20 whatever, but I am not briefed on that today
21 to give you a clear answer on it. But I could
22 do that.

1 Let's play a fantasy game of
2 soccer. Okay? And we are going to have music
3 and lights, and it is going to be distributed
4 play. Everybody has to have certain elements
5 that they are going to so-called download.
6 And there is going to be actually simulations
7 of plays that various people can play roles.

8 So, all of this is not made
9 available insofar as you can access it to
10 perform certain operations and you can play
11 different roles. And if there is music, if
12 there is lights, if there is whatever, you are
13 looking at programs that are operating and
14 running it in a distributed environment.

15 So, if we are going to do
16 something, looking at the copyright law today,
17 and not look at the actual technical
18 implementations that are taking place out
19 there in the internet, then it may be that you
20 could run against concepts in copyright that
21 are being defined in the patent law for you.

22 I happened to bring along a recent

1 case, Ancora Technologies v. Apple. It is a
2 Federal Circuit case from March 2014. They
3 get into the notion of what it means to be a
4 computer program, and they defined it in terms
5 of just instructions, not statements and
6 instructions. So, they are differing. They
7 are trying to redefine copyright law there.
8 They talk about performing methods, and they
9 talk about the concept of copy, which is
10 definitely something in play in the first
11 panel and this panel.

12 And they talk in terms of volatile
13 memory versus non-volatile memory. And they
14 kind of are agreeing, to one of the ordinary
15 skill in the art, a volatile memory is memory
16 whose data is not maintained when the power is
17 removed, and the non-volatile memory is memory
18 whose data is maintained when the power is
19 removed.

20 Now, oftentimes instead of
21 volatile versus non-volatile, they talk about
22 static versus dynamic. So, when a copy, so-

1 called for copyright purposes -- and getting
2 back to your question about European Treaties,
3 if you go into the discussions about uploads
4 to satellites and cable communications, they
5 don't have the same concept of copy. The
6 reason they don't is statutorily they are not
7 required, as the U.S. was, to have fixation in
8 tangible form as the point of attachment for
9 copyright protection. So, a lot of them, the
10 work is protected, just as if you get up and
11 sing a song; it doesn't have to be fixed.

12 So, we pay a lot more attention to
13 the fixation in tangible form than they would.
14 So, when you have these kinds of
15 conversations, which used to be my job several
16 years back, about what it means to be
17 communication of broadcast programming -- they
18 were talking about direct satellite
19 broadcasting at the time I was directly
20 involved -- the communication right, the
21 communication to the public, which in the
22 United States is covered by the public

1 performance.

2 And here, you have to look into
3 the definition where they talk not just about
4 transmit, but communication more broadly.
5 Because there is the definition of transmit,
6 which is more an analog-based concept;
7 whereas, images and sounds are received beyond
8 the place where they were sent, or something
9 to that effect.

10 But when you get into the digital
11 representation, what you are talking about is
12 the data structures moving in commerce from A
13 to B. And they may be based on or incorporate
14 preexisting audiovisual works or music, but it
15 is not what is being communicated.

16 MS. CLAGGETT: Thank you.

17 MS. LYONS: So, communication is a
18 better concept here.

19 MR. AMER: Thank you.

20 I think, picking up on the last
21 question about what it is that the Treaties
22 require, there has been some discussion of the

1 Charming Betsy Doctrine. And so, I think the
2 question is, assuming that the treaties do
3 require members to cover the offering to
4 distribute, is it reasonable to construe the
5 distribution right -- for purposes of the
6 Charming Betsy Doctrine -- is it a reasonable
7 construction to construe our law as providing
8 that right? And if so, is that dispositive?
9 Does that essentially answer the question, if
10 that is a reasonable interpretation?

11 Mr. Kupferschmid?

12 MR. KUPFERSCHMID: So, we have got
13 a tough question here because you are asking
14 us, do we comply with an international treaty
15 that requires us to provide a right of making
16 available? And I will disagree with Steve
17 here a little bit, not entirely, but a little
18 bit, in saying, making available? I don't
19 know exactly what that means.

20 I think the treaty describes it a
21 little bit, but there's a lot of questions
22 inherent in the terminology "making

1 available," right? So, we have got that
2 ambiguity.

3 We have got ambiguities in our own
4 law in terms of what it means to distribute
5 something, what the right of distribution
6 covers and doesn't cover.

7 And so, there's, I think, a lot of
8 wiggle room in terms of do we comply or don't
9 we comply with our international obligations.
10 I am going to take a little bit what I think
11 is somewhat of a minority view here.

12 I went through the cases, like I
13 said, limited to really just looking at the
14 distribution cases and whether you needed to
15 actually distribute something or to download
16 it, rather, or just merely making it
17 available, is that sufficient? And in looking
18 through all those cases, I thought the vast
19 majority of those cases did cover -- the court
20 did come out and say there was a making
21 available right.

22 Now, to do that, you have to give

1 some definition. You have got to define a
2 little bit what it means to make available.
3 And the two filters that I saw that the courts
4 were generally using, if you apply these two
5 filters throughout all these cases, virtually
6 all of them say this is a making available
7 right.

8 The first one is, has the
9 transferor completed all the steps necessary
10 for a public distribution, so that the only
11 steps that are further necessary to transfer
12 ownership are those required by the
13 transferee? Okay? So, it is up there.
14 Anyone can come at any time and download the
15 material.

16 And then, the other criteria,
17 which comes up I think more often, is that,
18 underlying, the alleged infringer must have
19 had the capacity to transfer a copy. And by
20 that, I mean he must have possessed a copy.
21 Okay?

22 So, for instance, I can say, "Hey,

1 I would like to sell you Lee's car." Okay,
2 have I made his car available to you? Well,
3 I don't own his car. I don't have any right
4 to make his car --

5 MS. CLAGGETT: And beyond that,
6 not only do you not own the car, but you don't
7 actually have the car in your possession.

8 MR. KUPFERSCHMID: Yes, exactly.
9 And so, I think you see a lot of cases where
10 people will interpret as, okay, there's no
11 making available right. But if you apply
12 these two filters, you will see that it
13 actually did come out on the right end. And
14 either maybe the plaintiff just sued the wrong
15 party; maybe secondary liability theories come
16 into play because they provide the means for
17 making available as opposed to making it
18 available.

19 So, I think looking through that
20 lens, because making it available is not as
21 clear, at least in terms of the treaty, the
22 WCT, it is not so clear as some people may

1 think.

2 MR. AMER: Mr. Band?

3 MR. BAND: So, of course, I
4 disagree with the premise of your question.
5 But, having made that clear, so assuming that
6 the treaties do require what you say, what you
7 are assuming that they require, then I would
8 say that our case law, again, quite clearly
9 satisfies that because there have been all
10 these cases where sort of the offering has
11 been considered to be sufficient to lead to
12 distribution liability.

13 Now, again, I might disagree with
14 the reasoning in some or maybe all of those
15 cases, but, unfortunately, I am not a judge,
16 so what I think doesn't really matter.

17 But I think the point is that,
18 first, as a general matter, we always comply
19 with our international obligations, right?
20 That is always the case, as Karyn --

21 MS. CLAGGETT: Exactly.

22 MR. BAND: We always do that.

1 Second of all, I think even in
2 this specific case, regardless of how you
3 interpret the obligations of the WCT, I think
4 either way, we are complying with them.
5 Rightly or wrongly, we are complying with
6 them.

7 MR. AMER: I think Mr. Halpert.

8 MR. HALPERT: Thank you.

9 I would just like to add to
10 Keith's very good comment about the scope of
11 the right of making available.

12 To the extent that one were
13 actually to try to insert it into the
14 Copyright Act, again, there are ways that we
15 can achieve compliance with international
16 norms without doing this. But I want to be
17 very clear about the lack of clarity with this
18 term, and I think some fairly serious
19 constitutional issues, if it were to be
20 codified in U.S. law.

21 And I think as we talk about a
22 "right of making available" here in a sort of

1 loose way, it is important not to lose sight
2 of these.

3 First of all, the right of making
4 available would be very different than the
5 existing rights in the Copyright Act. It
6 would encompass both distribution and public
7 performance. So, the question would be, why
8 would we do something that overlapped with
9 existing rights to that extent?

10 Secondly, the degree of activity
11 that is required to engage in any of the acts
12 that are specifically limited by Section 106
13 is missing. You can have the effect of making
14 information available -- this goes to the
15 secondary liability point that Keith made --
16 simply by not implementing a copy control
17 technology that a particular copyright owner
18 or a copyright troll would want you to
19 implement.

20 This would have implications for
21 hardware, for software, and possibly service-
22 based offerings that were not subject to some

1 either fair use or limitations on liability in
2 Section 512. And it would, I think, implicate
3 First Amendment concerns because it would go
4 to, as used by plaintiffs, would go to whether
5 you restricted access to information, because
6 the opposite of making information available,
7 the way not to make information available is
8 to restrict access.

9 So, it would create a bias toward
10 filtering or blocking content and, also,
11 potentially create liability simply for using
12 ordinary software that has the effect of
13 making copies. Even writing a journalistic
14 article that mentions the availability of
15 infringing work somewhere on the internet
16 could be deemed to be making information
17 available.

18 So, my point is that it is an
19 unconstitutionally vague term if codified in
20 U.S. law, and we need to be very clear about
21 what we are talking about, rather than
22 assuming, simply assuming, yes, we are

1 fulfilling the international obligations; that
2 this is, in and of itself, a freestanding
3 right, as would be interpreted by U.S. courts
4 in ordinary copyright proceedings.

5 And this goes in a core way to the
6 feasibility of attempting to codify this in
7 U.S. law. And I think there would be a very
8 serious drag on innovation if it were to be
9 codified in U.S. law.

10 And I apologize that I am bringing
11 this up on this panel.

12 MS. CLAGGETT: Yes, because I was
13 going to say, we are going to explore that a
14 little bit in more detail in terms of the
15 panel after lunch, in terms of the benefits of
16 clarification, if any, as well as any
17 potential downside of actually codifying
18 something specifically in our law.

19 MR. AMER: I think Mr. Husick was
20 next, and then, Mr. Sheffner, then Ms. Lyons.
21 Mr. DiMona has a comment. And then, I think
22 we will go to another question. Oh, and then,

1 Steve Tepp.

2 MR. HUSICK: Just to expand a
3 little bit on what Keith said earlier, as a
4 practical matter, I can name any collection of
5 bits on any storage medium or network anything
6 I want. And so, it is to the copyright owner
7 to demonstrate that a copy has been made
8 without authorization.

9 And therefore, as a practical
10 matter, the work either has to be reproduced
11 or performed in order to assure yourself of
12 that. Because format transformation means
13 that you can't just fingerprint the file; you
14 can't just do an MD5 checksum and say, "Yes,
15 that's the same file," because all you are
16 doing is inviting format transformation as a
17 matter of process.

18 And so, as a practical matter, a
19 defendant will be able to say, if you create
20 a freestanding right in which there is no
21 requirement to verify the identity of the
22 work, that you have simply not met your prima

1 facie burden because I may have a file on my
2 iPad right now named "zerodarkthirty.m4v," and
3 I may not, but it may not be the work that
4 everyone thinks I'm referring to.

5 MR. AMER: I think Mr. Sheffner
6 was next.

7 MR. SHEFFNER: So, the question
8 that I raised my flag to respond to is, does
9 current law put us in compliance or in
10 violation of our international treaty
11 obligations? And I will admit I am not an
12 international lawyer.

13 So, I asked the question, well,
14 what exactly does it mean to be in compliance
15 with our treaty obligations? And just to
16 repeat the position that we took in our
17 written submission, we believe that the
18 statute as properly interpreted does keep us
19 in compliance with our international treaty
20 obligations.

21 Now there has been discussion that
22 the case law, the split of the case law as to

1 whether merely making something available by,
2 for example, putting a work in your shared
3 folder and making it available to others on a
4 peer-to-peer network is itself an act of
5 infringement. There is a split in the courts
6 whether, as I think Keith said, that the vast
7 majority go in favor of the plaintiff. There
8 is a minority in favor of the defendant.

9 So, I would say that, under some
10 of those interpretations, we would not be in
11 compliance with our treaty obligations. But,
12 again, as properly interpreted, it would be.

13 I realize this is bleeding into
14 the second panel, but we are not calling for
15 a change in the statute at this point. I
16 think it is very important to watch the
17 development in those cases, to make sure the
18 courts interpret that properly for, among
19 other reasons, keeping us in compliance with
20 our treaty obligations under Charming Betsy.

21 But, again, to reiterate some
22 suggestion that we made in our written

1 comments, we do think it would be very
2 helpful, coming out of this process, for the
3 Copyright Office to state clearly what it
4 believes would be a proper interpretation of
5 the law, the statute, and, again, one that
6 would keep us in compliance with our treaty
7 obligations.

8 MR. AMER: Thank you.

9 Ms. Lyons?

10 MS. LYONS: Yes, please. I am
11 going to discuss a bit your points you made.

12 What does it mean to be a copy? I
13 said earlier that a file is a method of
14 logically linking. It is a tag system. It is
15 not a copyright work. It is not even the
16 expression of the work. So, you are not
17 downloading; you are not copying files.

18 You know, rebuttal time will come.

19 So, what is the form of expression
20 we are talking about? We are talking about
21 the digital representation of the work. The
22 work is incorporeal; the literary work, it has

1 to be expressed in some form.

2 If you express it in the form of a
3 computer program, which is I think the normal
4 way on the internet that information is made
5 available and processed, and you perform
6 operations on this symbolic language,
7 represented in the form, and, in fact, it is
8 your bits. You know, when you convert that
9 symbolic logic to binary form, that is when
10 you get into the world of the data
11 structuring, the data structures. We call
12 them digital objects.

13 We recently had an X.1255
14 recommendation adopted at the ITU
15 [International Telecommunication Union] in
16 Geneva, where the governments of the world
17 decided on "digital entity" as the way forward
18 for this machine-independent data structure.

19 So, if you have this, the work
20 incorporeal, you are not downloading the work
21 per se. You are downloading the expression of
22 the work as it has been incorporated in some

1 other form. And so, you are making this
2 derivative work.

3 You also talked about format
4 transformation. This gets into the broadcast
5 case, the Aereo. They received the signal
6 from the State Department, not the State
7 Department -- I'm in Washington; I'm sorry --
8 the Empire State Building. And they had their
9 antennas there, and they took it.

10 I have some of the articles I read
11 about their technical methods. They actually
12 transcoded. In other words, they converted
13 the information. So, they made another
14 derivative work and perhaps several derivative
15 works in the process of making that
16 information available.

17 So, if you want to look at what it
18 means to be making available, then you have to
19 get into the technology of what you are
20 talking about.

21 MS. CLAGGETT: Thank you, Ms.
22 Lyons.

1 MS. LYONS: Otherwise, it is going
2 to run out of steam.

3 Thank you. Thank you.

4 MR. AMER: Mr. DiMona was next, I
5 believe.

6 MR. DiMONA: Thank you.

7 In my opinion, the World Copyright
8 Treaty, the main goal of this particular part
9 of it was to bring interactivity squarely
10 within the scope of copyright, to make it very
11 clear that interactive, on-demand services
12 were within the concept of the communication
13 right; whereas, the older European laws were
14 more broadcast-oriented.

15 And in doing that, they also steer
16 the law towards the liability of the service
17 provider that is making available the works
18 for people to download. And that point is
19 tied up with the offering.

20 I think it is pretty clear. I
21 think that some of the criticism that you
22 heard this morning about cloud computing and

1 First Amendment, to me, are sort of red
2 herring arguments in this context. It is just
3 trying to create concerns and confusion.

4 I think cloud computing systems
5 can and should be licensed. I think the
6 courts and Congress could easily make the
7 difference between commercial services that
8 are broadly making copyrighted content
9 available and certain unusual circumstances
10 where somebody who works for a business
11 accidentally put an article into the company's
12 cloud computing system, and some other person
13 in the company read it. You know, I don't
14 think that that is the focus of this.

15 I think those types of situations
16 aren't really what is understood by a broad
17 making available right. And I just think that
18 First Amendment concerns really shouldn't be
19 worried about here. Fair use and other
20 doctrines handle those type of situations.

21 MR. AMER: Thank you.

22 Mr. Tepp?

1 MR. TEPP: Thank you.

2 Let me begin by being clear that I
3 am not advocating recodification of making
4 available right in U.S. law. The argument is
5 it is already in there; it has been in there.
6 There is no need to recodify it. And I don't
7 necessarily agree with some of the claims that
8 were made about supposed harm that would occur
9 if it were re-codified.

10 But getting back to the core
11 question of whether the Charming Betsy
12 Doctrine controls, of course, some other
13 panelists have said, well, there is some
14 flexibility and some lack of clarity. Of
15 course, there is some flexibility in
16 implementing the making available right. I
17 will get into some of the more detailed
18 discussion of that in the later panel on this
19 very subject.

20 But when the alternative that is
21 being offered is categorically that making a
22 work available does not implicate any

1 exclusive right in the United States copyright
2 law, it is very hard to see how we would be in
3 compliance with a making available right in
4 the treaty that we have signed onto and
5 implemented.

6 So, when we have a statute that is
7 less than crystal clear and a doctrine of
8 avoiding interpretations that bring us into
9 non-compliance, that doctrine does seem
10 sufficient to be determinative, but I hasten
11 to add, it doesn't need to be determinative
12 because the legislative history of U.S. law
13 also leads us to the same conclusion.

14 Thank you.

15 MR. AMER: Mr. Halpert?

16 MR. HALPERT: And I think that I
17 ultimately agree with Mr. Tepp, but the key
18 question is: what does this term actually mean
19 in the context of U.S. law? And the First
20 Amendment and other innovation implications of
21 this are not to be ignored.

22 And so, your initial response,

1 "What does the right of making available mean
2 to say?," "It means making works available,"
3 isn't really adequate to address this concern.
4 And it also doesn't address the potential due
5 process concerns with multiplying statutory
6 damages of, say, \$80,000 per work that is
7 compiled to come up with some multimillion
8 dollar figure against somebody who, yes, is
9 violating copyright, but the scale of the
10 sanction could be absolutely massive. It also
11 could have some deterrence on entities if the
12 make available right applies to secondary
13 liability that are innovating, trying to come
14 up with good business models.

15 So, again, the injunction, a basic
16 single-work type of sanction would be
17 appropriate, but I think we need to be careful
18 in approaching this right to make available
19 and assuming the broadest possible
20 interpretation, particularly given how
21 litigious the U.S. legal system is, and in
22 many ways quite different than other national

1 regimes around the world that have adopted
2 this sort of right to make available.

3 And understanding how this works
4 in context is extremely important, and I think
5 it would be helpful to be a good deal more
6 precise about what the meaning of the term
7 actually is in the context of U.S. law,
8 accepting your point that we should be in
9 compliance and the Copyright Act should be
10 interpreted in a way that puts us in
11 compliance with our international obligations.

12 MS. CLAGGETT: Thank you very
13 much.

14 I think we only have about 15
15 minutes left, and we did want to, again, give
16 the opportunity for the audience to respond to
17 anything that was raised on the panel.

18 I think we just have one or two
19 more final questions from people here at the
20 table, and then, we will turn it over for the
21 last five or ten minutes to see if there are
22 any audience questions or remarks in response

1 to the discussion.

2 MS. STRONG: Thank you.

3 I think it is time, as our time
4 wanes, to turn a little more toward the
5 quantum of evidence that is needed in these
6 cases. And we have heard a little bit in the
7 first panel, and I think Mr. Band mentioned
8 the Diversey and Hotaling case earlier.

9 But I would like to hear your
10 views on the quantum of evidence that is
11 needed for the making available case in the
12 case under 106(3) of our law and your thoughts
13 on the line of cases, including Diversey and
14 National Car. And what would have been or
15 what should be, in your view, the result if
16 those cases apply in the non-tangible realm?
17 Because those were more the tangible realm.

18 MR. AMER: Mr. Sheffner?

19 MR. SHEFFNER: Sure. I think to
20 answer this question, you need to look -- and
21 I am going to stick to the peer-to-peer
22 context -- you need to understand how the

1 technology works. So, all the different
2 members or people who have signed up to
3 participate in this peer-to-peer network each
4 have on their computer a shared folder. They
5 have the files that they want to share with
6 other members of the network sitting in a
7 particular folder.

8 An outsider, anybody, can sign up
9 to be a member of the network and can see what
10 is in any of the peer's shared folders. So,
11 they know what that particular peer is making
12 available to other participants in the
13 network.

14 What they can't see, however, is
15 the actual transfers from one peer to the
16 next. So, that is why we have this situation
17 where it is really easy to know what somebody
18 is making available, but we don't necessarily
19 know, we don't have a way to know what they
20 are actually transferring from one peer to the
21 other. So, that is why we are in this
22 situation.

1 And one of the reasons why we
2 can't see what one peer is transferring to the
3 other is because the operators and designers
4 of these peer-to-peer systems don't want you
5 to know. The main reason they don't want you
6 to know is because this whole thing was
7 designed to infringe copyright, and they don't
8 want people to get caught.

9 So, we are left with a situation
10 where they have designed these networks not to
11 create evidence or not to store evidence. So,
12 the only thing that we can know is what
13 somebody is making available.

14 Now courts have recognized, to go
15 back to my previous answer, this is not a
16 situation where you want to just say, "Oh,
17 sorry, the law doesn't cover that." So, they
18 have done various things.

19 Some of them have said, "Well, if
20 you have an investigator do a download, that
21 counts as an unauthorized distribution."
22 That's fine.

1 We have some, like Judge Gertner
2 in the London-Sire v. Does case, who say,
3 "Well, making available itself is not
4 distribution. However, it is a logical
5 evidentiary inference that, if I have a bunch
6 of files in my shared folder and I am a member
7 of a peer-to-peer network, that they actually
8 are being transferred." So, at least at the
9 initial stages of the litigation, that is good
10 enough.

11 I am glad we have those doctrines,
12 especially in light of some of the case law
13 which has said that merely making available is
14 not distribution itself. But they don't go
15 far enough. And again, the law should
16 recognize, for all the reasons we have talked
17 about so far, but, in addition, because of
18 these evidentiary reasons, that merely making
19 copyrighted works available on a peer-to-peer
20 network is itself an act of distribution.

21 MR. AMER: Can I ask you a quick
22 follow-up? And others are welcome to respond

1 to this, too.

2 We had a panelist this morning say
3 that, as a practical matter, it doesn't make
4 that much difference whether you require
5 evidence of distribution because in practice
6 what plaintiffs typically will do is have an
7 investigator download the file in order to
8 verify its authenticity.

9 I just would be interested in your
10 views as to that, if evidence of distribution
11 is really required as a practical matter.

12 MR. SHEFFNER: Well, I would say
13 many courts do allow that sort of evidence to
14 count, a download by an investigator or, say,
15 a "buy" by an investigator will count as an
16 unauthorized distribution. But the courts are
17 not unanimous on that point.

18 So, I think it is important -- and
19 again, courts are not unanimous on the point
20 that Judge Gertner made -- so it is important
21 to have that backstop. And I would hate for
22 courts' sort of unwillingness to allow those

1 sort of alternate methods of proof to hinder
2 a copyright owner's ability to enforce their
3 rights.

4 MR. AMER: Thank you.

5 Mr. Kupferschmid I think was next.

6 MR. KUPFERSCHMID: So, Maria asked
7 about the National Car Rental case. I want to
8 address that because I think that has little
9 to no bearing on the discussion here. That is
10 a sort of somewhat complicated fact pattern.
11 And the court in that case held that the
12 making of the programs, the software programs,
13 available for use for a third party did not
14 constitute distribution.

15 So, this case is distinguishable
16 from other cases involving the scope of
17 distribution rights because in this case
18 Computer Associates' claim involved
19 inappropriate use of the software. A copy of
20 the software was not transferred, was not
21 offered to the third party -- I think it was
22 EDS, if I remember correctly -- nor made

1 available to them. All they did was use it
2 for their benefit.

3 So, really, that is not making it
4 available. It is just using the software;
5 they were using the software, National Car
6 Rental, not the third party here. They never
7 gave this offer to the third party. They
8 never offered it to them.

9 So, in that context, what we are
10 talking about here, this case is largely
11 irrelevant I think.

12 MR. AMER: Mr. Halpert?

13 MR. HALPERT: Thank you. Sorry
14 about this.

15 It does seem to me that the
16 investigator example is an utterly
17 straightforward application of a distribution,
18 and the courts that are refusing to recognize
19 that would benefit from a Copyright Office
20 report that said that this is a form of
21 distribution.

22 Where I have some question and

1 doubt is whether, for purposes of calculating
2 statutory damages, which normally have to be
3 proven by the plaintiff pretty specifically,
4 one can simply count up the number of files
5 that were uploaded and say, "Yes, all of those
6 were, in fact, made available," and we should
7 have a calculus multiplying by whatever the
8 figure is going to be for all those works.

9 But it seems to me that if one
10 can't prove in a closed network of the sort
11 that Ben was describing that files were shared
12 among other users, perforce, there has to be
13 a form of proof with at least one party who is
14 communicating with somebody in this illegal
15 network that, in fact, works were distributed
16 or made available, whatever word it is one
17 would like to use.

18 MR. AMER: Thank you.

19 So, I think we are going to end
20 with Mr. Band, Mr. Husick, and then, Ms.
21 Lyons, and then, open it up to the audience.

22 MR. BAND: Well, it seems to me,

1 as I said before, that in the kinds of cases
2 that the rights-holders seem to be concerned
3 about, that the reproduction right on its face
4 would take care of the problem. And to the
5 extent that you have certain international
6 obligations that have certain labels to them,
7 again, we have things parallel to that. And
8 whether we get to the same result by
9 principles of secondary liability, as was
10 discussed in the earlier panel, or
11 reproduction right, or whatever, it really
12 doesn't matter, I mean as long as there is a
13 way to enforce one's rights.

14 And it is certainly in the
15 situation that Ben was describing where you
16 have this peer-to-peer network and someone is
17 making all these files available for sharing,
18 you know, again, I just don't see how that
19 could not be seen as an infringement of the
20 reproduction right. Chances are those copies
21 were themselves infringing when the person got
22 it. And even if they weren't, if they were

1 licensed, they were not licensed to be shared
2 with everyone. So, by putting them into the
3 share file, you are breaching the license and
4 you are probably, again, exceeding the terms
5 of the license agreement and infringing the
6 reproduction right, and so forth.

7 So, it just seems to me that you
8 have more than enough there. If you want to
9 pile on and, then, say, okay, if the
10 investigator downloads a copy, again, if the
11 court wants to call that a distribution, fine.
12 I don't really think that is a distribution.
13 I think that that is the making of another
14 copy and that there is a contributory
15 infringement, whatever. I mean, the point is
16 that there are more than enough tools to get
17 at that, and we don't need to sort of, again,
18 distort the existing rights to cover that
19 situation. We get there anyway.

20 MS. CHARLESWORTH: I just had a
21 follow-up for Mr. Band.

22 But when we think about what the

1 harm is here, isn't the harm the fact that the
2 file is being distributed to thousands or
3 millions of users? In other words, you are
4 positing that the law should focus on the
5 reproduction right and the uploaded
6 reproduction, the single reproduction. But,
7 I mean, does that really track what the real
8 issue and harm is to the copyright owner?

9 MR. BAND: But you're assuming, of
10 course, that it has been reproduced. I mean,
11 you are assuming that it has been --

12 MS. CHARLESWORTH: Yes, I am
13 assuming that in a peer-to-peer -- let's
14 assume that the file has, in fact, been widely
15 shared. But to take Mr. Sheffner's
16 explanation, you can't really demonstrate
17 that.

18 But I am saying what the copyright
19 owner is concerned about is the widespread
20 dissemination of the work. But your solution
21 is focused on the individual copy that is
22 being uploaded, and I am saying, you know, is

1 that really where the harm is or is the harm
2 in the dissemination?

3 MR. BAND: Right, but to the
4 extent we get into the remedies, I mean,
5 because you are not going to be able to prove
6 actuals regardless, you are in the statutory
7 damages area anyway, and so it really makes no
8 difference whether it is a reproduction,
9 infringement of the reproduction right or an
10 infringement of the distribution right. I
11 mean, I think that the plaintiff is going to
12 bring evidence that it was part of this
13 network.

14 And frankly, you know, I might
15 disagree with others -- and this is my own
16 personal opinion -- but the damages, the
17 statutory damages, in principle, that have
18 been assessed in these cases, some of these
19 cases, to the extent that there is a way to
20 suggest that these are the only copies of the
21 stuff available online, and so forth, you
22 know, the damages, to the extent that they are

1 consistent with what the range that Congress
2 has given, you know, Jammie Thomas took her
3 chances and she got caught, and that is life.

4 But I really don't see a problem
5 with, you know, if there are statutory damages
6 available for infringement of the reproduction
7 right, that seems to be sufficient. I mean,
8 you don't get, the rights-holder doesn't get
9 more statutory damages. I mean, it is the
10 same \$150,000 maximum.

11 MS. CLAGGETT: And we are getting
12 really close to the end, and I did want to see
13 if we had any final audience participation
14 from people who are waiting. But I think we
15 had two more people to speak very, very
16 briefly, and then, we will see if anybody from
17 the audience wants to respond to anything that
18 was mentioned on the panel.

19 MR. HUSICK: Just a very quick
20 comment that we seem to be focused on the
21 minority of courts that are not willing to
22 accept investigator evidence. We have a way

1 of correcting that, and that is we appeal
2 those cases until we get a clear statement of
3 the law. We don't need to go monkeying with
4 things. That will develop in due course in
5 good time, Justice Scalia notwithstanding.

6 MR. AMER: Ms. Lyons?

7 MS. LYONS: Yes, and there are
8 methods being developed -- that Apple case I
9 mentioned had to do with licenses -- a method
10 of having programs that would go in, not just
11 to the application programs, but to the actual
12 BIOS to check whether they were in conformance
13 with license requirements.

14 But, more generally, and I know
15 they say it is not the file; it is the
16 information represented in digital form. And
17 if you structure it as a data structure that
18 is persistently identifiable, then I would
19 suggest we could get into a discussion of what
20 it means to be a copyright notice in this
21 context. Because the copyright notice as it
22 now is, I would suggest, it is pretty

1 meaningless.

2 And it would be interesting to
3 have a way, once you had this information and
4 it is not being transferred, you're going in
5 to process it, that you could actually, then,
6 see here is the notice, and you can actually
7 have along with it in the data structure
8 itself boundary conditions for use.

9 MS. CLAGGETT: Thank you very
10 much.

11 I think at this time we are going
12 to turn it over to see if there are any
13 audience comments. And it seems like we do
14 have two.

15 Just a reminder, if you could just
16 keep your comments to two minutes, and we will
17 be right on time in terms of closing this
18 session.

19 PROFESSOR MENELL: Okay. Well, it
20 is really a clarification question. Mr. Band
21 is making some assumptions in deciding that
22 the copy that is on the host computer is a

1 violation of the reproduction right.

2 But the way in which a lot of file
3 sharing technology works is you may have
4 ripped a CD, and I know you would defend that,
5 and I would defend that as being a fair use.
6 There is no violation.

7 And so, what happens is they,
8 then, download or acquire a program that will
9 then make their hard drive available. Okay,
10 that is what a peer-to-peer service becomes.
11 So, there is no 106(1) technical violation
12 really until someone else downloads. And that
13 is why 106(3) serves a very valuable role in
14 dealing with that situation, which is the
15 common situation.

16 We don't know -- I mean, we do
17 through hashtags perhaps know that the client
18 computer did have an illegal copy, but in many
19 cases that is not going to be easily provable.

20 So, 106(3) does -- and I want to
21 distinguish that from the argument that was
22 made on the first panel by Mr. Bridges. Mr.

1 Bridges was saying that a forensic copy would
2 not be enough. He wants proof of some third
3 party, and that is very hard to come by, for
4 the reason Mr. Sheffner raises. And so, I
5 think common sense would get us to a 106(3)
6 cause of action here as well.

7 MS. CLAGGETT: Thank you.

8 Professor Ginsburg?

9 PROFESSOR GINSBURG: I wanted to
10 address a remark of Jonathan's which was also
11 in Andrew Bridges's written comments, which is
12 the superficially-appealing symmetry of saying
13 that, if you accept a digital distribution
14 doctrine, then you have to accept a digital
15 first sale doctrine. And I think that that at
16 first blush sounds pretty good, but actually
17 doesn't work because Section 109(a), in its
18 references to "that copy" and "a particular
19 copy," is the codification of the longstanding
20 doctrine that distinguishes between physical
21 copies and the incorporeal rights. So, it is
22 the flip side of Section 202.

1 And 109(a) makes perfect sense
2 when you think about it in the context of
3 chattel rights versus incorporeal copyright.
4 Section 106(3) doesn't say -- it says "copies"
5 -- it doesn't say that particular copy. It
6 doesn't say that copy. And that is because
7 the language in 106(3) can cover a non-
8 physical chattel; whereas, I believe that
9 109(a) is all about physical chattels.

10 MS. CLAGGETT: Thank you very much.

11 I think we have one final comment,
12 and then, we are going to close and break for
13 lunch.

14 MR. BRIDGES: I just wanted to
15 discuss the concern about the difficulties of
16 proof for plaintiffs and the suggestion from
17 Ms. Charlesworth that, well, but that file may
18 have been shared with lots of people.

19 Implicit in that was the suggestion that maybe
20 we need to presume it has been shared with
21 lots of people because one can't prove the
22 actual dissemination to others.

1 My concern is, as a litigator --
2 and statutory damages are relevant here -- we
3 are talking about \$150,000 per work infringed.
4 And plaintiffs come into court saying, "Well,
5 we're alleging 10,000 works infringed. Please
6 don't make us prove that we really own all
7 10,000." And they're saying, "Please don't
8 make us prove that the violation actually
9 occurred. Let's have a deemed distribution,
10 please. Oh, and please don't make us prove
11 actual harm; we want a presumption of
12 irreparable harm. And, oh, please don't make
13 us prove damages; we get statutory damages."

14 So, we have an entire regime here
15 where plaintiffs get to claim \$150,000 per
16 work infringed without having to prove
17 anything. Why don't we just declare 300
18 million infringers in the United States? And
19 then, we can work backwards to see who should
20 pay what.

21 But if you are going to have a
22 system that really allows getting all the way

1 to the end of the case with hardly any actual
2 proof, then I think we have got a crazy
3 system. And that is one reason I am concerned
4 about the respect for copyright law, as we
5 twist things more and more and more in favor
6 of those who are asserting claims.

7 Thank you.

8 MS. CLAGGETT: Thank you very much.

9 And we want to thank the panelists
10 who have served on this session. This has
11 been very, very informative.

12 Just some housecleaning: we are
13 going to take a lunch break from 12:30 to
14 1:45, and then, we will be back in this room
15 for Session 3, which will look into the
16 benefits of clarification and whether there is
17 any benefit or downside from trying to tinker
18 with Title 17.

19 Thank you very much.

20 (Whereupon, the foregoing matter
21 went off the record for lunch at 12:34 p.m.
22 and went back on the record at 1:46 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:46 p.m.

MS. CLAGGETT: Okay. Thank you very much. We, I think, had a very, very informative first half of the day where we talked about how the current exclusive rights in Title 17 do cover a making available right in our law. But we also had a number of comments that acknowledged that courts have struggled to really understand the contours of such a right.

And so now, on this panel we really want to focus to some practical issues with respect to how U.S. courts have considered the making available right and whether it would be of some benefit to the courts, to parties and litigants, and others, to have further clarification in our law in terms of how the United States does implement a making available right.

So, I am going, just as we did the other panels, I am going to start with just

1 asking everyone to identify themselves just by
2 their name and their affiliation. We are not
3 going to have opening remarks. And then, we
4 will start off with some questions.

5 I will start first with Allan.

6 MR. ADLER: Allan Adler. I'm
7 General Counsel and Vice President for
8 Government Affairs for the Association of
9 American Publishers.

10 MS. AISTARS: Sandra Aistars, CEO
11 of the Copyright Alliance.

12 MR. BAND: Jonathan Band, Library
13 Copyright Alliance.

14 MR. BARNES: Hi. I'm Gregory
15 Barnes. I'm General Counsel of Digital Media
16 Association.

17 MR. BEITER: John Beiter, still
18 with the Law Firm of Shackelford, Zumwalt &
19 Hayes, still representing SESAC.

20 MR. BRIDGES: Andrew Bridges. I'm
21 an internet and copyright litigator in San
22 Francisco and Silicon Valley.

1 MR. KUPFERSCHMID: Keith
2 Kupferschmid, General Counsel and Senior Vice
3 President for Intellectual Property for the
4 Software and Information Industry Association.

5 MS. LYONS: Patrice Lyons, General
6 Counsel, Corporation for National Research
7 Initiatives.

8 PROFESSOR MENELL: Peter Menell,
9 University of California at Berkeley School of
10 Law.

11 MS. MOY: Laura Moy, Public
12 Knowledge.

13 MS. WOLFF: Nancy Wolff with PACA,
14 the Digital Media Licensing Association, an
15 association that is involved in licensing
16 images primarily.

17 MS. CLAGGETT: Great. Thank you
18 very much.

19 I think we are going to start off
20 first with just a very broad question. Then,
21 we will see if panelists want to respond. And
22 then, we will drill down into some specific

1 issues.

2 So, in terms of the initial broad
3 question for all the panelists, I just wanted
4 to ask -- again, we had some discussion
5 earlier today about courts struggling to
6 actually assess how or whether we have a
7 making available right in our law. For
8 example, what type of actual evidence is
9 necessary to prove a distribution under our
10 law?

11 So, the broad question I have
12 first is whether there would be any benefit to
13 parties, to litigants, to users even, from
14 further clarification, either through
15 legislative amendment or through a Copyright
16 Office report in this area.

17 Sandra?

18 MS. AISTARS: I guess I would
19 start by saying that in an ideal world we
20 might have legislation or a statute that would
21 be drafted a bit more clearly. But, given the
22 circumstances in which we find ourselves, it

1 is probably not realistic to redraft the
2 statute as it currently exists.

3 However, I do think it would be
4 helpful to have further guidance from the
5 Copyright Office, perhaps setting out more
6 specifically the evidentiary requirements, the
7 specific attributes of the various rights
8 involved in Section 106, and how the making
9 available right is implemented through those.

10 MS. CLAGGETT: Thank you.

11 Do I have anyone else?

12 John Beiter?

13 MR. BEITER: Thank you.

14 The comments that SESAC submitted
15 were joint comments with ASCAP, BMI, the Music
16 Publishers, and the Songwriters Guild of
17 America. I am speaking for SESAC, but the
18 comments are joint.

19 These organizations believe that
20 the making available right is already implicit
21 in the enumerated rights in 106, but believe
22 that some clarification might be in order.

1 MS. CLAGGETT: And when you say
2 "clarification," do you have a distinction
3 between clarification through a legislative
4 change or clarification by the Copyright --

5 MR. BEITER: Yes, legislatively.
6 We don't think it would be an expansion of
7 rights because we believe those rights are
8 already there. Possibly including a phrase
9 specifically invoking making available in the
10 list of exclusive rights.

11 MS. CLAGGETT: I think next is Ms.
12 Wolff, and then, Professor Menell.

13 MS. WOLFF: I think when you look
14 at the display right and the way courts have
15 interpreted on the internet, there may be a
16 time soon where they may need some
17 clarification. Because the display right for
18 visual art is really the only right they have
19 online, and if the display right can be
20 circumvented by technology, so, in effect, any
21 website user can have the benefit of a full
22 visual display, but by clever framing never

1 have to license because it doesn't reside on
2 their server. And if the courts continue to
3 require that a copy be made on the server of
4 the website that is taking advantage, you
5 know, the benefit of the visual display, it
6 could eventually eviscerate completely any
7 kind of licensing or any display right for
8 visual artists.

9 So, I think if this broadening of
10 -- and maybe "broadening" is the wrong word --
11 but if technology is continued to be
12 developed, so that there are ways of framing
13 or displaying images, and there's never an
14 infringer down the road that you could ever
15 obtain any kind of judgment against, you could
16 put all the images in some foreign offshore
17 country, we will really have a problem if
18 there is no more licensing model for our
19 visual images. And I think that is, with
20 technology advancing, something that there is
21 a lot of concerns within the industry.

22 MS. CLAGGETT: Thank you very

1 much.

2 Professor Menell?

3 PROFESSOR MENELL: In light of the
4 conversation this morning, I think that there
5 was nearly unanimous agreement -- I won't say
6 "unanimous"; there was one member of this
7 panel that I think disagreed -- but I think
8 the idea that you could establish a violation
9 of 106 by showing that someone has taken a
10 copyrighted work and put it into a folder or
11 some internet-accessible location from which
12 the work can be accessed by the public, which
13 gets into a whole bunch of other issues, but
14 those are, I think, being worked out in other
15 venues right now, that having that clearly
16 established would greatly simplify litigation
17 that is going on in many different parts of
18 the system.

19 As I mentioned earlier, it would
20 clarify the joinder issues. It would, I
21 think, dramatically reduce some of the
22 discovery costs. There are a whole bunch of

1 sort of aspects of what we are talking about
2 today that reverberate through the entire
3 litigation system.

4 That said, I certainly think that
5 it would be unwise for Congress to do this
6 without also taking on issues such as
7 remedies. I think on the panel this morning
8 we heard from the Library of Congress that to
9 expose libraries to potentially wide-range
10 liability because of repositories that they
11 have, you know, if we are going to discourage
12 preservation materials, those are all things
13 that I think would be unfortunate, unwise, and
14 time-sensitive. The longer we wait to clarify
15 these rights, the less preservation there will
16 be.

17 And so, I would try to identify
18 all of the issues that are reasonably closely
19 related. And I will also add that, once you
20 are opening up remedies, that also opens up
21 512; it opens up orphan works. There are a
22 lot of different parts of the system.

1 So, I don't think we can easily
2 cabin this issue. And I, as a scholar,
3 wouldn't want to see that. I would like to
4 see a much broader engagement.

5 MS. CLAGGETT: Thank you very
6 much.

7 Mr. Band?

8 MR. BAND: So, I think I agree
9 with what Peter just said. You know, the hip
10 bone is connected to the thigh bone, and so
11 forth. So, certainly, on one level you can
12 say, yes, you know, clarification is always a
13 good thing because there's always some
14 ambiguity and uncertainty.

15 But to start sort of clarifying
16 the nature of this right would require
17 redefining the other rights to make sure you
18 don't have unnecessary overlap, and you have
19 to think about the impact on contracts and,
20 then, you have to say, well, is it just
21 prospective, retrospective?

22 And then, statutory damages I

1 think clearly would be part of the discussion
2 and, then, exceptions. So, it gets very, very
3 confusing very quickly, and you have to say,
4 you know, is the situation so bad that it is
5 worth, to use another overused metaphor, just
6 like picking at one thread in a knitted
7 sweater and, then, the whole thing will fall
8 apart?

9 So, I think, as a practical
10 matter, and here I agree with Sandra, maybe
11 there is some ambiguity, but we are probably
12 better off letting the courts deal with the
13 cases as they arise, as opposed to trying to
14 deal with it legislatively, because the only
15 way to deal with it would be to really deal
16 with all the moving pieces at the same time.

17 And I think to the extent the
18 option then, if we are not doing legislative
19 amendment, then we are saying, oh,
20 clarification in the Copyright Office. But I
21 think, to some extent, it is the same problem,
22 meaning the Copyright Office needs to be very

1 cognizant that sort of squeezing over here,
2 again, to use another metaphor, it is like
3 squeezing this part of the balloon will cause
4 something else to move somewhere else.

5 And so, you have to be very
6 careful, start saying, you know, "We think
7 this." Then, you have to sort of think of all
8 the possible ramifications, and not all of
9 them going through what we have already talked
10 about here. But, as I said, what about the
11 impact on first sale?

12 I agree with Professor Ginsburg
13 that there is an argument as to why this would
14 not -- you could interpret this in one way, so
15 that it would not have an implication for
16 first sale, but I think that that is something
17 that would be litigated. I mean, I think that
18 there is a very good argument that -- you
19 know, she has her argument, and I think
20 someone would come up with a counter-argument
21 based on the statute. And so, again, you have
22 to tread very, very carefully in this area.

1 MS. CLAGGETT: Thank you very
2 much.

3 I think we have Mr. Beiter next.
4 Okay, so I am going to go with Mr. Bridges,
5 Ms. Lyons, Mr. Kupferschmid.

6 MR. BRIDGES: Thank you.

7 I think that courts do a good job
8 of working kinks out over time. Maybe it
9 takes longer than some people would like, but
10 I do think that law tends to get clarified
11 over time and the more courts work with
12 things.

13 I need to confess to some real
14 cynicism in copyright policymaking when I hear
15 the words "clarification," "harmonization,"
16 and "rationalization," because I have never
17 encountered in my recent memory any occasion
18 where those drove at any object other than
19 expanding the powers and rights of copyright
20 owners.

21 And I have heard one instance
22 today in the display right: what I heard from

1 my friend Nancy involved a case that I
2 litigated and won, Perfect 10 v. Amazon.com.
3 And what I am hearing from her on the
4 "clarification" is actually she wants a
5 different outcome. I don't consider that to
6 be a clarification; I consider that to be a
7 change.

8 I am concerned as to what
9 stakeholders the Copyright Office has closest
10 at heart, and to what extent the professionals
11 who tend to congregate inside the Beltway
12 would be driving that process, when I do think
13 that copyright law is for the nation, and for
14 the entire nation, and that is its first
15 beneficiary. And so, the enthusiasm that I
16 perceive here among certain persons for the
17 Copyright Office to make a statement is one
18 that, frankly, I don't share.

19 MS. CLAGGETT: Thank you very
20 much. I will not make a comment other than
21 that, we hold you all very close to our
22 hearts.

1 (Laughter.)

2 And that is why we seek public
3 comments from everyone and anyone who actually
4 wants to submit them to our office.

5 MR. BRIDGES: And I very much
6 appreciate that.

7 MS. CLAGGETT: Thank you.

8 I think Mr. Kupferschmid, and
9 then, Ms. Lyons, and then, Mr. Glazier.

10 MR. KUPFERSCHMID: All right.
11 Thank you.

12 As I mentioned in the earlier
13 panel I was on, we do not think that any type
14 of further clarification or amendment to the
15 statute is necessary. If you look at the
16 cases, the overwhelming, vast majority of the
17 cases, using the sort of two filters I put in
18 place earlier -- I can repeat them if people
19 want me to -- using those filters, I think
20 that the vast majority of cases prove that
21 there is this making available right under
22 U.S. copyright.

1 So, if you are asking me, do I
2 think it is necessary for some kind of
3 amendment or clarification, the answer is
4 absolutely not, certainly not in the
5 legislation area.

6 If you are asking, would there be
7 a benefit to clarification, sure, why not? I
8 mean, just to further clarify things, but
9 certainly not legislatively. I mean, it would
10 have to be some type of statement.

11 There is also the possibility that
12 danger comes with the clarification; what we
13 think is a clarification actually sort of
14 further confuses the issue. And therefore, if
15 you are asking, would I prefer that such
16 clarification, if it comes, come from the
17 Congress or the Copyright Office, I would
18 choose the Copyright Office, just for that
19 purpose.

20 But you ultimately have to ask,
21 where do we stop? I mean, there are a bunch
22 of different areas in copyright law that could

1 stand to be clarified. And so, why are we
2 just picking on this particular area?

3 And then, lastly, I just want to
4 address the Hotaling case Professor Menell
5 referred to and the gentleman this morning,
6 also mentioned, about worry about potential
7 chilling effects on libraries. I mean, that
8 case is 17 years old. So, if there is some
9 chilling effect, let's see what it is and
10 let's see if there's something that needs to
11 be addressed. There ought to be sufficient
12 evidence, if there is some type of chilling
13 effect, by this point.

14 MS. CLAGGETT: Thank you very
15 much.

16 Ms. Lyons I think was next.

17 MS. LYONS: Yes, please. Thank
18 you.

19 This is very good you're holding
20 this right now to take the temperature of the
21 room, see what they think.

22 Going back historically, it is

1 sort of a generational thing, you revise the
2 copyright statute. And sometimes war would
3 intervene historically, and so, they would put
4 it off for 10 years or more. But, on cycles
5 of 20 years, usually; now we are well beyond
6 that.

7 Technology changed dramatically.
8 Like when broadcasting came in, it was
9 necessary to reevaluate the law. There are
10 many provisions of the law that could be
11 impacted on the concept of copy, for example.
12 If that is kind of made something other than
13 what it was, I think, really intended to be,
14 then that could ripple to many things. The
15 first sale doctrine, they had the Section 104
16 proceeding a few years.

17 If the making available right, on
18 the other hand, is going to fall on the
19 communication to the public, the public
20 performance right, then you are going to get
21 into, are we going to slap compulsory licenses
22 on the whole thing, when maybe you are really

1 talking about performing computer programs,
2 and you just don't know that this is the new
3 kind of expression that you are dealing with.

4 So, my suggestion would be that
5 maybe it is way overdue, that they have
6 studies. You know, the Copyright Office used
7 to do this in the past. They would have
8 studies, and Congress would mandate that they
9 do this, not just for particular issues --

10 MS. CLAGGETT: We still do.

11 MS. LYONS: -- but more generally.

12 Okay. Now I will get to my point
13 -- more generally, so that you could actually
14 look at the interrelationship between the
15 different pieces. Otherwise, you are just
16 going to poke your finger and it will have
17 ripple effects that may be unintended.

18 MS. CLAGGETT: Thank you very
19 much.

20 I think I am going to go to Mr.
21 Glazier, Ms. Wolff, Mr. Barnes, and Mr.
22 Beiter.

1 MR. GLAZIER: Thank you.

2 Until it gets to a point where the
3 courts start interpreting the law in a manner
4 different than Congress intended, there is no
5 reason for Congress to amend the law. I don't
6 think we are to the point yet where courts
7 have interpreted the distribution right or the
8 performance right in a manner that is so
9 different than what Congress intended in
10 trying to make sure that we were complying
11 with the WIPO Treaties, when this was being
12 debated in 1996, that we are yet to the point
13 where Congress needs to go in and amend to
14 correct the courts who have now veered away
15 from the original intention.

16 The intention was made pretty
17 clear. It is not like this question wasn't
18 debated, and debated very extensively, during
19 the treaty negotiations by the PTO and the NII
20 [National Information Infrastructure] report,
21 by the Committee during the hearing process,
22 and the drafting practice for the

1 implementation legislation. And the consensus
2 was that, for the broader rights in 106, we
3 were in compliance; making available was
4 covered, and that within the patchwork of
5 distribution, reproduction, and performance,
6 there was no need to re-skew or otherwise
7 affect standing meanings at the time.

8 But when Congress revisited
9 specific situations where electronic theft was
10 the subject, and they wanted to address
11 whether or not distribution, for example,
12 covered making available, they were quite
13 specific. So, in the NET Act, when Congress
14 was looking at the response to the LaMacchia
15 case, where I think we called them "bulletin
16 boards," which was described in Section 506 as
17 making available on a computer network to
18 members of the public or accessible to members
19 of the public, they basically described the
20 making available right in the context of
21 Section 506 and the criminal copyright law,
22 specifically adapting making available to that

1 particular context and showing what their
2 intention was. And the Copyright Register at
3 the time was pretty clear about what she
4 thought the intentions were.

5 So, I think the idea of relating
6 this to other elements in the copyright law,
7 like first sale, are political markers which
8 are part of the legislative process that might
9 indicate, if Congress was ever going to do
10 this, we want to make sure this is put on the
11 table as a tradeoff. I don't think they are
12 actually related to the subject that Congress
13 identified, that the Copyright Office
14 identified.

15 So, I do think it is a great idea
16 for the Copyright Office to reiterate after
17 these court cases what it believes the law is
18 and what Congress intended. I think the
19 Copyright Office is the guardian of the
20 national interest when it comes to copyright
21 law and policy, and the Copyright Office does
22 that job pretty well.

1 And if, for some reason beyond the
2 guidance that has already been given by the
3 Copyright Office in the past, and I hope after
4 this process, the courts still veer away in a
5 direction that was unintended by Congress,
6 perhaps Chairman Goodlatte, who was the author
7 of the NET Act, where they very clearly
8 spelled out what making available meant vis-a-
9 vis a computer network and accessibility to
10 members of the public, will once again clarify
11 it, if he has to. But I don't think we are
12 there yet.

13 MS. CLAGGETT: Thank you very
14 much.

15 I think we had Ms. Wolff, and
16 then, Mr. Barnes, and then, Mr. Beiter.

17 MS. WOLFF: To go back to the
18 display right, and I am not sure now today
19 that a visual artist has much of a display
20 right when you look at the type of framing
21 that is involved that has advanced much
22 further than even it was in the Perfect 10 v.

1 Amazon case. At that time, you got a small
2 thumbnail. When you clicked on it, you went
3 directly to the website where the image was
4 located, and the website was grayed-out.

5 Now, with the current-way image
6 searches, when you click on the thumbnail, you
7 don't get any reference to the website; you
8 just get a high-res visual of the image. And
9 for many people, that is all you need, and
10 that is the display right. That is what gets
11 licensed, and that is the enhancement of that
12 web page, is that visual image.

13 So, I think things have changed
14 even since the Perfect 10 v. Amazon case, and
15 not every court has agreed that that is the
16 right way to look at it. You have the Flava
17 Works v. Gunter case in Illinois.

18 So, I think that sort of the per
19 se linking of the reproduction with the
20 display is something that is not in the Act,
21 and the courts have tied them together. And
22 I think that maybe could possibly be clarified

1 by even the Copyright Office, and looking at
2 each one of these six rights are distinct, and
3 you can have a violation of one without a
4 violation of the other.

5 MS. CLAGGETT: Thank you very
6 much.

7 I think we had Mr. Barnes, and
8 then, Mr. Beiter.

9 MR. BARNES: Yes. I am a little
10 confused now because I agree with most of what
11 Mitch has said, which is atypical.

12 What I will say, though, is I
13 think the way the question was initially
14 posited, "courts struggling" I guess the way
15 it was framed, I don't know if courts have
16 struggled that much. I think if you look at
17 what most of the comments you guys have
18 received on this topic thus far as indicators,
19 I mean, most people feel like they have got it
20 right thus far, and they have been able to
21 deal with the situation, and it has allowed
22 for the flexibility that most U.S. authorities

1 have acknowledged in the bundled rights.

2 And so, I don't know if at this
3 point we need a clarification via the
4 Copyright Office and/or through legislation.
5 What I really hear as kind of this underlying
6 theme is, you know, we want you guys to stand
7 ready in case we lose certain decisions and we
8 are not happy with the outcome. And I don't
9 know if that is the right way to approach this
10 problem.

11 What I will say, though, is, if
12 there is going to be clarification, I think it
13 has to come through the legislative system and
14 it can't come through just some type of
15 advisory opinion offered by the Copyright
16 Office because, as Jonathan pointed out, I
17 mean, there are a lot of related components
18 that attach to this that will be affected, and
19 statutory damages just being one that has been
20 discussed. I mean, the Copyright Office on
21 those topics can only discuss recommendations.
22 They can't make changes in law and they can't

1 advise the courts necessarily to apply
2 statutory damages in a different fashion.

3 So, I think it is very dangerous
4 for the Copyright Office to kind of go in that
5 direction. I think if it is going to be
6 handled, it would have to be handled by the
7 legislative system, which, then, can look at
8 several different components.

9 MS. CLAGGETT: Thank you very
10 much.

11 I think we had Mr. Beiter, and
12 then, Ms. Aistars.

13 MR. BEITER: I promised Jay
14 Rosenthal that I would say this. But when the
15 topic came up a while back about who are the
16 stakeholders most near and dear to the hearts
17 of the people in this room, I would be really
18 be remiss if I didn't say that our
19 organizations represent songwriters, and I am
20 thinking about the guy who is sitting in
21 Nashville right now writing a song and
22 struggling with the second verse. Those are

1 the stakeholders; I am going to use the word
2 "author" because that is what they are. And
3 any gathering like this that doesn't note that
4 is -- well, we always should.

5 Secondly, we also believe that the
6 Copyright Office, it would be very helpful if
7 the Copyright Office would provide some
8 guidance concerning the existence of the
9 making available right within the exclusive
10 rights under 106.

11 And thirdly, again, we are not
12 thinking in terms of expanding rights. If it
13 becomes necessary to take a legislative route,
14 we believe that a clarification of what we
15 believe is already existing could be easily
16 accomplished with some language in 106.

17 MS. CLAGGETT: Thank you very
18 much.

19 Ms. Aistars?

20 MS. AISTARS: I just wanted to
21 comment on what my colleague Mr. Barnes said.
22 Two things.

1 One, we actually did say quite
2 clearly in our comments that we do want both
3 the Copyright Office and Congress to stand
4 ready in case the courts do rule in certain
5 cases, in particular, with regard to the
6 public performance right, in ways that put us
7 in a situation where we no longer comply with
8 our treaty obligations and where we no longer
9 have an effective public performance right.
10 And so, that is, indeed, our position on the
11 issues. I don't think that that is anything
12 to be ashamed about or to try to hide.

13 Secondly, as far as why I think
14 this isn't necessarily the time for
15 legislation, and why I would prefer the first
16 step to be guidance coming from the Copyright
17 Office -- and Jonathan Bend alluded to this in
18 his comments as well -- the one area of
19 flexibility I think that clarification from
20 the Copyright Office affords us is that what
21 you do does not necessarily change how issues
22 are dealt with in contract law between

1 parties, existing contracts between parties.

2 And my worry is that, if we start
3 changing definitions without an adequate
4 understanding of existing contractual
5 relationships that have grown up over many,
6 many decades, that we actually disrupt a
7 licensing system that is working fairly well
8 and put ourselves in a situation where it
9 becomes even more challenging to effectively
10 license rights.

11 MS. CLAGGETT: Thank you.

12 Mr. Beiter? Oh, you didn't have
13 anything?

14 MS. STRONG: As a follow-up
15 question, and I will pose a hypothetical,
16 would any of your views change with respect to
17 the need for potential clarification if the
18 Supreme Court were to rule in the Aereo case
19 in a position contrary to the brief filed by
20 the United States government?

21 MS. AISTARS: My position would
22 not change. That was what I was referring to.

1 MS. STRONG: Even after the Aereo
2 case?

3 MS. AISTARS: Uh-hum.

4 MS. STRONG: Yes?

5 MS. CLAGGETT: Yes, I think she
6 was saying that her position was that --

7 MS. AISTARS: No, no. So, my
8 position was, if the courts rule incorrectly
9 in cases dealing with the public performance
10 right, namely, Aereo, we may very well be
11 seeking legislation to address that issue.

12 MS. STRONG: Thank you. I just
13 wanted to make sure we are putting all the
14 pieces on your view together.

15 Others?

16 MS. CLAGGETT: Ms. Lyons?

17 MS. LYONS: Yes, I will reiterate
18 because I think it would be even more urgent
19 to start the process now. Because, basically,
20 in my view some of the basic technical issues
21 weren't briefed to the Court. So, the Court
22 judges on what it is presented.

1 And if the whole notion of
2 transcoding or the making of the derivative
3 work in this context, it is uninformed as to
4 what may be actually happening. And so, the
5 pattern may play a big role in this. And yet,
6 that could dominate copyright in ways, and it
7 already is, as a matter of fact. Over the
8 last couple of years, maybe the last 20 years,
9 there is an imbalance really between copyright
10 and patent.

11 And when you get into the
12 performance right, for example, performing a
13 patented method, and you represent that with
14 a patented data structure, well, you see, that
15 used to be called expression of a work, and
16 you used to have public domain ways of doing
17 that.

18 And so, a novel, for example, is a
19 public domain way of structuring a literary
20 work. And if it is fixed on paper, people can
21 actually write novels in that form.

22 But when you get into managing

1 information in the internet environment, the
2 data structures themselves, although we have
3 a data structure we have made available in the
4 public domain, there are many different
5 highly-patented ways of doing that.

6 So, to what extent the basic
7 rights under copyright are being severely
8 restricted without actually examining the
9 technical background? So, I reiterate, I
10 think this is a timely point at which to
11 fundamentally rethink what we are doing.

12 MS. CLAGGETT: Thank you very
13 much.

14 I am going to go to Mr. Band, and
15 then, Mr. Glazier.

16 MR. BAND: Sure. So, in response
17 to Maria's hypothetical, I think a lot would
18 depend on exactly what the reasoning of the
19 Court was. If, in the highly-unlikely event
20 that they issued a ruling that was sort of so
21 sweeping that it really would encompass cloud
22 computing, then, yes. Then, I would think

1 that we would want a statutory change.

2 But if they were to adopt
3 something more narrow, something along the
4 lines of what the SG was recommending, then I
5 don't think that, even though I may or may not
6 agree with all the reasoning of the Court, I
7 would think that at that point it would be
8 probably not necessary for Congress to get
9 involved.

10 I mean, again, it is always a bit
11 of a -- there is this notion that, well, when
12 Congress gets involved and they clarify, that
13 you really have clarity. And I think you only
14 get a little bit of clarity. I think there's
15 always going to be new fact patterns, new
16 situations.

17 And again, Aereo is a perfect
18 example where, you know, building on what
19 Patrice was saying, one of the problems was,
20 because of the strange way Cablevision was
21 litigated and the issues that were never
22 resolved in Cablevision because of the

1 stipulation, that led Aereo to be litigated in
2 a very strange way.

3 And so, you don't have in Aereo --
4 none of the courts looked at the most basic
5 issue, which was, who was doing this, right,
6 the whole issue of who was the volitional
7 actor? There is no decision on that.

8 So, in many ways, what the Supreme
9 Court really should do is remand and figure
10 out who is the volitional actor, but that is
11 probably not going to happen.

12 But the point is that, you know,
13 it doesn't matter what the statute says, given
14 that in that case it is not clear, and all the
15 briefs are sort of talking past each other,
16 because there is no ruling as to who was the
17 volitional actor, and, obviously, if
18 ultimately Aereo is the volitional actor, they
19 lose. If the users are the volitional actor,
20 I think Aereo wins. And who cares what the
21 transmit clause says?

22 But I think that that is the

1 point, is that you might not like the result.
2 You go to Congress. You come up with some
3 kind of clarification. But, then, there is
4 going to be the next case, new fact pattern,
5 and we are not necessarily going to be any
6 better off than we were with the existing
7 statutory framework.

8 MS. CLAGGETT: Thank you.

9 I am going to go to Mr. Glazier,
10 and then, Professor Menell.

11 MR. GLAZIER: Thank you.

12 I think the question in Aereo, if
13 Congress had to amend the law, might focus a
14 little bit more precisely on what "to the
15 public" means than it does on "making
16 available" or "distribution" or "performance"
17 or "right of communication."

18 You know, in that case I don't
19 think that the concept of making available is
20 as much at stake as are you making it
21 available to the public. And right now,
22 whether it is the distribution right or the

1 performance right or transmission in 106(6),
2 "to the public" is the key piece there. And
3 even where Congress clarified the distribution
4 right in the NET Act for purposes of Section
5 506, it was to make available on a computer
6 network accessible to the public.

7 So, I think if Congress were to
8 open up the Copyright Act because of Aereo in
9 order to address the issue in Aereo in the
10 government's brief, it would have to focus on
11 whether or not what Aereo did was actually a
12 one-to-many public act, even though they tried
13 to get around it by using 1950s technology in
14 a 2014 sort of a cloud computing case.

15 If the question is, while the
16 patient is on the table are there
17 opportunities to address other acts within the
18 copyright law, whether it is for politics and
19 tradeoff, which I think are some of the things
20 that Jonathan has put on the table, or things
21 that might need to be clarified, like
22 Professor Menell has put on the table, I think

1 that is a little bit of a related, but
2 separate question. But I am not sure that
3 Aereo itself, it might be the catalyst, but I
4 am not sure that it itself raises the making
5 available question, nor should it be
6 interpreted by anybody that a result in Aereo
7 somehow means we don't have a making available
8 right.

9 MS. CLAGGETT: Thank you.

10 Professor Menell?

11 PROFESSOR MENELL: I tend to agree
12 with Register Pallante's call for a much
13 broader review of the entire copyright
14 statute. And I realize that we are here for
15 a more limited purpose, but I feel that this
16 is going to take some time and we have, I
17 think, good reason. I think we are well past
18 the period which the 1976 Act is obsolete on
19 so many dimensions. We have come up with a
20 whole bunch of kludgy solutions. We are
21 relying on courts to come up with other
22 kludges.

1 And while this is happening, we
2 are losing a lot of the public. And I say
3 that because this is not the crowd where that
4 broader public is present.

5 And Andrew's point about, you
6 know, he is worried that we won't have the
7 right people in the room, and that this
8 process is -- when you go back to the 1960s,
9 it was a pretty open process. It is true that
10 it didn't include consumer groups and some
11 other groups because that was less in play.
12 Today it is in play, and I think that we are
13 a country that is democratically-governed.
14 And so, I worry about the path dependence of
15 waiting for the Supreme Court to do things and
16 Congress to react.

17 I think Congress can be proactive.
18 We are long past a point at which Congress
19 should be looking at these issues. Just let
20 me pick a specific example that relates very
21 closely.

22 So, the last time we looked at

1 damages was in 1999. It was the Digital
2 Deterrence Act, and it was focused on a very
3 particular pathology. It was a pathology of
4 perhaps a bulletin board service that is
5 putting video games up. The software industry
6 was perhaps united with the recording industry
7 and the motion picture industry. And that was
8 the target.

9 Within a year of that legislation,
10 Napster happened. And Napster completely
11 changed the terms of the debate. And I don't
12 think anyone who was coming up with that
13 regime was thinking about the issues, and so,
14 making available followed after that.

15 So, we can say courts might get
16 this right, but, meanwhile, the world -- and
17 I don't mean that in just kind of a general
18 way -- I mean, I think we have an opportunity
19 to lead on this issue. We ought to lead on
20 this issue. We have leading industries.

21 And I realize right now there is a
22 lot of nervousness because no one wants to

1 open up the Pandora's box. But Register
2 Pallante has already done that, and the Patent
3 Office is starting to do that. And I hope
4 that Congress will see that this is not an
5 issue where we want to just wait and react.

6 I think we have a lot of facts, a
7 lot of knowledge, and the process that
8 unfolded 50 years ago could be replicated on
9 a shorter time. It doesn't have to take 20
10 years. It could happen much sooner. But it
11 would take several years. And this process I
12 think is really helping. And I would love to
13 have a discussion.

14 I mean, no one is quite willing to
15 do it, but I do feel that there are a whole
16 bunch of really valuable improvements that we
17 could make, and it could get perhaps a
18 stronger takedown regime, but much more
19 rational damages. And making available is
20 intertwined with that.

21 MS. CLAGGETT: Thank you. And the
22 only thing I would just clarify is just that,

1 yes, the Copyright Office, Register Pallante
2 did mention a review of the entire statute.
3 How that review ends up, as to whether there
4 should be or there is a need for legislative
5 change is something I think we have not
6 concluded, and certainly Congress is still
7 considering that as well.

8 Did I have anybody else to
9 respond? Oh, Mr. Adler?

10 MR. ADLER: I thought it was very
11 interesting that, when you asked the question,
12 you didn't pose it in terms of whether or not
13 the Aereo decision came out the wrong way or
14 in a way that you would not have supported.
15 You mentioned the United States' position.

16 And I think, on this issue, the
17 United States government, the Executive Branch
18 is really vested. For 16 years, they have
19 adhered to the same position that they took
20 originally, which was that the umbrella
21 approach would work in terms of the United
22 States honoring its obligations as a signator

1 to the WIPO Treaties.

2 That approach, obviously, was very
3 attractive at that time because I think there
4 was still a certain resonance from the fact
5 that some 20-odd years earlier we had done the
6 same thing. As part of the United States
7 accession to Berne, it accepted the
8 responsibility of moral rights by saying that,
9 well, we already have that embodied in a
10 number of areas of federal law and state law,
11 and they pointed to defamation law, rights of
12 publicity, privacy, and a variety of things
13 like that.

14 I think what simply happened here
15 is that this turned out to be a tougher issue
16 because so much has changed around the basic
17 premise, unlike what happened with moral
18 rights, where there was relatively little
19 change around the basic premise that said
20 moral rights could be addressed through an
21 umbrella approach.

22 So, I think that it is really

1 critical that, to the extent that the position
2 on this issue of the Executive Branch of
3 government as far as I know has not changed at
4 all, and, in fact, I suppose some would argue
5 that the government has doubled down in terms
6 of carrying its position forward into
7 international trade agreements that it has
8 with respect to the view that at least the
9 United States government, for purposes of
10 trade policy, believes it knows and
11 understands what the making available right
12 is.

13 I would hope that, before we turn
14 this issue over to the kind of food fight
15 environment that would ultimately ensue if
16 Congress were asked to try to deal with this
17 issue among the many other aspects of
18 copyright review that it ultimately may
19 consider as fodder for legislative revision,
20 I would think that the United States
21 government could do a great service by making
22 sure that in every case where this issue

1 arises they introduce a brief stating their
2 position with respect to the making available
3 right.

4 If they cannot present their
5 position as to why the umbrella approach is
6 still a valid way of the United States
7 complying with its obligations with respect to
8 this right, then I think we probably have
9 crossed the threshold that might call for
10 congressional action.

11 But, until that happens, I don't
12 think that the actions of less than a handful
13 of lower-level federal courts, the actions
14 basically of just a few judges, should
15 ultimately determine that this issue has to be
16 thrown back to Congress, and that the
17 Executive Branch, which advised Congress on
18 the umbrella approach, and the Congress, which
19 accepted that approach and has stood by it all
20 these years, should be suddenly sent back to
21 the drawing board because a few federal judges
22 got the issue wrong.

1 MS. CLAGGETT: Thank you, Mr.
2 Adler.

3 I think it is Mr. Band next.

4 MR. BAND: So, I might agree with
5 what Allan said; I might not. I am not sure
6 100 percent.

7 (Laughter.)

8 But I will say that I don't think
9 that the government needs to be intervening in
10 every single case where the making available
11 right comes up. You know, there are many
12 treaty obligations and, arguably, you could
13 say that the U.S. Government needs to get
14 involved in all of them by that logic. And I
15 just don't think that that is the case.

16 And I think, again, in this case,
17 you know, I have always thought that the
18 notion that somehow what the Court does in
19 Aereo has anything to do with the
20 international obligations concerning the
21 public performance, again, is sort of
22 misplaced.

1 How a court rules in any given
2 case turns on those specific facts, and, you
3 know, the treaty obligations go much more to
4 statutes and what Congress does, rather than
5 what happens in any given case.

6 And again, I would like to
7 reiterate, especially in this case, given that
8 if the Court were to find that the volitional
9 actor is the user, and that there is
10 significance to all of these dime-sized
11 antennas, then I think that that is fine. And
12 that is the way the Court rules, and it is not
13 a public performance because it is not public.
14 And that has nothing to do with what our
15 treaty obligations are because the Court has
16 interpreted that there is this intermediary
17 intervening copy, and that makes a difference.

18 And I don't see why any treaty
19 obligation would have an impact on that
20 interpretation, frankly, of the facts. And
21 so, I think this notion always that, oh,
22 ruling this way or ruling that way will

1 somehow interfere with our international
2 obligations, I think that that is -- you know,
3 cases turn on facts, and the specific facts
4 make a difference.

5 MS. CLAGGETT: Thank you very
6 much.

7 I think we will go into a slightly
8 related question. So, I think a number of
9 panelists have mentioned that they would not
10 necessarily think that there needed to be
11 legislative change, that clarification might
12 come from Copyright Office guidance, for
13 example.

14 And so, one question we had would
15 be, is there any consensus or agreement as to
16 what that Copyright Office guidance should
17 look like in terms of making available? Is
18 there a consensus in terms of what U.S. law
19 covers in that instance?

20 And so, we talked about these
21 issues a little bit in the earlier panels, but
22 I wanted to kind of go back to some of the

1 specific examples that we weren't able to
2 finish discussing before.

3 So, for example, in the case of
4 someone who puts a digital file in a share
5 folder, would the Copyright Office or would a
6 guidance saying that that is, in fact, a
7 violation of the distribution right be
8 something that the panel would agree is
9 appropriate? So, I will just throw it out
10 there, and then, we can talk about some of
11 those other specific examples that we didn't
12 get a chance to talk about, like linking and
13 other things like that.

14 So, I wanted to just open it up
15 with a general question, and then, look at
16 specific activities if we were going to
17 provide guidance in this area.

18 I will start with Mr. Bridges,
19 then Ms. Lyons.

20 MR. BRIDGES: Thank you.

21 I will start with a question,
22 frankly, on a matter where I think I know a

1 little bit, but I may be ignorant. Has the
2 Copyright Office issued guidance as to whether
3 a purely-online website is published?

4 MS. CLAGGETT: No, I don't believe
5 that we have.

6 MR. BRIDGES: I think that is
7 because it touches the very issue here.
8 Because the Copyright Office has issued
9 guidance that says, "For a publication to
10 occur, there must have been a distribution of
11 copies to the public by sale or other transfer
12 of ownership, rental, lease, or lending, or an
13 offer to do the same."

14 And so, if we are going to build
15 this discussion around publication, the fact
16 that the Copyright Office, on the fundamental
17 building block of the discussion here has not
18 taken a position, or if the position is there,
19 it is the works that are available only online
20 have not been published, then I don't think we
21 are talking about mere Copyright Office
22 clarification, but we are talking about an

1 adjustment and possibly a change in Copyright
2 Office guidance on some issues.

3 This takes us back to the point
4 Ms. Lyons made, which is once we start going
5 into this, there are all sorts of unintended
6 consequences. And then, will the Copyright
7 Office take a position on whether "copy" in
8 Section 109 for the so-called first sale
9 doctrine means the same thing as "copy" in
10 Section 106(3)?

11 I think once we want to go down
12 this -- my view is on guidance -- guidance
13 should not be a vehicle for changing
14 established positions or for putting a system
15 out of equilibrium by focusing on the burning
16 issue du jour.

17 MS. CLAGGETT: Thank you.

18 Ms. Lyons?

19 MS. LYONS: Thank you.

20 Copyright guidance and statutory
21 interpretation, I remember the regulatory
22 proceedings when I used to be in the Office of

1 General Counsel at Copyright, and then, there
2 would be litigation afterwards, everybody:
3 "How could you make that decision?" and that
4 sort of thing.

5 So, a careful evaluation, rather
6 than trying to get into statutory guidance,
7 which is somewhat similar to regulatory
8 proceedings, might be a more advisable way to
9 consider here, especially when making
10 available may be viewed as a type of public
11 performance. And if you get into that, there
12 is -- I mentioned today the patent law -- but
13 there is an even bigger morass. It is the
14 communications law, and what does it mean to
15 be broadcast and cable and TV?

16 I have been following several
17 proceedings at the FCC where they are trying
18 to grapple with this very issue. Because when
19 you have information that is structured using
20 the internet protocols, and it is made
21 available through what you might call
22 broadcast facilities, just maybe whatever

1 computational facility you might have, and
2 take the labels away and look at the
3 functionality, what is actually happening, you
4 may come out with a better way to approach it.

5 Because, otherwise, you open the
6 door where people are going to get frustrated
7 and they are going to say, "Well, we're going
8 to use it anyhow and nobody is going to get
9 paid." And you are not to be going litigating
10 everywhere.

11 I was in a meeting in Europe where
12 a big telco group had invited me as a
13 copyright expert. And actually, somebody from
14 a U.S. university got up in this rather small
15 group and suggested there should be a
16 compulsory license for everything on the
17 internet. Well, you see, I took a pause,
18 counted to 10, and then, addressed the issue.

19 So, the temptation is there to
20 say, "Oh, this is too hard." And so, whatever
21 they consider the broadcast, the 111, and all
22 the licenses and public performance, they

1 really need to step back and see, if you are
2 going to consider this a public performance,
3 and making available appears to be in that
4 kind of genre, what are you going to do? Are
5 you going to, then, say, "Here's a better way
6 to do it?" And you can't ask the FCC for
7 guidance as to what is cable and broadcast in
8 that context because maybe they really don't
9 know right now.

10 MS. CLAGGETT: Thank you.

11 Mr. Band?

12 MR. BAND: So, addressing
13 specifically the issue that Maria asked -- I
14 think it was Maria who asked it -- about
15 consensus with respect to putting a work in
16 the share file, you know, I think there
17 probably would be a degree of consensus that
18 that is implicated by 106, but what part of
19 106 there might be disagreement on.

20 So, not to sound too much like a
21 broken record, you know, I would view that as
22 certainly the courts have found that to be a

1 distribution right, you know, an infringement
2 of the distribution right. I think it would
3 probably be better to classify it as an
4 infringement of the reproduction right.

5 And here, I just want to respond
6 briefly to the question that Professor Menell
7 asked at the end of the last session, when I
8 made the same point, which is it does seem to
9 me that it is more of a timing issue. In
10 other words, if a user first uploads or first
11 installs peer-to-peer software, and then,
12 after that, places a work on their hard drive,
13 and by virtue of the peer-to-peer software,
14 that work sort of by default is automatically
15 in the share file and automatically is made
16 available, it seems to me that that probably
17 would be an infringement of the reproduction
18 right.

19 It could be, if the order was
20 reversed, in other words, that the work was on
21 the hard drive first, and then, the software,
22 the peer-to-peer software was placed. Maybe

1 that wouldn't, in that specific case there
2 wouldn't be an infringement of the
3 reproduction right with respect to the music
4 file that was already on the hard drive.

5 But, presumably, a person is going
6 to keep on adding more music after they
7 already have the peer-to-peer software on
8 their computer. And it would seem to me that
9 when you do add more music files already you
10 already have that, the file sharing software
11 on your computer, that anytime you add it in
12 a way that sort of automatically makes it
13 available, that that would be or should be
14 seen as an infringement right. And so, again,
15 it seems to me that that takes care of the
16 problem.

17 MS. CLAGGETT: I guess we have got
18 a number of people. So, I am just going to go
19 kind of down here, because I didn't reference
20 the specific order, but I will go with Ms.
21 Moy, Professor Menell, Mr. Kupferschmid, and
22 then, Mr. Glazier.

1 MS. MOY: All right. Thank you.

2 So, I think in the last panel I
3 brought up the issue of cloud computing and
4 the possibility that a broader making
5 available right would cover uses of cloud
6 computing that we would have no intention of
7 covering.

8 So, I don't know whether or not we
9 are in consensus with respect to this, but I
10 think that any clarification coming out of the
11 Copyright Office would have to consider very
12 carefully what happens in the situation where
13 someone saves a PowerPoint presentation with
14 a copyrighted image on a drive that is
15 accessible to members of a company with, say,
16 500 employees? Or what happens if somebody
17 backs up their hard drive to a shared network?
18 Or what happens if someone accidentally
19 indexes a folder that is in their Dropbox that
20 contains copyrighted works, to make it
21 available publicly through a link on the web,
22 even though they don't share that link? What

1 happens in each one of these situations?

2 And I think someone else mentioned
3 on the last panel that I don't think anybody
4 who is in favor of a broader making available
5 right would want to cover these types of
6 instances. But I think that it is very
7 important that we consider those and make sure
8 that, if we are going to clarify that some
9 placing of copyrighted works in a shared
10 folder constitutes distribution under 106,
11 then we need to make sure that it doesn't
12 cover those other uses.

13 MS. CLAGGETT: Professor Menell?

14 PROFESSOR MENELL: How you
15 accomplish this goal of assisting courts and
16 assisting Congress is an interesting question
17 of governance. You know, what is the role of
18 the Copyright Office in this complex web of
19 institutions?

20 I think there is a tiered set of
21 approaches. But one approach might be to,
22 through an official document that has -- I

1 will use the Orphan Works Study as an example
2 -- that provides a very scholarly approach to
3 the issue, that tries to sort of look out at
4 all of the work that has been done, and to try
5 to organize that, so that courts and lawyers
6 can access that. I think that is sort of a
7 low level of intervention.

8 And especially in this area, the
9 reason I entitled my article "In Search of
10 Copyright's Lost Ark" is because I think we
11 have lost some of that institutional memory.
12 It is now there, and I think that people are
13 going to reference it increasingly. And so,
14 to help to make that more accessible to the
15 public.

16 It was interesting to me, just
17 because two members of the Copyright Office,
18 staff who I have great admiration for, David
19 Carson and Rob Kasunic, both wrote excellent
20 articles about this problem leading up to it.

21 But we have lost connection, the
22 institutional memory, and that is what had

1 happened even by 1976. So, to the extent that
2 you are playing just sort of an archival role,
3 you will help that process.

4 Now some Justices and judges might
5 not consider this pertinent. We have heard a
6 lot about whether or not legislative history
7 is appropriate. I think that we are
8 inevitably drawn to getting behind that
9 curtain, that we want to see what people were
10 talking about and how they thought about it.

11 And I think when you do that,
12 often it does achieve clarity. And so, this
13 is kind of a very low-level intervention that
14 I don't think anyone could really object to.
15 You are just telling the history of how a law
16 came to be, in which the Copyright Office was
17 the central actor. And so, I don't know that
18 it requires you to do that much more than what
19 I and Professor Nimmer have tried to do, but
20 it does matter that it comes from an
21 institution like this.

22 There are, I think, steps above

1 that. And we have heard reasons why perhaps
2 those steps ought not to be taken, at least
3 aggressively or immediately.

4 My instinct is to try to see how
5 the Green Paper process plays out in
6 conjunction with some of the things that
7 Representative Goodlatte is doing and what you
8 are doing, but building towards what was
9 referred to earlier as really trying to set
10 forth the group of studies that would enable
11 the nation to look at this set of questions.

12 But if you are looking for what
13 can be done in the short-run, I think just
14 providing that history would be a valuable
15 service.

16 MS. CLAGGETT: Thank you very
17 much.

18 Mr. Kupferschmid?

19 MR. KUPFERSCHMID: We asked what
20 Copyright Office guidance should look like.
21 I will go back to my earlier answer, which I
22 don't think the Copyright Office -- I don't

1 think it is necessary to provide any
2 clarification or guidance here. There is a
3 real risk that, when you do so, you may
4 create, inadvertently create, a whole new can
5 of worms or level of confusion.

6 But, to the extent you decide
7 otherwise, I think, actually, Mr. Adler had a
8 good example or a good suggestion about filing
9 briefs, maybe not every case, but in certain
10 more complicated cases or something, which
11 gives the Copyright Office the ability to look
12 at the factual scenario in that case and
13 determine how it should apply.

14 But if the Copyright Office were
15 to go down this path in terms of defining or
16 clarifying what it means, or the making
17 available right, what it means to make
18 something available, you have got to define
19 what that term means. What does it mean to
20 make something available? What types of
21 actions? What are the parameters of doing so
22 with the limitations? And that, like I said,

1 I think that is fairly difficult.

2 I want to raise some other issues
3 that people -- or address some other issues
4 that people said. Mr. Bridges mentioned,
5 well, in order to do that, you have to define
6 copy as being consistent, with 106(3) and 109
7 have to be consistent. And that is just not
8 the case.

9 I mean, the first sale doctrine,
10 109, talks about the particular copy. So, we
11 will move on from there and save that
12 discussion of the first sale doctrine for
13 another day.

14 Jonathan, in addressing the shared
15 file issue where they are copying a shared
16 file, reverts back to sort of that it should
17 be a violation of the reproduction right. And
18 that is somewhat antiquated thinking because
19 of the cloud computing issue where you have
20 something that is legally, legitimately put up
21 in the cloud, is not illegal reproduction, but
22 access to that may be limited to one person or

1 a group of people. But, then, access is
2 provided to that much greater to what is
3 supposed to be provided, and that is exactly
4 the type of scenario where we need a
5 distribution right to cover that type of
6 situation.

7 And then, lastly, Laura had
8 mentioned the situation of somebody who
9 accidentally uploads a work onto a shared
10 file. It sort of reminded me of that old
11 Steve Martin bit, you know, "Oops, I forgot
12 murder was against the law."

13 (Laughter.)

14 And then, eventually, she says the
15 error was discovered and corrected. I mean,
16 we are going to get that excuse on every
17 single case if that were the situation.
18 "Oops, I didn't know. I did it accidentally."
19 I mean, that issue, the state of mind or the
20 intent will go to damages. It has not been,
21 should not be a role, play a role in
22 copyright, unless you are talking about

1 secondary liability, which we are not in this
2 case.

3 So, in terms of the academic
4 articles or software somebody put on a shared
5 file, know what you're doing. Know who you
6 are letting access to your computer and your
7 files to. I mean, that is good practice,
8 aside from copyright.

9 MS. CLAGGETT: Thank you.

10 And I think I am just going to go
11 down the row in terms of order. So, Mr.
12 Glazier, then Mr. Bridges, Mr. Barnes, Ms.
13 Aistars, and Mr. Adler. And then, I will come
14 back to Ms. Moy.

15 MR. GLAZIER: Thank you.

16 I think maybe "guidance" is the
17 wrong word because it almost makes it sound
18 like a business advisory opinion or something
19 from the Department of Justice where you are
20 commenting on whether it is okay for somebody
21 to proceed with a particular business plan or
22 whether they are or aren't going to be liable

1 under it.

2 And I think you can't do that
3 because you can't make that guarantee of
4 enforcement. And I think maybe "opinion" is
5 the better word, and I do think it is pretty
6 necessary because the Copyright Office has
7 issued an opinion on this in the past during
8 the development of the legislation and beyond
9 that. And now, you have a handful of district
10 courts who have issued opinions that do not
11 mesh with the stated public opinion of the
12 expert agency during that time.

13 So, I do think it is time for an
14 updated opinion where the Copyright Office
15 specifically addresses why it still believes
16 what it believes, if it does, despite the
17 handful of cases that have come out and tried
18 to apply the umbrella approach to the
19 particular facts of those cases.

20 And I do think it is necessary to
21 get into what the Supreme Court has said, and
22 you have said this in the past, has said about

1 the link between distribution and publication
2 because it can be quite circular. And you
3 sort of brought this up, where we certainly
4 believe that distribution in 106(3) broadly
5 includes general publication, and that
6 publication is defined and distribution is
7 not. And I know they covered this this
8 morning, but publication really does
9 explicitly cover offering to distribute, but
10 requires some distribution.

11 So, the whole thing is circular.
12 You have addressed this before. You have
13 talked about why making available exists in
14 the umbrella approach. And I think it is
15 necessary to just -- I won't even use the word
16 "clarify" -- to update the opinion to
17 specifically note why that approach is still
18 the opinion of the expert agency today,
19 despite a few district court opinions that
20 seem to, when applied, these particular facts
21 go in a different direction.

22 MS. CLAGGETT: Thank you.

1 Mr. Bridges and Mr. Barnes, and
2 then, Ms. Aistars and Mr. Adler.

3 MR. BRIDGES: Sure. Well, I sort
4 of like the concept of investigation that both
5 Ms. Lyons and Professor Menell suggested. But
6 the question is, what should we be
7 investigating?

8 I have heard earlier today
9 statements that, well, maybe the Copyright Act
10 is obsolete or maybe it hasn't kept up with
11 the times or maybe the changes in technology
12 are putting undue pressure on things, and we
13 need to understand how to address new
14 challenges like Bit Torrent and the like.

15 I think the way to do that is not
16 to do historical research in how we got from
17 the 1909 Act to this obsolete 1976 Act. I
18 think that, if we are going to investigate
19 things, let's investigate requiring fact,
20 evidence-based criteria. What at this date
21 promotes "the Progress of Science and the
22 useful Arts. . . ." Isn't that the

1 enterprise?

2 Let's understand how this
3 discussion fits into the copyright's
4 constitutional purpose. Let's look for
5 evidence-based discussions, not sort of
6 necessarily partisan predictions of how people
7 will themselves react, if certain things
8 happen and don't happen. But do a broader
9 fact-based investigation of that nature, and
10 then, there can be some guidance about whether
11 the current conditions measured by that
12 standard justify congressional action or not,
13 and then, whether the conditions justify some
14 other response.

15 But it seems to me, I agree an
16 investigation is appropriate, but I think the
17 unique virtue and competence of the Copyright
18 Office is to measure these questions according
19 to the constitutional purpose of copyright and
20 to make evidence-based decisions.

21 MS. CLAGGETT: Thank you very
22 much.

1 Mr. Barnes?

2 MR. BARNES: Yes, I think we
3 should probably stay away from some of the
4 titles just in general. So, when you call it
5 clarification, guidance, or opinions, I think
6 automatically you are going to get certain s
7 stakeholders that are concerned because you
8 are going to position them as winners or
9 losers automatically.

10 I think Professor Menell's
11 framework is really valid, looking at
12 historical background as a starting point.
13 And the reason I think that is important is
14 because Members of Congress -- there is a lot
15 of turnover on the Judiciary Committee and
16 within the Congress at large.

17 And so, Andrew is a good friend,
18 and I often agree with him. But it is
19 important to educate the Members because a lot
20 of them don't have an historical background
21 and that framework to understand how we got to
22 where we are today. And I think that would be

1 helpful. And this is a very technical area of
2 law, most people know. So, I think that is a
3 good starting point.

4 I think what I would add to this
5 report, which is what I would just call it, on
6 this topic of making available is an issue-
7 spotting area. So, we have talked about -- I
8 think there was a back-and-forth between
9 Andrew and Keith just about the definition of
10 copy.

11 And so, we should look at certain
12 things that would have to be decided if
13 Congress was going to change the law, and that
14 can be flagged for Members, so that they can
15 look at that. But I would stay away from
16 actually making strong recommendations. I
17 mean, you obviously could include in this
18 report a back-and-forth about where certain
19 stakeholders are. So, at least that way,
20 Members of Congress kind of get a sense of
21 where the constituencies are at large.

22 But I would stop short of doing

1 the actual hard recommendation. And I think
2 there are a couple of reasons you want to do
3 that. And it is simply because technology
4 changes, business models adapt and evolve, and
5 where you draw the line in this report is
6 going to be debated for years to come through
7 litigation, and it is probably not going to
8 suffice five years from now. And so, maybe it
9 is better to just stop at that point in the
10 report and, then, have Members of Congress
11 take it up from there.

12 MS. CLAGGETT: Thank you.

13 Ms. Aistars?

14 MS. AISTARS: Thanks.

15 I guess I would start by asking
16 the question, who is your audience when you
17 are issuing guidance? And my answer to that
18 would be that the courts are your audience,
19 the courts, the clerks, and the judges writing
20 the opinions.

21 And so, in issuing guidance, I
22 guess I would begin by considering the

1 umbrella approach, commenting on why it still
2 applies, why it still works, perhaps reviewing
3 the scope of rights under each of the implied
4 rights, the evidentiary requirements for each,
5 and commenting on the existing case law and
6 providing some rationale for understanding
7 that case law under the rubric that you have
8 provided for the courts to consider.

9 And maybe conclude with explaining
10 how to, in general terms, continue to rule in
11 a fashion that upholds our obligations
12 internationally and that remains consistent
13 with the congressional intent generally.

14 What I would not suggest is taking
15 a very granular approach and trying to imagine
16 all of the different scenarios that might come
17 up and commenting on, well, this is in and
18 this is out, and if you place a file in your
19 share folder before you have installed
20 software versus after, you know, no disrespect
21 intended to Jonathan, but I just think that is
22 a very difficult exercise to engage in.

1 Regardless of how you come out on the results,
2 you are just never going to be able to imagine
3 all the possible scenarios and factual
4 situations.

5 The other comment that I would
6 make is with regard to the cloud computing
7 concerns that have been raised. I share some
8 of the views that Keith Kupferschmid
9 expressed. I guess I would say it is not
10 clear to me why this situation is any
11 different than any other business situation
12 that businesses find themselves in with
13 regards to employees behaving appropriately in
14 the workplace.

15 You know, it is no different to me
16 than making sure that they are not making
17 hundreds of copies of an article and
18 distributing them in analog form. It is just
19 a different iteration of the same problem, and
20 businesses have dealt with that over the
21 years, you know, quite readily, either by
22 getting CCC licenses or by issuing best

1 practices and educating their employees as to
2 what is appropriate and what is not. So, I
3 don't see it as any different of a problem.

4 MS. CLAGGETT: Thank you very
5 much.

6 Before I move on to Mr. Adler, I
7 will just point out that we have about 15
8 minutes left in this session. So, I think I
9 am going to go back around to all the people
10 who have their flags up now for final remarks.
11 And then, we will open it up and see if there
12 are any audience comments.

13 Mr. Adler?

14 MR. ADLER: Yes, I just wanted to
15 make two points. One sort of builds on the
16 point I made before and, then, is amplified by
17 what Mitch suggested and what Sandra had
18 suggested.

19 The legislative history that
20 Professor Menell unearthed is very
21 interesting. It is also very revealing about
22 the evolution of these concepts in the

1 Copyright Act.

2 But, ultimately, I think we find
3 ourselves in the position that we are in
4 because the people who espouse the umbrella
5 approach basically failed us in the sense that
6 their approach ignored basic rules of
7 statutory construction and, also, made a very
8 essential etymological mistake. They simply
9 seem to have assumed that the making available
10 right and the terminology use was basically
11 redundant with the idea of distribution. Of
12 course, we now know it is not.

13 There is an overlap, to be sure,
14 as there is an overlap with public performance
15 and display. But, clearly, generally
16 speaking, when a legislature uses different
17 words, one doesn't assume that they are merely
18 asserting the same idea and using different
19 words to do it.

20 The idea that the WIPO Treaties
21 established making available as a new right,
22 but merely that it was redundant of the

1 existing right of distribution, makes no sense
2 in the international context and it makes even
3 less sense with respect to the way in which
4 the U.S. would treat the question of whether
5 or not that right already existed in U.S. law.

6 And I see the error here as one
7 that very recently occurred by the Supreme
8 Court in the Kirtsaeng case, and was pointed
9 out, interestingly, by one-third of the
10 majority in that decision, indicating that
11 really, as far as the makeup of the Court was
12 concerned, that majority opinion was wrong.

13 Justice Kagan, with Justice Alito
14 in agreement, pointed out that they were stuck
15 with the Supreme Court's Quality King decision
16 in which the Court simply assumed that
17 importation is a form of distribution, nothing
18 more. And because distribution is subject to
19 the first sale doctrine as a limitation, so
20 must importation right in the same way.

21 But, as she pointed out, if they
22 had recognized that importation differs from

1 distribution in key ways, and certainly would
2 differ with respect to the way it might
3 interplay with the first sale doctrine, if
4 there is an interplay at all, you would come
5 out with a very different result that actually
6 would have made very sensible law and sensible
7 policy.

8 And I think the same thing is true
9 here. And this is, again, the burden I think
10 initially of the United States government in
11 terms of taking positions as to what its
12 advocacy of the umbrella approach to
13 codification or the lack of need of
14 codification of a making available right
15 means, to be able to articulate to the courts
16 how making available differs from and is not
17 merely redundant of distribution or
18 publication, for that matter.

19 And I think if that were done, it
20 would open the door to being able to make the
21 appropriate distinctions between the way
22 making available interacts with distribution,

1 the way it interacts with public performance,
2 the way it interacts with display. If you
3 were to pick any 20 people off the street and
4 ask them if they knew what it meant to make
5 something available, they probably would give
6 you a very reasonable and fairly consistent
7 answer to that question. We have kind of
8 tortured this because it is a legal concept
9 and it has far-reaching applications when
10 applied by the courts.

11 And then, the other point I was
12 going to make goes back to, again, my friend
13 Jonathan's dogged insistence that the
14 reproduction right resolves all of these
15 issues. Again, it loses sight -- and I think,
16 Jacqueline, your question this morning pointed
17 that out -- it loses sight of the fact that,
18 when we began looking at the question of how
19 existing copyright law would work or wouldn't
20 work in the digital era -- remember the
21 quaintly-named Information Superhighway
22 studies that were done in 1995 led by Vice

1 President Gore after he discovered the
2 internet?

3 Basically, when they were doing
4 that, the thing that they understood more than
5 anything else as the central concept that made
6 their need to study those questions so
7 important was the realization that the same
8 act violating the same rights that had existed
9 in the analog world, but now occurring in the
10 digital environment would have exponentially
11 greater harm.

12 And so, there was a need to
13 consider their application in different
14 contexts, but also in different terms. And
15 so, for example, when Jonathan says that this
16 all could be treated very simply if we just
17 focused on the fact that reproduction is
18 involved, so let's forget about making
19 available, let's even forget about
20 distribution, and just call it a violation of
21 the reproduction right. So, essentially,
22 everything gets reduced to the making of a

1 single copy, and that is the scope of the
2 violation, regardless of the exponential level
3 of harm that could result when that happens
4 online.

5 And it seems to me that we have
6 talked a great deal about this in terms of its
7 relation to statutory damages, but, remember,
8 there is another whole area of remedies to
9 consider here. And that is the area of
10 injunctive relief. Because injunctive relief
11 is an equitable doctrine, it is perfectly
12 legitimate for judges in those cases to be
13 able to consider that, when somebody places
14 copyrighted work into a shared folder online,
15 are they doing so in reckless disregard of a
16 reasonably foreseeable harm that is likely to
17 occur? That is something that is perfectly
18 within the right of a federal judge to
19 consider in shaping injunctive relief.

20 And I think we need to think more
21 about that aspect of this issue when we think
22 about the importance of why making available

1 was established as a separate right, and not
2 merely something that was repetitive or
3 redundant of existing rights.

4 MS. CLAGGETT: Thank you very
5 much.

6 And I guess we have a few more
7 flags. As I said, we are going to try to see
8 if we have a few moments for audience
9 participation. But I think I had said Ms. Moy
10 next, and then, I will go back and start with
11 Ms. Wolff, Professor Menell, Ms. Lyons, and
12 then, end with Mr. Band.

13 MS. MOY: I am just trying to
14 bring us back to thinking about the situations
15 where perhaps no distribution has actually
16 occurred, and we are just looking at offering
17 something to the public.

18 And as Public Knowledge explained
19 in our comments, we don't think that there
20 should be an exclusive right to cover that
21 situation. But, that aside, if we are going
22 to decide to cover that, I do think that we

1 need to take into consideration the average
2 user. And other members of this panel have
3 said that they don't think that the average
4 user would accidentally index something that
5 is a copyrighted work on a shared drive or
6 that they should just have company best
7 practices or just best practices generally to
8 prevent copyrighted works from ending up on
9 shared drives.

10 But I think it is the situation
11 where someone, for example, puts together a
12 PowerPoint presentation that includes a
13 copyrighted image and saves it on a networked
14 drive. It is something that is going to occur
15 all the time. It occurs all the time now.

16 And I think if you think that that
17 doesn't occur, then you are out of touch with
18 the average user. You are greatly
19 overestimating the sophistication of the
20 average user.

21 And if we think that every one of
22 those instances is a copyright violation, I

1 think that that is at odds with copyright's
2 intent to promote the progress of science and
3 useful arts, and it is also at odds with the
4 treaty.

5 MS. CLAGGETT: Thank you very
6 much.

7 Ms. Wolff?

8 MS. WOLFF: Well, I will give you
9 a very easy broad license for that image, and
10 you will have no problem.

11 (Laughter.)

12 You can do that within your
13 company. I mean, to me, that is just
14 licensing, and you take care of it when you
15 start and you think about your uses.

16 But I just want to sort of go back
17 to the original question. Do we think the
18 umbrella approach still works today? And I
19 think it only does if the courts correctly
20 understand and interpret the six exclusive
21 rights that we have.

22 And I think in some areas we do

1 fail, and I go back to the display right. I
2 think we do fail there, and how we try to give
3 either guidance, opinion, or wait for the
4 courts. And I think we have to remember that
5 the Constitution does talk about authors, and
6 authors can be a general user and they can be
7 individual artists. They can be visual
8 artists. They can be songwriters. And they
9 can't always afford to go to the Supreme Court
10 and wait to make law change.

11 And I think if there is any way to
12 have clarity or have any type of whatever you
13 call it, opinions, to make it clear that we
14 have each of these six exclusive rights, and
15 that they are separate and you can violate the
16 public right to display without having a
17 reproduction, I mean all those things I think
18 would be very helpful because judges are
19 generalists and they don't always get things
20 right. And they only look at the papers they
21 do have in front of them.

22 So, if it means having the

1 government present briefs, like they did in
2 the recent Alaska Stock v. HMH case, it is
3 just helpful for going back to Copyright
4 Office practices and what people expect their
5 rights are. I mean, people, visual artists do
6 expect that they do have the right to public
7 display their work and to control those
8 rights.

9 MS. CLAGGETT: Thank you very
10 much.

11 Professor Menell?

12 PROFESSOR MENELL: The Copyright
13 Office has historically played some essential
14 roles in our entire cultural history. So, I
15 look at this question and I say, well, there
16 isn't one hat; there are multiple hats that
17 you need to be focused on. And one is
18 fidelity to law, that the Copyright Office is
19 part of the knowledge that guides courts and
20 the public.

21 And so, I believe that being much
22 more open about how judges can access the law

1 -- it is very hard for lawyers to make some of
2 the arguments that I, as a scholar, can make.
3 Part of the reason I file briefs in the courts
4 is because the courts are going to be
5 suspicious when something gets pulled out of
6 a legislative history. I try to be very
7 thorough in the work that I do. I never want
8 someone to say, "You missed something."

9 And I think the Copyright Office
10 is a place that can do that with a high degree
11 of fidelity. It has those records. It can
12 and should maintain an institutional memory.

13 And I will point out something
14 that no one has picked up on, but it was in
15 this research I found. The Geneva Phonogram
16 Convention, it was a very interesting part of
17 the history that led to specific language in
18 the Sound Recording Amendments Act of 1971
19 having to do with making available.

20 And so, I don't go to the more
21 recent treaties. I go all the way back there,
22 and the U.S. took a pretty aggressive position

1 in order to establish serious protection for
2 phonograms. And so, that is part of our
3 history, and I think it does inform these
4 issues. And some of the language that wound
5 up in the 1976 Act grew out of that whole
6 little sideshow, but it is a really
7 interesting sideshow. That is one hat.

8 The other hat is as a legislative
9 counselor, and the entire 1976 Act grew out of
10 the Copyright Office as really the drafter,
11 the drafting institution doing events like
12 this. And I think that that ought to be
13 sketched out.

14 And I realize you have principals
15 that you respond to in Congress, but I think
16 that they could perhaps benefit from hearing
17 sort of a more systematic approach to how we
18 are going to get at perhaps the evidence-based
19 decision making that Andrew referred to.

20 But I will say, as someone who was
21 in a recent NAS study about evidence-based
22 decision making, I am skeptical, even as a

1 social scientist, that we are going to get the
2 answers to all the questions that we want
3 through empirical studies. The data is very
4 hard to get at, and the data can't deal with
5 a whole bunch of hypothetical scenarios.

6 The problem, when I look out into
7 the content world today, is that I worry
8 increasingly about how advertising is now the
9 dominant modality for paying for our culture.
10 And Madison Avenue shouldn't be the way in
11 which art comes about. It should come about
12 through markets with the consumers, people who
13 value those works.

14 And so, it is not hard to put
15 together an empirical study showing, look,
16 these industries are doing better than they
17 used to do. But, when artists are being told,
18 "You need to have these product placements,
19 and we need to do this and that," that I think
20 corrupts the entire system.

21 So, I do think empirical evidence
22 is going to be very important, but I think it

1 is really important not to just accept
2 traditional measures. We have to go back to
3 what copyright was about, which was creating
4 a marketplace for the creativity that would
5 come up through a true marketplace, and not
6 this I think much limited marketplace that is
7 driven by media.

8 MS. CLAGGETT: Thank you very
9 much.

10 I think we have three people
11 remaining, but only a few minutes. So, if I
12 could ask everyone to just be very brief?

13 Yes, please, Ms. Lyons.

14 MS. LYONS: Just a backup thought,
15 since 1976, the Act was adopted, there have
16 been important developments in the
17 computational capabilities and networking, and
18 I think we will all recognize that that is the
19 case. And oftentimes, people talk about a
20 copyright work as if it is a music work rather
21 than the representation of that work in some
22 digital form.

1 And we have been working with the
2 copyright industries for many years now to
3 develop ways of structuring the data, so that
4 it would be identifiable and you can manage
5 the licensing rights in the network
6 environment.

7 And in this context, I have been
8 giving some consideration to, if copy is found
9 to just be the tangible, which I suspect may
10 be where it comes out, that there might be
11 alternate bases for exploring, if you have a
12 digital object or other similar data structure
13 that is uniquely and persistently
14 identifiable, and there is some way in the
15 registry system to keep hash of that, that it
16 could be a logical equivalent of a copy.

17 And this comes into play
18 particularly when you are in a volatile
19 processing environment, because if you are
20 playing a video game that has preexisting
21 works that are incorporated in that, there may
22 be new works that are generated on the fly,

1 just as is happening. So, you might want to
2 consider that.

3 And in conjunction with that, how
4 to identify that it is protected? So, the
5 notice of copyright really truly needs to be
6 reevaluated. In its current form, it doesn't
7 perform that useful function at all.

8 And some sort of agreed standard
9 in the metadata, which would be acceptable
10 under the Berne Convention -- they have a
11 provision that would allow standardization of
12 certain identification information -- may be
13 a helpful start on that.

14 Now, for evaluation, just a quick,
15 practical suggestion.

16 MS. CLAGGETT: Very quickly,
17 because I am going to have to push on.

18 MS. LYONS: I am going to do it.

19 You have use cases. I mean, I
20 have been to many standards groups, and they
21 have use cases. Well, instead of taking a
22 live litigation where people are at each

1 other, if you take a use case, the scenario of
2 things that are going on out there in the real
3 internet environment and invite comment on the
4 different aspects, and start developing a
5 record of where people find things don't quite
6 fit properly, that is one you might think
7 about.

8 MS. CLAGGETT: Thank you very
9 much.

10 And then, I think in the last two
11 minutes we will have the final comments from
12 the participants, Mr. Glazier and, then, Mr.
13 Band.

14 MR. GLAZIER: One thing more that
15 I thought was pretty concerning, and that was
16 that somehow the distribution right, right
17 now, only covers when there is an actual
18 transfer of a copy. And if you are offering
19 for distribution, somehow that is not covered,
20 and that making available would be a stretch.
21 And we would be expanding rights if we covered
22 something in a search folder or how people use

1 the internet today.

2 For enforcement purposes, if you
3 had to have a snapshot picture of an actual
4 transfer of a copy in order to enforce your
5 rights, you would have no remedy at all. And
6 so, the idea that putting something into a
7 place on a computer network that is accessible
8 to members of the public, as it states in
9 Section 506, and offering it for distribution,
10 under the definition of publication, which is
11 at least equated, if not encompassed, within
12 distribution, to say that that is not covered
13 by the current distribution right I think is
14 a big stretch. I would hate for that to be
15 implied.

16 The constitutional mandate is to
17 protect the exclusive -- we always forget that
18 word -- the exclusive rights of authors, which
19 as a consequence promotes science and the
20 useful arts.

21 And so, I don't think people
22 should get confused about offering for

1 distribution. It is definitely part of the
2 copyright law, and it is not a stretch or an
3 amendment to make it so.

4 MS. CLAGGETT: Thank you.

5 We will conclude the panelists
6 with Mr. Band.

7 MR. BAND: So, I might not agree
8 with all of Mitch's interpretations, but
9 putting that aside, just very quickly, The
10 Washington Post yesterday had this big story
11 about all these reports that are issued that
12 no one reads.

13 MS. CLAGGETT: Don't say that
14 about the Copyright Office, please.

15 (Laughter.)

16 MR. BAND: And the truth, in my
17 view, the wrong conclusion, it said, well,
18 these are all useless and no reason-- I think
19 the problem is not that they are not read, but
20 that they are read, but they are read and they
21 are misused or taken out of context many years
22 later. And I think that that is something

1 that we really need to -- or not "me" -- you
2 need to think about when you consider doing a
3 study, report, analysis, whatever, in this
4 area. How is it likely to be used, not only
5 in the next five years, but how is it likely
6 to be used in 25 years?

7 And I am just thinking about the
8 report that the Copyright Office, I think it
9 came out with it in 1983 about interpreting
10 108. And I think that it was --
11 interpretation was completely wrong.

12 But, putting that aside, I mean,
13 that report, a 25-year-old, or whatever,
14 however many years that is, a 30-year-old
15 report, is an issue in ongoing litigation, you
16 know, in a completely different factual
17 context.

18 And so, I think that there is a
19 danger to having these reports that, then,
20 many, many years later, you know, again when
21 the world changes, but still someone is going
22 to say, "Oh, look at what the Copyright Office

1 or the expert agency said then."

2 So, I think that that is a danger
3 that you need to be aware of, especially in
4 this context, why a report here as opposed to
5 any one of the other 20 issues that you could
6 easily be doing reports on?

7 And then, the final remark, just
8 getting back to where we started, is that it
9 is true that it is always important to know
10 how we got to where we are and the roots and
11 the legislative history and all the back-and-
12 forth. But, at the end of the day, a judge
13 has to decide. You know, it is up to the
14 judge to make the decision how to apply the
15 law to the fact.

16 And sort of all the legislative
17 history is interesting, but at the end of the
18 day it is their job, and I think we need to
19 trust them and understand that we can't sort
20 of micromanage what courts are going to do
21 through reports, interpretations, legislation,
22 you know, whatever. Judges are going to have

1 to apply the law to facts, and the facts are
2 always going to be changing. The technology
3 is always going to be evolving. And so, we
4 have to, at least some level, have trust that
5 they are going to do the right thing.

6 MS. CLAGGETT: Thank you very
7 much.

8 Thank you to all of the panelists.
9 I am going to open it up and see
10 if there is anybody from the audience.

11 Professor Ginsburg?

12 PROFESSOR GINSBURG: Hi.

13 I don't want to weigh-in on the
14 institutional competence question. I just
15 want to react to particularly Ms. Moy's
16 comments because I think they take the making
17 available right, or whatever we have, out of
18 context, to the extent that we still have the
19 fair use doctrine, we still have Section 512.
20 And I thought that a number of Ms. Moy's
21 examples were actually very good illustrations
22 of how in a making available right, digital

1 distribution, whatever you want to call it,
2 they can play together with the fair use
3 doctrine.

4 So, the example of lots of
5 scientists, let's say, are working together in
6 a peer-to-peer network or they are all
7 uploading and downloading their files to a
8 shared Dropbox folder. Well, that might be a
9 terrific example of fair use. That might. It
10 may be that any third-party copyrighted
11 content is being made available to too large
12 a number of people to constitute a non-public.
13 But if it is non-commercial research, that is
14 probably fair use.

15 And if it is commercial research,
16 this is Texaco. So, how is it different
17 whether the content is being distributed by
18 photocopies to the R&D department of a for-
19 profit enterprise or that same content is
20 being made available through a shared storage
21 locker in the cloud? So, I still think that,
22 regardless, the fair use doctrine is very much

1 part of it.

2 And I think the photo in the
3 PowerPoint example, in addition to Nancy's
4 response, if you are showing that PowerPoint
5 to a large number of persons, such that it is
6 a public performance and Section 110(1)
7 doesn't apply, well, that is already a
8 violation of the public performance right.

9 So, I am not sure that every
10 scenario which might look problematic if we
11 said, "Oh, my goodness, that's a making
12 available to the public, and it is a new
13 violation," whether or not it is a prima facie
14 violation, it is not necessarily an
15 infringement because of the fair use doctrine
16 and other exceptions.

17 MS. CLAGGETT: Thank you very
18 much.

19 I want to thank all the panelists.

20 We are going to quickly set up for
21 Session 4, which will be a discussion of
22 foreign implementation and interpretation of

1 the WIPO Internet Treaties.

2 Thanks.

3 (Whereupon, the foregoing matter
4 went off the record at 3:22 p.m. and went back
5 on the record at 3:26 p.m.)

6 MS. CLAGGETT: Okay. Since I
7 think we ended a little bit late, we are going
8 to our seats to try to get this last panel,
9 this last formal panel with participants. And
10 then, we will have an audience participation
11 session.

12 MS. STRONG: So, good afternoon,
13 everybody. Thank you for attending the fourth
14 session of this afternoon's roundtable.

15 This one is on Foreign
16 Implementation and Interpretation of the WIPO
17 Treaties. We have eight distinguished
18 panelists.

19 And as in the prior sessions, we
20 will just go around the dais, and if you can
21 introduce yourself by name and affiliation?
22 And we will get started after that.

1 MS. CASTILLO: My name is Sofia
2 Castillo, and I am a Legal Fellow of the
3 Copyright Alliance.

4 MR. DiMONA: Joe DiMona, Vice
5 President, Legal Affairs, with BMI in New
6 York.

7 MR. GENETSKI: Christian Genetski,
8 General Counsel, Entertainment Software
9 Association.

10 MR. SCHRUEERS: Matt Schruers,
11 Computer and Communications Industry
12 Association.

13 PROFESSOR LUNNEY: Glynn Lunney,
14 Tulane.

15 MR. ROSENTHAL: Jay Rosenthal,
16 Senior Vice President and General Counsel at
17 the National Music Publishers' Association.

18 PROFESSOR GINSBURG: Jane
19 Ginsburg, Columbia Law School.

20 MR. TEPP: Steve Tepp, on behalf
21 of the Global Intellectual Property Center of
22 the U.S. Chamber of Commerce.

1 MS. STRONG: Thank you all very
2 much.

3 As in prior sessions, we are going
4 to start with a general question or two, and
5 then, dive down into some specifics. So, I
6 would like to start off with the question of,
7 basically, how do foreign laws implement the
8 making available right? And I am going to be
9 very specific here. I am talking about WCT
10 Article 8 and WPPT Articles 10 and 14. And
11 how has such implementation provided, in your
12 view, either more or less clarity in these
13 countries in the context of digital
14 distribution? So, we are looking for
15 experience abroad on implementation of these
16 particular articles.

17 And if you can just tip your card?

18 And we will call on
19 Professor Lunney.

20 PROFESSOR LUNNEY: So, just to
21 start, to me, the process of sort of amending
22 the U.S. copyright law in order to comply with

1 this international treaty strikes me as just
2 a bit disingenuous. I don't see any of my
3 friends from the European Union here. I
4 haven't heard of any trade arbitrations
5 seeking to change our law in this respect.
6 So, I am not really sure it is the
7 international treaty that is driving this
8 particular examination of the making available
9 right.

10 That being said, I think that the
11 European Union and the other countries that
12 have adopted the making available right have
13 gone through the same process with respect to
14 internet uses that we have gone through under
15 our public performance and distribution right.
16 They have used a different linguistic
17 framework. They have come to different
18 answers in particular situations. They have
19 come to the same answer in some situations.

20 So, on the Cablevision case, for
21 example, where the Second Circuit held that to
22 be not copyright infringement, we have the

1 court in Singapore saying it is not copyright
2 infringement. The court in Germany initially
3 saying it is not copyright infringement, and
4 then, coming back and saying, at least with
5 respect to the first retransmission from the
6 antenna to the subscriber's individual service
7 space, that is a retransmission, and courts in
8 Australia initially saying it is not, and
9 then, changing their mind as well.

10 So, they have come to some
11 different outcomes in some areas, but, on the
12 whole, it is hard to see where their law is in
13 any sense preferable on these issues or
14 clearer on these issues than ours. And we
15 would have to go through the same sort of 10-
16 to-15-year process of litigation to sort out
17 what a making available right would like in
18 the United States, were we to adopt it.

19 MS. STRONG: Professor Ginsburg?

20 PROFESSOR GINSBURG: Thank you.

21 Okay. I guess we might start with
22 the text of the WCT before turning to how it

1 has been implemented. And the language of the
2 WCT treats the making available right as an
3 instance of the right of communication to the
4 public.

5 So, "without prejudice" to a whole
6 bunch of provisions of the Berne Convention,
7 where the right of communication to the public
8 is specified, "authors of literary and
9 artistic works shall enjoy the exclusive right
10 of authorizing any communication to the public
11 of their works, by wire or wireless means,
12 including the making available to the public
13 of their works in such a way that the members
14 of the public may access these works from a
15 place and at a time individually chosen by
16 them." That language is verbatim in Article
17 3 of the 2001 European Information Society
18 Directive.

19 And I think that the "may access"
20 makes clear that this covers not only a
21 completed communication, but the prospect of
22 a communication, the offer of a communication.

1 I think there is a legitimate
2 question whether Article 8 adds something to
3 the Berne Convention. This is relevant to the
4 extent that if the making available right is
5 not implicitly in the Berne Convention, is
6 something new with the WIPO Copyright Treaty,
7 then failing to implement the WIPO Copyright
8 Treaty would not subject us to trade sanctions
9 under the TRIPS, which incorporates Berne, but
10 the WIPO Treaties are post-Berne.

11 But if one thinks that Article 8
12 is a clarification of what the meaning of
13 right of communication to the public is, then
14 the making available right is also subsumed
15 within not only an international obligation,
16 but an enforceable international obligation.
17 So, that is a threshold question.

18 Then, as to how it has been
19 implemented or understood, Singapore is the
20 only country that has found that a
21 Cablevision/Aereo-type situation engages no
22 right under copyright. Every other

1 jurisdiction has either, under the rubric of
2 making available or other pieces of things,
3 such as the Shift TV case in Germany that
4 Glynn Lunney referred to, have found that
5 there has been a violation of an exclusive
6 right under copyright.

7 As for the European Union, the
8 European Court of Justice in the Svensson case
9 has now made totally clear that the offering
10 of a work, not merely the completed
11 transmission of a work, is a making available
12 to the public. The issue in Svensson ended up
13 turning on whether there was, for there to be
14 a communication to the public, whether there
15 was a "new public" when the content was
16 initially made available with authorization
17 from Website No. 1 and subsequent websites
18 linked to that content.

19 But on the front issue of whether
20 or not making that content available via a
21 link was a making available, that is now
22 clear. And that position was also reiterated

1 more recently in the website-blocking case, in
2 the Telekabel Wien case that the ECJ decided
3 just about a month ago.

4 So, I think in terms of
5 international implementation, it is clear that
6 the offer, as well as the actual transmission
7 of content, is what the making available right
8 is all about.

9 One last comment, because I agree
10 with Glynn on this. In the United States our
11 approach, to put some things called
12 "distribution," including digital, and other
13 things in a box called "public performance,"
14 is something of an outlier. In most other
15 countries, the concept of communication to the
16 public covers digital communications, whether
17 as a stream or as a download.

18 MS. STRONG: Thank you very much.

19 Mr. Tepp?

20 MR. TEPP: Thank you.

21 So, on the previous two panels
22 ago, there was some discussion of room for

1 interpretation of what making available means.
2 I think Professor Ginsburg has just quite
3 articulately pointed out that, insofar as the
4 question of making a work available, as within
5 the scope of the making available right, it
6 surely must be.

7 That is bolstered further by the
8 text of the Guide to the Copyright and Related
9 Rights Treaties Administered by WIPO, which is
10 published by WIPO and which the Copyright
11 Office referenced in its Notice of Inquiry for
12 this process.

13 To the extent that commenters are
14 offering the view that making available does
15 not include making available, it seems to tax
16 credulity. Or even more extremely, at least
17 one commenter suggested that, if making
18 available does include making available, it
19 is, quote, "unprecedented." That seems hard
20 to swallow.

21 To the extent that foreign laws,
22 and we get into the particular question that

1 was posed, implement this right, it seems
2 consistent with the interpretation that making
3 available includes making available.

4 I did a brief survey using the
5 WIPO Lex Database of Laws in preparation and
6 tried to look at laws across geographic
7 diversity and diversity of level of
8 development, as well as diversity of whether
9 or not they have actually ratified the WIPO
10 Internet Treaties.

11 Albania, Australia, Brazil,
12 Canada, China, Ecuador, Egypt, the European
13 Union, Ghana, Japan, Nicaragua, and Pakistan,
14 the ones I looked at, and every one of those
15 has implemented a making available right. I
16 can't speak to every jot and tittle of their
17 implementation of that international law in
18 their national courts. Of course, there is
19 some room for national law and national
20 interpretation, but the fundamental question
21 of whether or not offering a work, making it
22 available to the public, is within the scope

1 of the making available right and should be
2 implicated under that right in order to comply
3 with the treaties, seems to be fairly clear,
4 both as a matter of the text of the treaty as
5 well as looking at how other countries have
6 implemented it.

7 Thank you.

8 MS. STRONG: Thank you.

9 Mr. DiMona?

10 MR. DiMONA: Okay. Thanks.

11 I think there are two areas where
12 the public performance right in the United
13 States falls short of what is happening in
14 Europe. One has to do with the remote DVR-
15 type situation that was addressed by the
16 Cablevision case, and the other has to do with
17 the exemption for downloading from the public
18 performance right.

19 Taking the first one, we did in
20 our paper, I think we put in evidence from
21 various countries' laws that clearly show that
22 making available right in England and

1 Australia and Japan has been recognized on the
2 communications side to include the mere
3 offering as well as the actual performance.

4 And there is a case called the
5 TVCatchup case in the European Union which
6 dealt, I believe, with a very similar
7 situation of the Cablevision case, and came
8 out that it was a violation of the making
9 available right.

10 And parenthetically, there have
11 been a few district courts who agreed with
12 that in the United States as well. So, I
13 think that that is a problem with the
14 Cablevision decision. Hinging the existence
15 of the public performing right in the United
16 States on whether or not a copy of a certain
17 kind was made or whether a putatively
18 individual copy was made, I think is just a
19 bad law, a bad outcome.

20 With a server, the cost of memory
21 getting cheaper and cheaper and cheaper,
22 anybody can architect a system that creates

1 individual copies in order to avoid copyright.
2 And that is exactly what Aereo did. Having
3 received the invitation, they said, okay, this
4 is great; we will start providing subscription
5 television with individual antennas. So, I
6 think we are falling short there.

7 On the download issue, I think
8 that the court again, a Second Circuit
9 decision here, is wrong I think on the law,
10 also wrong on the technology. The Copyright
11 Act says, "public performance by any means,
12 process now known, or hereafter invented."
13 And the court came out with, well, it's a
14 transmission, but only if it is an audible
15 transmission, which is a special kind of
16 process. And I think that is inconsistent.

17 In Europe, as Professor Ginsburg
18 was saying, it has been recognized to be a
19 public performance, and collective societies
20 there can license both mechanical and
21 performance, and have been doing so for quite
22 a few years now. They treat both streams and

1 transmissions to be both rights. And so, you
2 know, I think that we are a little bit out of
3 step there.

4 On the technology, I think also
5 Professor Ginsburg this morning said that it
6 is not helpful to think of streams and
7 downloads as being radically poles apart. You
8 can architect a download so that you can hear
9 it right while it is going, while it is
10 downloading. You can, similarly, make copies
11 of streams. And there are a lot of variations
12 in the middle. So, I think we fall short here
13 on that issue as well.

14 MS. CLAGGETT: Thank you.

15 Mr. Rosenthal?

16 MR. ROSENTHAL: First of all, I
17 want to address Joe's comments about that
18 there is a real similarity, at least a growing
19 similarity, between the two types of rights we
20 are talking about here, the public
21 performance, the distribution, reproduction;
22 and that in Europe there certainly is a

1 different licensing format and a different
2 process that they use to license these rights
3 than we do over here.

4 Now the Copyright Office is
5 addressing these issues in your study on
6 licensing. You know, should we be bringing
7 some of these rights together, and all of
8 that? And that is fine, and that is for that
9 particular procedure.

10 But, essentially, we shouldn't be
11 looking at the fact that we are a little bit
12 different over here, and all the debate we had
13 this morning, as really being that significant
14 in the overall points by Steve and made by
15 Professor Ginsburg, that this does cover the
16 right and we should move forward in trying to
17 deal with it, whether through legislation
18 eventually or not.

19 I'm not sure, looking at Europe
20 and what they have done, because they have
21 done it in many different ways, is that
22 instructive to us. I think it is good that we

1 can look at the results over there and see
2 that they have come to some different results
3 than some over here.

4 Just one other point about
5 international law and the issue of the free
6 trade agreements. The free trade agreements
7 did not really concern me that much in terms
8 of us being really in violation of them until
9 the situation has arisen with Antigua. And I
10 think that we do have to and I think you have
11 to take into context that now we have a
12 situation where a country has brought an
13 action against the United States for a
14 violation of international law under WTO.

15 And now, they are engaging in a
16 process where they are effectively giving away
17 U.S. copyrighted works, not much, and it is
18 Antigua, yes, you know. But the point is
19 that, all of a sudden, the seriousness of our,
20 let's say, looking at the free trade
21 agreements and adhering to them in a way that
22 would not get us into trouble with the WTO I

1 think is much more important now because of
2 that and should be taken into consideration,
3 as you guys are reviewing these topics.

4 MS. STRONG: Thank you.

5 Mr. Schruers?

6 MR. SCHRUEERS: So, Professor
7 Lunney started by pointing out that he wasn't
8 aware of any of our European colleagues sort
9 of wringing their hands about the state of
10 U.S. law. And as he said that, I was thinking
11 that at least recently the shoe has been on
12 the other foot. Many here in the U.S. were
13 wringing hands about whether or not the
14 European Court of Justice Svensson opinion was
15 going to render a result whereby all
16 hyperlinks on the internet needed to be
17 licensed.

18 And I think that would have been
19 an unfortunate and absurd result, which didn't
20 occur only because of a somewhat convoluted
21 opinion, which Professor Ginsburg alluded to,
22 which seemingly suggests that if the new

1 audience is coterminous with the original
2 audience, then -- anyway, there are logical
3 readings of the opinion; there are also very
4 illogical readings of the opinion.

5 Had there been an illogical
6 result, that would have come out of an
7 implementation in communications to the
8 public. And so, having seen us just narrowly
9 dodge a bullet, I think -- I mean, we don't
10 actually know how that is going to play out
11 over time -- but assuming we have dodged the
12 bullet, it seems a uniquely inopportune time
13 to sort of revisit that issue here and sort of
14 take on the same risk.

15 Certainly, it would do no favors
16 for the credibility of copyright law to say
17 that every link needs a license. And I don't
18 think anybody wants that result to occur in
19 U.S. copyright law. So, that is, I hope, a
20 less probable outcome here.

21 But, again, in the sort of
22 European example, in our preparations for the

1 European consultation that recently occurred,
2 one of the things that I heard extensively was
3 concerns about multiple demands for one
4 exploitation of the work. I mean, we have
5 that now in Europe. We have that to some
6 degree here in the United States.

7 Any interpretation that appears to
8 expand distribution, so that one exploitation
9 of the work means that perhaps not only the
10 reproduction and public performance rights are
11 triggered, but, also, the making available
12 right for a use of the work, as we are seeing
13 in Europe.

14 That seems to me to be a very real
15 risk, and it would be unfortunate if some
16 report or statement from the Copyright Office
17 were to be the impetus for a lot of
18 rightsholders to say, "Ah, well, now these
19 works have already been given to the public in
20 some licensed manner, but perhaps my newfound
21 making available rights means that I am
22 entitled to take a cut for actions that people

1 thought were adequately licensed." And I
2 think that is a very real outcome and one that
3 I am concerned about.

4 MS. STRONG: Thank you.

5 Next, Mr. Genetski, then Professor
6 Ginsburg. And then, I am going to have a
7 follow-up question about the structure of
8 various copyright laws.

9 MR. GENETSKI: Thank you.

10 So, building on the point that
11 Matthew closed there with, and going back to
12 a specific example that Joe and Jay both
13 raised as well, and coming at it from a
14 slightly different perspective, which is the
15 big question in front of us is whether there
16 is some action the Copyright Office should
17 take to recommend or as an impetus towards
18 legislative action on a making available right
19 here to be consistent with the WIPO Treaties.

20 And the perspective that I bring
21 on behalf of the video game industry is just
22 the practical business implication that might

1 result from including a making available
2 notion or right, whether it is layered on as
3 another item under 106 or it is incorporated
4 into existing rights.

5 I think that looking at the
6 foreign implementations, the different
7 approaches that have been taken by different
8 countries around the world, is instructive for
9 us in thinking about what the consequences of
10 any action here, other than sort of holding to
11 what has seemed to be the overwhelming
12 consensus point all day that we are in an okay
13 spot now for the most part with the umbrella
14 approach we have taken.

15 I would look at Canada, and
16 looking specifically at the issue that Joe
17 raised about, under the U.S. law, the
18 distinction between a download and a stream,
19 and a download being covered under
20 distribution right; stream being covered under
21 the public performance right. And the EU
22 taking a much different approach, which has

1 real implications for collection societies and
2 licensing regimes.

3 Canada has, under a case that my
4 trade association was the main plaintiff in,
5 ESA v. SOCAN, took the same approach as U.S.
6 law: it is a communication right, not public
7 performance in Canada, but again split stream
8 and download, had strong language about not
9 stacking royalties, not layering the rights,
10 collecting twice for the same act, as Matthew
11 mentioned.

12 And in the wake of that decision
13 and an overlap of just a few months, Canada
14 passed its amendments to its Copyright Act,
15 including incorporating a making available
16 provision. Whether it is a separate right or
17 not is the subject of a lot of debate now, but
18 into its communication right, and solely
19 within its communication right.

20 What that has spawned is, you
21 know, within a year of a case that was
22 litigated from the Copyright Board through

1 every intermediate court in Canada and,
2 ultimately, decided by the Canadian Supreme
3 Court, we are back to square one in the
4 Copyright Board again, starting over, having
5 arguments from very smart people on both sides
6 about what the implication of that making
7 available language being put into the
8 communication right is.

9 And I don't want to re-litigate
10 the issue here today, but the point is we are
11 going to go down that same road again to reach
12 a resolution, and you have got very different
13 interpretations about whether that upset the
14 apple cart. There are a lot of existing
15 licensing practices that the companies that I
16 represent have built into their ability to
17 incorporate music into their works. They
18 thought they had clarity. So, a well-
19 intentioned action has now meant we have got
20 several more years of confusion on that issue.

21 MR. DiMONA: Admit it, you enjoyed
22 the first SOCAN case so much that you really

1 are looking forward to doing it a second time.

2 MS. STRONG: Thank you very much.

3 I would like to follow up on one
4 or two issues you raised, but, first,
5 Professor Ginsburg.

6 PROFESSOR GINSBURG: Yes, well, it
7 will be interesting to see what the Copyright
8 Board of Canada does, which I think it should
9 be doing shortly at this point, in determining
10 whether the enactment of a making available
11 right in Canada, whether that, in effect,
12 replaces the ESA/SOCAN case or incorporates
13 the ESA/SOCAN case.

14 Much of the debate in that case is
15 also about whether a making available right
16 includes prospective or the offering to
17 download -- of a download. So, that will be
18 another country's implementation to watch.

19 I just wanted to say something
20 more about Svensson. In Svensson, the "new
21 public" concept, which is not free of
22 controversy, came to the rescue because,

1 otherwise, it would have been extremely
2 problematic. And I think it was for Europe a
3 more elegant solution than implied license,
4 which I think is perhaps the way we would go.

5 But it should also be recognized
6 that in taking that route, the European Court
7 of Justice ruled that it is a making
8 available, but there is no new public if the
9 initial communication from Website No. 1 was
10 authorized. But, if that initial
11 communication from Website No. 1 wasn't
12 authorized, then it is a making available. It
13 is a communication to the public, and it is a
14 direct violation. It is not a theory of
15 secondary liability.

16 In the first panel, we talked a
17 little bit about whether these sorts of
18 situations should be adjudicated as a matter
19 of secondary liability. I think in the EU,
20 one upshot of Svensson is that, if that
21 initial communication was not an authorized
22 communication, you have a direct violation,

1 and it is not based on secondary liability.

2 MS. STRONG: Thank you very much.

3 I actually was hoping to turn to
4 another question, but I see that there are two
5 flags up. So, Mr. Schruers?

6 MR. SCHRUEERS: Yes, I will be
7 really quick. I think I agree with everything
8 Professor Ginsburg said about the
9 interpretation of Svensson. And I was sort of
10 thinking about how that would play -- right
11 now, we are sort of seeing a similar fact
12 pattern. I am a few days behind on the news,
13 but I have seen that Quentin Tarantino has
14 been litigating about a script that was made
15 available that was leaked.

16 Sort of applying this sort of
17 Svensson fact pattern, where you have got the
18 initial communication was not authorized, and
19 then, somebody linking to something that is
20 newsworthy, you know, I sort of see a
21 situation where you have people linking to
22 something of public note, that may well, under

1 making available, be a direct violation, where
2 we wouldn't want it to be.

3 And I find it very troubling to
4 think that we, at a time when we, as I said,
5 just dodged a bullet I think in Europe, that
6 we want to sort of revisit and reintroduce
7 that same uncertainty here, is troubling.

8 MS. STRONG: Thank you.

9 Professor Lunney?

10 PROFESSOR LUNNEY: I will try to
11 be equally brief.

12 And so, my point would be that,
13 instead of looking at what they have and what
14 we have and saying, "Oh, they have this. That
15 would be nice. Let's take it on," we need to
16 look at the real-world consequences of
17 adopting their approach. It may be more
18 elegant, as Professor Ginsburg has said, but
19 do we really want strict liability if you link
20 to a site that is originally unauthorized?
21 That puts the burden on the linker to know
22 whether that original site is authorized or

1 unauthorized, as opposed to our current
2 secondary liability approach, which puts the
3 burden on the copyright owner to provide
4 notice, and then, follow with a takedown.

5 That procedure is not perfect, but
6 neither procedure is perfect, and we need to
7 compare their relative cost and benefits.
8 Just saying they have one and we have the
9 other doesn't advance the ball very far.

10 MS. STRONG: I think Professor
11 Ginsburg wants the last word.

12 PROFESSOR GINSBURG: 512(d), which
13 we have and they don't, the equivalent of
14 512(d) is a matter of interpretation so far,
15 and some national courts have come up with a
16 512(d) equivalent, but it is not yet
17 Europeanized.

18 And I should have mentioned in
19 that landscape that we also have 512(d) as a
20 part of the consideration of whether linking,
21 deep-linking or framing a website would be a
22 making available (or whatever we are calling

1 the patchwork of rights that we claim end up
2 being the equivalent of making available).

3 MS. STRONG: Thank you.

4 There are two big trains of
5 thought that I would like to come back to.
6 And so, just to place a marker, one, I would
7 like to go back to a question that kind of
8 takes up on what Mr. Genetski was saying about
9 real-world consequences with respect to
10 statutory design and how laws look.

11 And then, I would like to come
12 back to this question about linking and, more
13 importantly, the question of not all countries
14 have secondary liability principles, and then,
15 how does that work in their implementation of
16 the making available rights?

17 So, putting a pause on the second,
18 to go back to the first question I have -- and
19 I will take Professor Lunney's admonition that
20 we are not all international lawyers, so we
21 are going to focus the question here just on
22 their statutory language, not necessarily case

1 law.

2 There are countries around the
3 world that have very explicit ways in which
4 they break out the communications for public
5 right, especially in the area of works. So,
6 I have seen laws that will start with an
7 overarching chapeau of: here's the
8 communication to the public, and then, they
9 will list about anywhere between 10 to 15
10 rights. Sometimes it will include the express
11 making available right, if it has been more
12 recently amended. In other cases it won't.
13 So, this is not a new structure of listing
14 very descriptive rights. So, they will have
15 broadcasting, rebroadcasting, public
16 performance, loudspeaker. You will have a
17 very long list.

18 So, my question to the panel is,
19 what is your experience in terms of real-world
20 licensing issues in these foreign countries
21 and real-world perhaps enforcement issues with
22 respect to those countries that have these

1 very detailed communications to the public
2 structures in their law that obviously have a
3 making available component? I was wondering
4 if you have any views on that.

5 Professor Lunney?

6 PROFESSOR LUNNEY: Well, it is a
7 question of all what you're used to, right?
8 So, if that is what you have grown up with,
9 then it seems right and just and the only
10 sensible way of doing it in the world. And
11 you adjust your contract language
12 appropriately.

13 I think the concern that my two
14 commenters on the right raised is, if you
15 already have the contracts or licenses in
16 place, and then, you come along and change the
17 right structure, do you grandfather-in those
18 preexisting license arrangements?

19 MS. STRONG: Well, to follow up, I
20 think that is my exact question, because some
21 countries do have, and have had, these very
22 detailed right structures, and then, the way

1 in which they amended their law, as they
2 perhaps implemented their treaty obligations
3 when they joined the WCT, is to add,
4 basically, the last including phrase from WCT
5 Article 8. And so, that would upset
6 potentially the new and old contracts.

7 I was just wondering if anyone on
8 the panel had any additional specific
9 information on perhaps cases in which they
10 were involved happened.

11 MR. SCHRUERS: So, I will
12 apologize that I can't answer that question.
13 I mean, there are international scholars here
14 far more studied on the subject than I am.

15 But I will make, I hope, the
16 obvious point that, sort of the more circles
17 there are in the Venn diagram, the more
18 concerns there are about things falling
19 between the circles, one.

20 And then, the sort of problem that
21 Christian's example with SOCAN illustrates so
22 well. It is that multiple circles overlapping

1 and to do one exercise you have got to check
2 multiple boxes. And then, as soon as you add
3 another one to the equation, right, you get
4 that many more times the number of potential
5 conflicts, right? It is sort of "N" times "N"
6 minus 1. And so, the larger entity, the more
7 complex we have. We already have six
8 enumerated rights and this will cause that
9 much more complexity, should we undertake the
10 issue, the change.

11 MS. STRONG: Thank you.

12 Ms. Castillo?

13 MS. CASTILLO: Yes. I also don't
14 have international law expertise. So, I can't
15 answer the exact question that you are asking.
16 But I think in terms of things that could be
17 helpful for the Copyright Office to take into
18 account in terms of issuing some kind of
19 guidance support, and referring back to the
20 Charming Betsy Doctrine that was mentioned
21 several times this morning where courts, where
22 possible, should interpret statutes in

1 accordance with the text and the spirit of
2 international treaties.

3 There are two things in the WCT
4 that could be helpful. One is one that
5 Professor Ginsburg has already referred to,
6 and it is the use of the permissive language
7 where they say, "by wire or wireless means,
8 including the making available to the public
9 of their works in such a way that members of
10 the public may access these works from a place
11 and at a time individually chosen by them."

12 So, basically, I think telling the
13 courts that the use of that permissive
14 language indicates that the offer of a work
15 triggers the right, and that there is no
16 international requirement for proof of actual
17 access to the work. That might be helpful.

18 The other thing that might be
19 helpful, looking in terms of determining the
20 spirit of the treaty, is looking at the
21 preamble. And sort of the first paragraph
22 explains that the treaty seeks to develop and

1 maintain protection in a manner as effective
2 and uniform as possible to copyright owners.

3 And so, I think those two things
4 might be helpful for the Copyright Office to
5 take on any guidance that would be helpful to
6 the courts.

7 Thank you.

8 MS. STRONG: Thank you.

9 Mr. Rosenthal?

10 MR. ROSENTHAL: We haven't been
11 involved directly in any proceedings over
12 there. But, if you are asking how things are
13 licensed, the process, almost all the
14 countries have societies that engage in the
15 licensing of making available. And some of
16 them break it down between their two different
17 societies, one like in France SACEM [Société
18 des Auteurs, Compositeurs et Editeurs de
19 Musique], and then, SDRM does the mechanicals,
20 SACEM doing the representation rights that
21 they speak of over there.

22 In Germany, GEMA does them both.

1 And I believe in the United Kingdom, I think
2 they are done both, but they have also merged
3 recently. We can find out for you the exact
4 nature, if that is what you are asking.

5 We could also supplement your
6 record here by getting some information from
7 the international societies who represent
8 music publishers, ICMP [International
9 Confederation of Music Publishers], maybe
10 CISAC [Confédération Internationale des
11 Sociétés d Auteurs et Compositeurs, also known
12 in English as the International Confederation
13 of Societies of Authors and Composers], about
14 this particular issue of how are they licensed
15 through the societies, if that would help.

16 MS. STRONG: Thank you.

17 Mr. Genetski?

18 MR. GENETSKI: I will start by
19 echoing the I am not the international law
20 scholar disclaimer. But I think I can address
21 your question at a high level from the
22 perspective of the industry I represent.

1 Because we look at this issue
2 broadly and kind of from two different
3 perspectives. So, our members, they create a
4 lot of intellectual property. Strong
5 copyright regimes are very important to us
6 instinctively and practically.

7 When we go around the world to
8 enforce those rights, typically, the analysis
9 you will conduct, you won't start with the
10 specific lists and the rights and how they are
11 protected. You will start with, what's the
12 problem that we are dealing with? How is the
13 value of our intellectual property being
14 compromised by a certain service or individual
15 or group of individuals?

16 You know, instinctively, most of
17 the members come from the U.S. trade
18 associations. Our member companies will
19 approach that through their own lens and think
20 of our own Copyright Act first and sort of
21 intuitively understand what would be
22 infringing about the conduct here. And then,

1 you go to that list, and you go through the
2 rights, and then, you go through the
3 precedents in that country and the way those
4 rights have been interpreted. And you try to
5 match the activity to what makes it unlawful
6 in a specific jurisdiction.

7 We really follow the same approach
8 when we are sitting on the opposite side,
9 which is we want to incorporate other
10 copyrighted works into the audiovisual works,
11 into a downloadable game. We want to have
12 music.

13 So, there what we will do is
14 figure out what rights do we need to clear and
15 how do we clear them under certain
16 jurisdictions. And so, it is the same
17 practical approach, which goes back, again, to
18 the larger point of any change for the sake of
19 clarification, well-intentioned change, where
20 there is already fairly well-established
21 practices under current things can be
22 upsetting.

1 MS. STRONG: Thank you.

2 Let me turn back to a little bit
3 of what we were talking about with Svensson
4 and the whole issue of how the secondary
5 liability might relate to the effect of
6 enforcement or of the availability of the
7 making available right itself.

8 So, I mentioned earlier, not all
9 countries have a secondary liability concept.
10 I know it sounds shocking, but they don't.

11 And I guess a couple of questions.
12 Are you aware of any cases or practices in
13 those countries that do not have a secondary
14 liability concept and there has been making
15 available litigation, or perhaps the converse?
16 I am trying to figure out, and I would be
17 interested in getting more information from
18 the experts on that. I think we have had a
19 little bit of an example of Svensson, but I
20 was wondering if there are any other examples
21 you might be able to provide.

22 Professor Ginsburg?

1 PROFESSOR GINSBURG: I don't have
2 the citation, but I believe Spain does not
3 have the concept of secondary liability for
4 copyright infringement. And Spain has a very,
5 very high level of what is called
6 "unauthorized activity." They may even be on
7 our watch list. But they are kind of a
8 notorious example of an EU country that does
9 not recognize the doctrine.

10 MS. STRONG: So, I guess I will
11 take advantage of your knowledge there. How
12 do you think in a future case Spain might
13 respect the recent Svensson case?

14 PROFESSOR GINSBURG: Well, since
15 it is not a theory of secondary liability,
16 that's not a problem. The problem is what
17 happens if you are providing
18 instrumentalities, but it doesn't come within
19 the ambit of the making available right.

20 So, if you are providing
21 instrumentalities for copying, but outside of
22 a making available context, that seems to be

1 a big hole.

2 MS. STRONG: Yes. And there is
3 probably some more experience here on the
4 experience in Spain, but Spain does have, as
5 you mentioned, a challenge problem with piracy
6 in the online environment, and especially
7 involving linking sites.

8 And so, I am curious to know how
9 -- I am going to take that back. I guess let
10 me go back to perhaps another region. There
11 are other countries in Latin America that also
12 don't have a concept of secondary liability in
13 the copyright context. I think there has been
14 some struggle in some nations to try to extend
15 just regular tort to that, but they have been
16 unsuccessful. I was wondering if maybe in
17 Latin America or in Asia whether anyone has
18 any other ideas or information to provide to
19 the record on how those countries are
20 implementing making available.

21 Mr. Tepp?

22 MR. TEPP: I think, by and large,

1 making available gets implemented as a matter
2 of direct liability. That seems more likely
3 the circumstance under which it will come up.
4 Obviously, there are some countries that don't
5 have secondary liability at all. There are
6 many countries that have secondary liability
7 in forms that are significantly different than
8 in the United States, through tort law,
9 through aiding-and-abetting-type statutes on
10 the criminal side.

11 But, of course, I think what I
12 would urge you to keep in mind is that what
13 you are being urged by some commenters is that
14 making a work available should not and does
15 not, some are arguing, implicate any exclusive
16 right under U.S. law. Well, if there is no
17 direct infringer, the secondary liability
18 analysis is extremely brief. There is none.

19 So, I think the focus I would urge
20 you to maintain is on the direct liability
21 question and whether or not the United States
22 is providing a making available right in a way

1 that complies with any plain meaning of that
2 term, if making a work available does not
3 implicate any exclusive right under U.S. law.
4 I don't see how it could.

5 MS. STRONG: Thank you.

6 Maybe if we can go back to some
7 higher-level questions on linking, are you
8 aware of any other countries' laws or
9 practices that make the distinction between
10 linking to legitimate materials and linking to
11 infringing materials? I mean, we have had
12 some discussion of Svensson, but I know this
13 probably will raise, again, the question or
14 the observation that Mr. Tepp on what could
15 possibly be direct liability, what would be
16 secondary liability.

17 So, in the area of linking to
18 different kinds of materials, do you have any
19 comments or observations?

20 (No response.)

21 MS. CLAGGETT: I was going to
22 actually say I don't have any further

1 questions, but that it is just 4:08. So, we
2 actually only have a few more minutes left in
3 this panel anyway.

4 Normally, we would say we would
5 want to use those last couple of minutes for
6 audience participation, but we have an
7 audience participation session next. So, we
8 probably don't need to do that. So, maybe
9 just one or two final questions, and then, we
10 will turn it over to the audience
11 participation.

12 MS. STRONG: I guess I will toss
13 out sort of another higher-level question.
14 Since the implementation of the treaties in
15 2002, we have reached the magic number of 90,
16 if that is a magic number, but that is quite
17 a large number of member states for a
18 relatively young treaty.

19 Do you have any observations or
20 general trends, either at the rate of
21 implementation or the regions of
22 implementation or the issues related to

1 implementation, given the recent decade of
2 success, I would say, and the widespread
3 adherence to the treaties?

4 MS. CLAGGETT: I think Mr.
5 Rosenthal looks like he wants to answer that
6 question.

7 (Laughter.)

8 MR. ROSENTHAL: Well, I really
9 don't. Actually, no.

10 On all of these points, these are
11 very, obviously, important questions. And I
12 think that maybe if we were given some
13 guidance beforehand on some of these
14 questions, we might have been able to come to
15 you with answers.

16 If this is important to your
17 deliberations, we will work on getting you
18 some of the answers to this, and we can
19 supplement, again, your record on these
20 points. I mean, as you raise these questions,
21 I am like, boy, this is something I would like
22 to know more about.

1 So, we are open to working with
2 you on that and getting you this from the
3 organizations in Europe and in Latin America
4 that can give you some good answers on it.

5 MS. CLAGGETT: Thank you. We
6 appreciate that.

7 Mr. Tepp?

8 MR. TEPP: It is a very broad
9 question, essentially asking about
10 implementation both in national law and in
11 national courts in 90 different countries. I
12 am not prepared to speak categorically in
13 absolute terms as to 90 countries.

14 I can tell you that the work I
15 have done indicates that, overwhelmingly, the
16 implementation is consistent with the view
17 that offering a work, making it available, is
18 and does implicate an exclusive right under
19 national law, in compliance with the WIPO
20 Internet Treaties.

21 As I mentioned earlier, I also
22 found some countries that have not yet

1 officially ratified those treaties, but appear
2 to have at least implemented the making
3 available right, consistent, again, with that
4 interpretation of the treaties.

5 And I agree with the observation
6 that to have in such a short time so many
7 countries adopt the treaties speaks to their
8 importance.

9 And just sort of two points that I
10 will make in the vein of closing remarks. One
11 is there was a question raised earlier about
12 whether any of our trading partners or other
13 governments really care much about what U.S.
14 law is on this point. I can speak from
15 personal experience that the government of
16 Japan has inquired about our compliance with
17 the making available right, in particular, for
18 years, and that it was important to them, and
19 they are not entirely convinced that we are
20 complying with it. And I understand why,
21 although I, of course, when I was a
22 representative of the U.S. government, always

1 maintained that we were pristine.

2 My final point is that in this
3 overall atmosphere of global challenges to
4 copyright protection and enforcement, where we
5 have 90 countries that have
6 implemented/ratified the treaties, and the
7 United States having to ask itself whether we
8 actually fully comply with it, it is not a
9 helpful situation for us to be in.

10 The United States is looked to as
11 a global leader in intellectual property
12 generally and in copyright, in particular.
13 And I think that it is important that we
14 provide the best possible example of
15 implementation and enforcement of obligations
16 that we ask other countries to undertake to
17 provide that sort of fair compensation to
18 creative authors and industries.

19 Thank you.

20 MS. STRONG: Thank you.

21 Professor Ginsburg?

22 PROFESSOR GINSBURG: Japan did

1 decide a Cablevision-like case and found that
2 it was a violation of their rights.

3 Two further thoughts, one inspired
4 by Steve Tepp, which also gets back to the
5 Charming Betsy Doctrine. Because there seems
6 to be some disagreement about whether the
7 Charming Betsy Doctrine actually matters
8 because we have sometimes had a tendency to go
9 it our own way and not make every effort to
10 interpret our copyright law in light of
11 international obligations, assuming that we
12 agree about what those international
13 obligations are.

14 And we do have a somewhat
15 inglorious record when it comes to the Berne
16 Convention and, notably, moral rights. I
17 think Steve has a point that it doesn't make
18 us look good to take a truculent attitude
19 towards our international obligations.

20 And also, the Supreme Court
21 attributed to Congress, when it came to the
22 Uruguay Round Amendments Act and the

1 restoration of copyright in foreign works
2 prematurely in the public domain in the United
3 States, that Congress had intention of
4 "unstinting adherence to Berne."

5 And I suppose that one might try
6 to argue that, when the position was taken
7 that we didn't need to amend our Copyright Act
8 because we had, through bits and pieces, we
9 had the equivalent of a making available
10 right, that we should be "unstinting" about
11 that as well.

12 The last comment, which might open
13 a hornet's nest, is, one, there is a private
14 international law problem with the making
15 available right, which is: where does the act
16 which gives rise to liability occur? Does it
17 occur in the country from which the work is
18 made available? Does it occur in the country
19 to which the work is made available? Does it
20 occur in both?

21 The ECJ in the Football Dataco
22 case determined that, where a particular

1 country has been targeted for the
2 communication, the work was certainly made
3 available to that country, but, also,
4 preserved the possibility that the country
5 from which the work is made available might
6 also be a locus of the making available right.

7 This is an important issue because
8 of the question of enforceability. Because if
9 you have any transnational making available,
10 which you almost certainly do, you wouldn't
11 want to conceive of the right in a way that
12 would allow opportunistic restructuring of the
13 offering of content.

14 So, it goes back to something that
15 we referred to earlier this morning with
16 respect to the reproduction right. If the
17 copies are being made on a server offshore,
18 does that elude effective copyright
19 enforcement or enjoyment of rights in the
20 United States? So, the "from/to" question is
21 one that I think also needs to be thought
22 about in the context of a making available

1 right or its equivalence in U.S. law.

2 MS. STRONG: Thank you.

3 Our final two, now three, we will
4 just go down the row this way. So, Mr.
5 DiMona, Mr. Schruers, and Professor Lunney.

6 MR. DiMONA: Thanks, Maria.

7 I just want to conclude my
8 participation by saying that we are in a world
9 that is awash in piracy today. And we have
10 creators who are struggling. I want to echo
11 a word that my colleague John Beiter said this
12 morning. Some writers, authors, and creators,
13 they need strong protection.

14 And as far as I am aware,
15 entertainment products are one of the only
16 positive balance of trade that the United
17 States has nowadays where we are actually
18 making more money from foreign sources than we
19 are spending. We need to protect our culture
20 in the future. We need to protect creators.

21 And my own personal view is that
22 we need very robust copyright rights in the

1 digital age to help with this problem and
2 narrow exemptions. You know, I am in favor of
3 exemptions as much as the next guy if there is
4 a meritorious argument to be made. The
5 copyright law is filled with exemptions where
6 Congress looked at a particular situation and
7 said, "You know, if you are paying this right,
8 you don't have to pay that right." But that
9 should be thought of and the case should be
10 made for those.

11 A final comment I will make, to go
12 back to your question, Maria, about how would
13 you fix the law: should you write a very,
14 very detailed public communication right with
15 a bunch of subparts or should you just have a
16 broad statement?

17 My sense is a broad statement is
18 better, but really there is a fine line there.
19 Because if Congress tries to write down every
20 single possibility of a scenario, they are not
21 going to be able to do it. And technology
22 evolves so quickly that they will just miss a

1 few. Things happen no one can understand.

2 So, that is a risk there.

3 If, on the other hand, you go with
4 a broad statement and say it should cover
5 everything, then you run the risk, like the
6 court did in Cablevision, where they just made
7 one misinterpretation, and, all of a sudden,
8 you have got this loophole that you just can't
9 remedy.

10 So, I don't know exactly what to
11 do with that, but I think broadly-enunciated
12 principles with particular narrow exemptions
13 is probably my feeling, and I think the law
14 needs to be made more robust, not less. And
15 that's it. That is all I want to say on that.

16 MS. STRONG: Thank you.

17 Just for the record, I was asking
18 for examples outside the U.S. I wasn't saying
19 that the Congress was going to write a very
20 detailed list.

21 Mr. Schruers?

22 MR. SCHRUEERS: So, one of the

1 other areas where the U.S. has a very strong,
2 positive balance of trade is the export of
3 digital services. It is one of our fastest-
4 growing exports. And certainly, we wouldn't
5 want to do anything to endanger that.

6 And indeed, other countries have
7 noticed that, the fact that Spain, Germany,
8 well, in the order of France, Germany, and
9 Spain have all now implemented or are
10 considering implementing ancillary right-like
11 proposals which they can assign to domestic
12 stakeholders to tax internet services. They
13 are exercising the quotation right in the
14 Berne Convention. It shows that there is
15 great interest in finding new sources of
16 revenue from existing services. And we
17 wouldn't want to see a making available right
18 here in the United States do something
19 similar.

20 And here we are at the end of the
21 day, and I sort of figured at some point I
22 would find what I was thinking of as the

1 iCraveTV case. So, in WIPO we have been
2 fighting for years now about the WIPO
3 Broadcast Treaty, which is sort of a perennial
4 issue.

5 And the one case that was the
6 problem that we need to fix, right -- there
7 was always the iCraveTV case. That was held
8 up to say this is why we need a WIPO Broadcast
9 Treaty. Now that is either a good example or
10 a bad example. It doesn't really matter.

11 Here I haven't even heard that
12 example yet. So, I sort of came in today
13 thinking like I am going to hear what the case
14 is that is the problem, and then, I can go and
15 read the case. And I am not sure where it is
16 that a plaintiff brought a case, and then,
17 could not recover because there was no making
18 available right.

19 And when Jon Band pointed out on
20 previous panels that there seem to be in many,
21 if not all, of these case the reproduction
22 right applying, I expected somebody to say,

1 "Well, ah, that wasn't the case in this case,
2 and that's why we need it." And I haven't
3 heard that.

4 So, I feel like we are largely
5 responding to hypotheticals until I hear what
6 that case is. And if someone wants to email
7 me the citation, I would be happy to read it.

8 MS. STRONG: Professor Lunney?

9 PROFESSOR LUNNEY: Just a final
10 thought. Piracy, depending on how you define
11 it, certainly some people think it is rampant.
12 But when we look around the world at all the
13 different legal regimes that different
14 countries have adopted, no one has found the
15 silver bullet. No one has found the magical
16 language you can stick into your Copyright Act
17 that will shut down file sharing, whether
18 peer-to-peer or otherwise.

19 Europe has it. They still have
20 1350 petabytes a month of file sharing traffic
21 on their internet backbone. So, it doesn't
22 appear that this is really going to help

1 significantly, and I am concerned that it is
2 going to open the doors to some really
3 ambiguous -- if we add a broad making
4 available right, it is going to be very
5 unclear what exactly that means in the U.S.

6 MS. CLAGGETT: Thank you very
7 much.

8 We are going to close it, but I
9 think Professor Ginsburg will have the last
10 word.

11 I will just note that we haven't
12 actually had any audience members sign up so
13 far to make any final remarks. So, audience
14 members, if you do want to make any final
15 remarks, please come to the podium.

16 Otherwise, we will close with Professor
17 Ginsburg and any other participants who have
18 final words.

19 PROFESSOR GINSBURG: I would like
20 to take the focus off of file sharing and
21 piracy because I think that one of the very
22 important features of a making available right

1 or an interpretation of the digital
2 distribution right as covering offers and
3 public performances, covering offers, is the
4 affirmative side, which is licensing; that
5 there shouldn't be gaps in the panoply of
6 rights that get licensed.

7 And I think that we may have an
8 issue about overlapping rights, and that needs
9 to be worked out. But I think that, given the
10 way copyrighted works are enjoyed by the
11 public, there are increasingly variations on
12 access models. And the WIPO Treaty says "may
13 access." It is all about access.

14 So, I think we should think about
15 this not simply in the enforcement context,
16 but in the positive context of what set of
17 rights do we need in order effectively to
18 grant rights, so that people may enjoy
19 copyrighted works without the threat of being
20 labeled infringers.

21 MS. CLAGGETT: Thank you very
22 much.

1 I want to thank the panelists for
2 this session. Thank you very much.

3 And as the panelists depart, if
4 anyone, as I said, would like to make comments
5 from the audience, please step up to the
6 podium, and we will start with our audience
7 participation session.

8 MR. BAND: So, I just wanted to
9 respond to some of the comments that were made
10 in this last panel.

11 One is that there would be no
12 surer way to sort of mobilize public
13 opposition to the Copyright Act than to have
14 a direct infringement liability for linking.
15 I mean, that would be an absolutely horrible
16 idea and would completely discredit the
17 Copyright Act.

18 I mean, the only thing that I can
19 imagine that would discredit the Copyright Act
20 more or the copyright system more than direct
21 infringement for linking would be to try to
22 extend copyright term again beyond life plus

1 70. So, you know, that would probably be the
2 only thing that would be a worse idea than
3 having direct infringement for linking.

4 The second point is that, in terms
5 of looking to foreign law for models, you
6 know, yes, it is always good to look to
7 foreign law for interesting approaches, but we
8 should, again, be somewhat consistent to not
9 only look to foreign examples for expansion of
10 rights, but also for interesting exceptions
11 and limitations.

12 And so, I note that the UK now is
13 considering -- and I don't understand their
14 parliamentary system -- but I understand that
15 they very soon will now have in their
16 copyright law all kinds of exceptions on
17 contracting-out. In other words, that
18 contractual limitations on a variety of
19 exceptions will be null and avoid. I mean,
20 they already have that in the EU Software
21 Directive and some other places, but this
22 would be in UK law with respect to libraries

1 and educational institutions, for a variety of
2 exceptions.

3 So, I think that that is something
4 I would recommend, looking at countries
5 contracting out.

6 Or, like in Canada, with statutory
7 damages, they have a limit on the total amount
8 of statutory damages per transaction for non-
9 commercial use. So, that I think is like
10 5,000 Canadian dollars. So, that would
11 significantly reduce the statutory damages
12 available in a non-commercial use situation.

13 MS. CLAGGETT: Thank you very
14 much.

15 Do we have any other participants
16 -- not participants -- audience members who
17 would like to provide any final remarks?

18 (No response.)

19 Okay. We definitely want to thank
20 all of the participants today. This has been
21 very, very helpful to us in terms of
22 exploration in further detail some of the

1 issues that were raised in the comments. As
2 I mentioned before, there is a possibility
3 that we might ask for further written comments
4 and, if so, we will issue an NOI that asks
5 some additional questions based on some of the
6 conversation that we received here today.

7 We expect to be able to post the
8 transcript of our proceedings in the next
9 several weeks, as well as a videotape of the
10 proceedings as well.

11 So, thank you, and we look forward
12 to working with everyone as we explore this
13 issue in further detail. Thank you very much.

14 (Whereupon, at 4:28 p.m., the
15 meeting was adjourned.)

16
17
18
19
20
21
22

A				
\$1 88:2	312:9	act 24:8,15 26:15	361:6	283:3 288:13
\$1.5 42:8 77:5,19	accepted 131:8	28:20 29:17 30:13	actor 55:1 73:21	335:17 357:20
\$150,000 112:18	263:7 265:19	31:8 32:18 33:18	86:3,6,7 255:7,10	addressed 14:6
213:10 219:3,15	accepting 200:8	34:3,7,9 36:22	255:17,18,19	46:5 118:10
\$4.5 88:5	access 14:1 151:22	38:9 40:18 54:20	267:9 280:17	155:16 237:11
\$80,000 199:6	154:8,9 166:16,19	60:10 62:4 78:16	actors 67:20 68:2	263:20 273:18
A-F-T-E-R-N-O-...	166:20 169:18,21	83:1 89:11,17	75:13 79:10 109:3	287:12 332:15
221:1	175:2 176:9 187:5	90:1,4 100:21	165:4	addresses 53:13
a.m 1:9 11:2 124:4	187:8 279:6	104:13 110:14,16	acts 41:20 48:3	116:5 286:15
124:5	283:22 284:1	110:21 111:5,10	131:3 186:11	addressing 69:14
Aaron 2:21 21:12	285:6 306:22	111:13 117:3	257:17	274:12 283:14
ABA 27:7	326:14,19 355:10	127:2 129:6,9,16	actual 11:9 13:18	336:5
Abe 27:5	355:17 380:12,13	130:5 133:14,17	13:21 60:8 71:16	adds 327:2
Abend 28:1	380:13	143:21 150:14	72:1 91:6,14	adequate 155:20
ability 58:1,2,4	accessed 154:1	167:5 185:14	92:20 94:13,14	199:3 250:3
60:3 121:17	162:17 228:12	186:5 191:4 200:9	109:1 114:16	adequately 12:22
134:19 139:10	accessibility 243:9	204:20 241:13	115:21 170:16	13:15 341:1
206:2 282:11	accessible 110:19	243:7 244:20	171:7 176:17	adhered 262:19
344:16	169:16 241:18	257:4,8,12 258:18	202:15 214:11	adherence 366:3
able 82:4 87:8	257:6 277:15	260:2 288:9,17,17	218:22 219:11	371:4
117:13 120:16,18	279:14 314:7	296:1 300:8	220:1 224:8 292:1	adhering 337:21
159:18 189:19	accessing 126:22	307:18 308:5,9	313:17 314:3	adjourned 384:15
212:5 245:20	accession 263:7	310:15 334:11	329:6 333:3	adjudicated 98:7
269:1 294:2	accidentally 196:11	343:10,14 358:20	355:16	346:18
298:15,20 301:13	277:18 284:9,18	370:22 371:7,15	actuals 212:6	adjudicating 97:8
360:21 366:14	303:4	378:16 381:13,17	adapt 292:4	adjust 352:11
374:21 384:7	accomplish 278:15	381:19	adaptation 142:14	adjustment 271:1
Abrahams 23:16	accomplished	Act's 26:9	adapting 241:22	Adler 1:11 7:5
abroad 323:15	248:16	action 57:16,18	add 29:8 185:9	152:11 222:6,6
absolute 146:11	account 175:13,19	71:22 79:8 115:20	198:11 229:19	262:9,10 266:2
367:13	354:18	217:6 265:10	276:9,11 291:4	282:7 285:13
absolutely 40:20	achieve 145:22	289:12 337:13	353:3 354:2 379:3	288:2 295:6,13,14
49:1 53:5 116:22	185:15 280:12	341:16,18 342:10	add-on 53:16 55:6	Administered
118:17 199:10	acknowledge 58:7	344:19	adding 276:6	330:9
236:4 381:15	59:11 68:5	actionable 161:16	addition 18:9	Administration
absolve 157:9	acknowledged	161:17	204:17 320:3	146:6
absurd 150:20	102:19 159:17	actions 20:19 78:9	additional 16:22	Administrations
338:19	221:9 246:1	139:10 265:12,13	17:16 19:12,18	130:17
Abuse 167:5	acknowledging	282:21 340:22	353:8 384:5	admiration 279:18
abusive 53:16 55:6	68:21	activities 13:8	address 20:18	admit 190:11
academic 134:16	acquaintances	134:3 163:3	37:19 45:9 46:18	344:21
285:3	93:19	269:16	58:9 73:11 141:7	admonition 350:19
accept 52:20	acquire 70:21	activity 13:10	153:11,18 165:16	adopt 254:2 325:18
149:16 213:22	216:8	80:13 84:7 90:21	168:21 199:3,4	368:7
217:13,14 310:1	acquisition 70:5	96:11 119:16	206:8 217:10	adopted 102:17
acceptable 115:11	104:17	134:3 160:2	237:4 241:10	193:14 200:1
	acquisitions 104:15	186:10 359:5	251:11 257:9,17	310:15 324:12

378:14	287:18 317:1	285:13 288:2	amended 30:16,19	analogy 84:14
adopting 348:17	aggressive 81:7	292:13,14	87:17 127:2	163:19
advance 17:8 349:9	307:22	Alaska 306:2	351:12 353:1	analysis 37:6 46:8
advanced 243:21	aggressively 281:3	Albania 331:11	amending 323:21	99:5,18 146:20
advancing 227:20	ago 25:13 28:17	alienated 133:19	amendment 38:10	316:3 358:8
advantage 95:14	46:20 138:18	Alito 297:13	187:3 196:1,18	363:18
227:4 361:11	159:1 162:19	Allan 1:11 7:5	198:20 224:15	analytical 51:18
advantages 82:13	261:8 329:3,22	152:11 222:5,6	231:19 235:14	analyzing 64:2
advertising 309:8	agree 13:4 46:14	266:5	236:3 315:3	ancillary 376:10
advisable 272:8	56:11 65:22 66:17	allegation 114:15	amendments	Ancora 177:1
advise 247:1	73:20 76:14 82:9	115:20	307:18 343:14	and/or 246:4
advised 265:17	87:8 92:4,18	allege 41:22 59:19	370:22	Andrew 1:15 3:14
Advisor 2:21 21:13	101:17 127:13	alleged 45:20 59:18	Amer 2:14 21:5,5	7:16 22:9 29:6
advisory 246:15	133:3 156:5	115:7 182:18	137:14 141:1	35:2 53:14 81:6
285:18	159:21 161:13	allegedly 115:19	143:13 145:1	84:13 101:16
advocacy 298:12	197:7 198:17	alleging 219:5	147:19 149:5	107:15 217:11
advocating 197:3	230:8 231:10	Alliance 1:12,12,15	150:21 154:19	222:20 290:17
Aereo 93:3 121:20	232:12 245:10	1:20 4:5 5:7 7:9	157:15 160:7	291:9 308:19
168:12 194:5	254:6 258:11	7:11 9:8 23:3	163:10 165:7,13	Andrew's 259:5
250:18 251:1,10	266:4 269:8	124:19 222:11,13	169:2 170:4 171:4	Angry 154:11
254:17 255:1,3,18	289:15 290:18	322:3	173:18 175:7	answer 29:21,22
255:20 256:12	315:7 329:9 347:7	allow 79:19 170:15	179:19 184:2	30:6 65:1 100:4
257:8,9,11 258:3	368:5 370:12	205:13,22 312:11	185:7 188:19	134:5 141:9 142:5
258:6 262:13	agreed 99:15	372:12	190:5 192:8 195:4	159:15 171:20
266:19 334:2	105:20 175:4	allowed 245:21	196:21 198:15	175:21 180:9
Aereo-type 174:19	244:15 312:8	allows 219:22	201:18 204:21	201:20 203:15
Affairs 2:15,18,20	333:11	alluded 95:9	206:4 207:12	236:3 281:21
2:21 3:4,17 4:11	agreed-upon 59:12	249:17 338:21	208:18 214:6	292:17 299:7
5:9 6:9 7:6 9:9	agreeing 177:14	alternate 80:19	America 1:14 2:9	324:19 353:12
11:20 15:7 21:6,9	agreement 56:6,8	206:1 311:11	3:18 6:10 7:19	354:15 366:5
21:14 22:16	66:22 90:12 94:20	alternative 197:20	22:17 118:17	answers 53:19
124:21 126:2	121:1 170:11,12	alternatively	126:3 225:17	98:14 100:9 309:2
222:8 322:5	210:5 228:5	122:16	362:11,17 367:3	324:18 366:15,18
affect 241:7	268:15 297:14	amazing 99:7	AmericaJIM 1:19	367:4
affiliation 19:9	agreements 131:11	Amazon 108:3	American 1:11 2:5	antenna 325:6
21:19 124:16	264:7 337:6,6,21	244:1,14	4:11 7:7 23:13	antennas 194:9
222:2 321:21	agrees 45:5 132:22	Amazon.com 234:2	27:7 105:1 151:11	267:11 334:5
affirmative 380:4	ah 340:18 378:1	ambiguities 181:3	152:10 222:9	anti-circumventi...
afford 305:9	ahead 46:13 169:5	ambiguity 45:2	amount 34:16 56:5	167:3
affords 249:20	aiding-and-abett...	128:18 181:2	98:4 112:16 383:7	anti-piracy 50:14
afraid 85:1	363:9	230:14 231:11	amplified 295:16	Antigua 337:9,18
afternoon 56:18	airing 85:1	ambiguous 85:8	amplifies 132:20	antiquated 283:18
64:16 141:4 170:7	airplane 113:19,20	149:10 158:13	analog 26:16 29:16	anxious 80:20
321:12	Aistars 1:12 7:8	379:3	117:5 128:16	anybody 110:3
afternoon's 321:14	222:10,10 224:18	ambit 361:19	129:3 294:18	123:17 149:2
age 29:17 374:1	247:12 248:19,20	amend 240:5,13	300:9	202:8 213:16
agency 286:12	250:21 251:3,7	256:13 371:7	analog-based 179:6	258:6 262:8 278:3

318:10 333:22 339:18 anybody's 159:13 anymore 129:5 anytime 276:11 anyway 141:21 210:19 212:7 339:2 365:3 AOL 121:10 apart 231:8 335:7 apologize 15:22 17:8 188:10 353:12 app 167:22 168:3 apparent 35:5 apparently 43:19 appeal 214:1 appear 26:10 368:1 378:22 appears 35:9 37:11 38:9,12 56:8 274:3 340:7 appellate 99:12 Applause 15:1 apple 168:3 177:1 214:8 344:14 application 14:9 207:17 214:11 300:13 applications 299:9 applied 102:17 123:6 287:20 299:10 applies 31:3 35:19 199:12 293:2 apply 30:22 40:18 59:14 86:7 128:15 128:18 149:18 153:16 172:21 182:4 183:11 201:16 247:1 282:13 286:18 317:14 318:1 320:7 applying 13:6 150:19 172:9 347:16 377:22	appreciate 235:6 367:6 approach 12:20 98:3 104:12 246:9 262:21 263:2,21 265:5,18,19 273:4 278:21 279:2 286:18 287:14,17 293:1,15 296:5,6 298:12 304:18 308:17 329:11 342:14,22 343:5 348:17 349:2 358:19 359:7,17 approaches 101:15 278:21 342:7 382:7 approaching 199:18 appropriate 37:13 144:17 157:14 199:17 269:9 280:7 289:16 295:2 298:21 appropriately 14:9 69:14 294:13 352:12 approvingly 88:9 April 81:2 apt 163:20 arbitrations 324:4 arcane 32:8 archeology 98:1 architect 333:22 335:8 archival 280:2 archives 70:4,8 117:2,10 area 70:10 98:17 138:5 148:6 158:11 212:7 224:16 232:22 236:5 237:2 249:18 269:17 279:8 291:1,7 301:8,9 316:4 351:5 364:17	areas 153:17 236:22 263:10 304:22 325:11 332:11 376:1 arena 77:10 arguably 164:3 266:12 argue 49:22 135:8 264:4 371:6 argued 103:12 arguing 78:6 363:15 argument 44:10,11 44:22 46:19 78:4 78:15 86:9 149:9 197:4 216:21 232:13,18,19 374:4 arguments 36:14 81:16 196:2 307:2 344:5 arisen 27:9 337:9 arises 265:1 Ark 279:10 army 76:21 arrangements 352:18 art 81:22 177:15 226:18 309:11 article 25:5,11 26:5 27:13 44:22 81:11 105:14,21 106:18 107:1,2,4 153:8 172:5,14 173:1,16 175:11 187:14 196:11 279:9 294:17 323:10 326:16 327:2,11 353:5 articles 169:18 194:10 279:20 285:4 323:10,16 articulate 298:15 articulately 330:3 articulation 61:16 artist 243:19 artistic 326:9	artists 107:21 227:8 305:7,8 306:5 309:17 arts 22:8 288:22 304:3 314:20 ASCAP 23:13 121:10 174:17 225:15 ashamed 249:12 Asia 362:17 aside 60:8 72:18 110:14 285:8 302:21 315:9 316:12 asked 149:4 166:8 190:13 206:6 262:11 264:16 274:13,14 275:7 281:19 asking 180:13 222:1 236:1,6,15 292:15 354:15 356:12 357:4 367:9 375:17 asks 384:4 aspect 51:15 55:17 59:4 60:19 66:22 84:10 87:16 107:8 117:14 301:21 aspects 41:9 52:19 73:9 105:19 229:1 264:17 313:4 assert 65:13 asserting 220:6 296:18 assess 12:13 139:15 224:6 assessed 212:18 assessing 37:10 assets 104:18 assign 376:11 assisting 278:15,16 Associate 2:16,19 3:3 11:18 15:5 Associates 206:18 association 1:11,13 1:14,17,19,22 2:1	2:7,8,8,11 3:17 4:14,16 5:15,19 6:8,10 7:7,13,18 7:22 8:17 9:13,19 9:22 22:16 23:11 23:19 27:7 125:10 125:14,22 126:3 141:13 151:11,12 152:10 222:8,16 223:4,14,15 322:9 322:12,17 343:4 associations 136:8 358:18 assume 52:20 58:19 68:16 143:10 211:14 296:17 assumed 296:9 297:16 assuming 60:9 74:7 83:19 143:9 180:2 184:5,7 187:22,22 199:19 211:9,11 211:13 339:11 370:11 assumptions 215:21 assure 189:11 astronomical 150:2 atmosphere 369:3 attach 246:18 attachment 178:8 attack 64:1 67:5 85:7 attempted 52:14 attempting 188:6 attending 321:13 attention 26:4 155:8 178:12 attitude 370:18 attorney 1:15 2:21 3:15 6:5 7:16 8:12 21:13 28:18 29:5 36:21 81:5 125:19 163:21 164:16 attorney's 29:1
---	---	--	--	--

attractive 263:3	346:21 347:18	176:9 180:16,18	340:11,21 341:18	152:9 153:5
attributed 370:21	348:22	181:1,17,21 182:2	342:1 343:15	154:22 168:9
attributes 225:7	authorizing 326:10	182:6 183:2,11,17	344:7 345:10,15	169:15 178:2,16
atypical 245:11	authors 2:5 4:12	183:18,20 185:11	346:8,12 347:15	197:10 203:15
audible 334:14	23:14 305:5,6	185:22 186:4,14	348:1 349:22	220:14,22 237:22
audience 4:19 6:18	314:18 326:8	187:6,7,17 191:1	350:2,16 351:11	243:17 247:15
8:20 10:20 16:1	357:13 369:18	191:3 193:5	352:3 355:8	259:8 265:16,20
17:15,17 18:6,9	373:12	194:16,18 195:17	356:15 360:7,15	268:22 271:3
18:16 19:11 20:2	automatically	196:9,17 197:4,16	361:19,22 362:20	274:1 281:21
109:22 110:3,4	275:14,15 276:12	197:22 198:3	363:1,14,22 364:2	283:16 285:14
117:22 120:10,14	290:6,9	199:1,2,12,18	367:17 368:3,17	295:9 299:12
123:14,18 200:16	availability 187:14	200:2 201:11	371:9,15,18,19	302:10,14 304:16
200:22 208:21	360:6	202:12,18 203:13	372:3,5,6,9,22	305:1 306:3
213:13,17 215:13	available 1:3 11:5	204:3,13,19	376:17 377:18	307:21 310:2
292:16,18 295:12	12:15 13:11,16	206:13 207:1,4	379:4,22 383:12	317:8 321:4 325:4
302:8 318:10	17:18 20:12 24:12	208:6,16 209:17	avails 122:2	341:11 344:3
321:10 339:1,2	24:17 30:2 34:2	212:21 213:6	Avenue 309:10	350:5,7,12,18
365:6,7,10 379:12	49:10 50:12 52:5	216:9 221:7,15,20	average 303:1,3,18	354:19 359:17
379:13 381:5,6	52:11 53:1,20	224:7 225:9,20	303:20	360:2 362:9,10
383:16	54:1 55:17 60:4	226:9 235:21	avoid 27:8 334:1	364:6 370:4
audifrom 11:7	60:11,16,21 61:6	238:17 241:3,12	382:19	372:14 374:12
Audio 30:12	62:11 66:11 80:5	241:17,20,22	avoiding 198:8	back-and 317:11
audiovisual 179:14	80:11 81:22 82:5	243:8 248:9 253:3	avoids 64:8	back-and-forth
359:10	82:14 83:6,10,17	256:16,19,21	award 36:21	291:8,18
Australia 66:8	84:1,4 86:17 89:1	257:5 258:5,7	awarded 112:17	backbone 378:21
325:8 331:11	89:2,9,17,21 90:4	260:14 261:19	awarding 112:20	backdrop 72:15
333:1	90:10,19 91:5,13	264:11 265:2	awards 77:19 113:2	background
Auteurs 356:18	93:11,20 94:4	266:10 268:17	aware 15:14 34:20	160:13 253:9
357:11	95:4,14 99:13	270:19 272:10,21	112:18 317:3	290:12,20
authenticity 205:8	100:19 101:11	274:3 275:16	338:8 360:12	backs 15:22 277:17
author 58:1 85:18	102:21 104:1	276:13 277:5,21	364:8 373:14	backstop 205:21
243:6 248:2	105:8,9,12,15,18	278:4 282:17,18	awash 373:9	backup 310:14
authoritative 102:7	105:22 106:2,6,10	282:20 287:13	awful 171:8	backward 143:19
127:22 148:13	107:22 109:4	291:6 296:9,21		backwards 219:19
authorities 245:22	110:19,22 111:14	298:14,16,22	B	bad 163:8 231:4
authority 166:21	114:5,5,17,19	299:5 300:19	B 40:11 43:6,9	333:19,19 377:10
authorization	118:6,12 119:1	301:22 307:19	57:15 179:13	balance 373:16
13:12 39:18 189:8	120:2 121:5 122:1	313:20 318:17,22	back 20:8 35:8	376:2
328:16	122:11 129:13	319:11,20 320:12	36:18 60:6 63:18	balances 86:20
authorize 40:4	131:3 132:3	323:8 324:8,12	67:9 75:12 80:3,5	ball 349:9
60:18 61:2 62:3	149:12 154:7	325:17 326:2,12	83:9 84:12 88:21	balloon 232:3
65:4 71:7,13,16	155:4,19 156:18	327:4,14 328:2,11	89:1 98:5 107:3	Band 1:12 5:6 7:10
71:20 89:16 131:4	157:21 160:4	328:16,20,21	108:20 120:16	124:18,18 127:6,7
162:12	166:16 171:2,3,7	329:7 330:1,4,5	121:10 123:13,22	138:2,3 154:20
authorized 40:2	171:11 172:6,14	330:14,15,18,18	124:5 129:3	160:8,9 171:4,5
61:10,13,16 66:4	172:16 173:1,14	331:3,3,15,22	131:20 134:22	171:21 173:3
109:9 346:10,12	174:10,13,22	332:1,22 333:9	136:13 139:3	184:2,3,22 201:7
			141:8 142:5 144:7	

208:20,22 210:21 211:9 212:3 215:20 222:12,12 230:7,8 253:14,16 266:3,4 274:11,12 302:12 313:13 315:6,7,16 377:19 381:8 banking 153:19 bar 27:7 136:8 bare-bones 172:1 bargains 140:6 Barnes 1:13 7:12 222:14,15 239:21 243:16 245:7,9 248:21 285:12 288:1 290:1,2 base 62:10,14 based 13:10 154:13 168:5 179:13 186:22 232:21 347:1 384:5 bases 311:11 basic 199:15 251:20 253:6 255:4 263:16,19 296:6 basically 150:8 154:15 158:12 241:19 251:19 265:14 296:5,10 300:3 323:7 353:4 355:12 basing 74:4 basis 61:13 83:4 130:22 bearing 206:9 began 299:18 beginning 111:3 begins 37:6 behalf 5:13 22:12 23:17 78:22 125:7 126:4 322:20 341:21 behaving 294:13 Beiter 1:13 3:13 7:14 21:21 22:4,5	51:8 55:11,22 113:8 117:20 120:8,20,21 222:17,17 225:12 225:13 226:5 233:3 239:22 243:16 245:8 247:11,13 250:12 373:11 believe 42:13 72:8 91:4 99:2 100:10 121:21 151:2 190:17 195:5 218:8 225:19,21 226:7 248:5,14,15 270:4 287:4 306:21 333:6 357:1 361:2 believed 75:17 121:2 believes 32:10 78:10 192:4 242:17 264:10 286:15,16 Beltway 234:11 Ben 2:8 6:9 126:1 170:3 174:2 208:11 209:15 Ben's 161:12 169:7 Bend 249:17 beneficial 146:13 beneficiary 234:15 benefit 7:2 70:22 207:2,19 220:17 221:16 224:12 226:21 227:5 236:7 308:16 benefits 64:18 88:17 118:20 188:15 220:16 349:7 benevolence 123:4 Berkeley 2:4 4:9 8:8 23:8 223:9 Berne 263:7 312:10 326:6 327:3,5,9 370:15 371:4	376:14 Berners-Lee 167:14 best 48:17 85:12,12 140:19,21 143:9 294:22 303:6,7 369:14 Betsy 131:13 158:10 180:1,6 191:20 197:11 354:20 370:5,7 better 73:10 92:19 145:22 147:1 179:18 231:12 256:6 273:4 274:5 275:3 286:5 292:9 309:16 374:18 beyond 93:18 116:19 168:2 172:3 179:7 183:5 238:5 243:1 286:8 381:22 bias 187:9 big 128:21 136:9 252:5 273:12 314:14 315:10 341:15 350:4 362:1 bigger 272:13 bill 30:19 billion 88:2,5 billions 112:22 binary 193:9 binding 102:14,15 BIOS 214:12 Birds 154:11 bit 24:3 30:20 51:5 77:2 82:16 87:10 88:17 89:3 90:15 116:4 123:11 133:6 137:15 141:9 144:19 154:18 173:21 180:17,18,21 181:10 182:2 188:14 189:3 192:11 201:6	224:21 254:10,14 256:14 258:1 268:21 270:1 284:11 288:14 321:7 324:2 335:2 336:11 346:17 360:2,19 bits 95:7 152:2 189:5 193:8 371:8 bleeding 80:18 191:13 block 270:17 blocking 187:10 blush 26:10 217:16 BMI 124:21 132:11 225:15 322:5 board 260:4 265:21 343:22 344:4 345:8 boards 241:16 body 156:7 bolstered 330:7 bone 230:10,10 book 101:3,5,7 136:18 137:12 138:9,22 151:3,4 152:19 bookseller 101:2 Borkowski 1:14 3:16 22:14,14 38:19,20 43:14 46:12,16,17 49:15 49:18 77:14 78:1 78:3 110:7,9 113:5,11 bought 101:7 162:10 boundary 215:8 bounds 28:8 box 261:1 329:13 boxes 354:2 boy 366:21 brain-twisting 51:21 Branch 60:15 262:17 264:2 265:17	brands 72:19 Brazil 331:11 breaching 210:3 break 17:19 123:22 218:12 220:13 351:4 356:16 Bridges 1:15 3:14 7:16 22:9,10 29:6 30:7,10 32:14 33:4,11 36:11 41:6,15,16,18 44:4,10 45:8 46:2 46:12,19 47:12,17 47:19 50:5 53:14 56:19 62:16,18 71:3,6 75:10,11 78:6 80:4 83:15 84:9 87:5,7 97:1,2 104:8,10 106:21 107:16 112:1 216:22 217:1 218:14 222:20,20 233:4,6 235:5 269:18,20 270:6 283:4 285:12 288:1,3 Bridges's 29:11 44:20 217:11 brief 11:7 28:17,22 30:11 33:7 47:18 57:5 87:5,7 88:9 89:22 110:10 136:6 152:8 250:19 257:10 265:1 310:12 331:4 348:11 363:18 briefed 175:20 251:21 briefing 15:15 briefly 19:7 21:1 28:14 32:2 72:12 89:15 213:16 275:6 briefs 97:19 98:4,7 99:1 255:15 282:9 306:1 307:3
---	--	--	--	--

bright 121:11 148:2,2	broadly-worded 132:21	3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:7	Canadian 344:2 383:10	244:1,14,17 246:7 249:4 250:18
bring 75:21 101:8 132:8 133:9 139:10 176:22 195:9 198:8 212:12 302:14 341:20	broken 274:21	cabin 230:2	capabilities 310:17	251:2 255:14
bringing 29:16 75:19 188:10 336:6	brought 277:3 287:3 337:12 377:16	cable 151:16 178:4 272:15 274:7	capacity 182:19	256:4,18 257:14
brings 76:17	brushes 72:17	Cablevision 54:6,6 54:8,14 55:2 58:18 62:22 63:1 63:5,15 74:7 93:2 102:20 121:20 254:20,22 324:20 332:16 333:7,14 375:6	car 183:1,2,3,4,6,7 201:14 206:7 207:5	264:22 266:10,15 266:16 267:2,5,7 269:3 276:1 282:9 282:12 283:8 284:17 285:2 293:5,7 297:8 306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broad 17:13 30:1 59:5 80:7 84:3 89:11 121:4 132:19 170:11 196:16 223:20 224:2,11 304:9 367:8 374:16,17 375:4 379:3	build 270:14	Cablevision-like 59:2 370:1	card 16:9,11 323:17	282:12 283:8 284:17 285:2 293:5,7 297:8 306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadcast 1:16 5:9 9:10 178:17 194:4 272:15,22 273:21 274:7 377:3,8	building 1:8 194:8 254:18 270:17 281:8 341:10	Cablevision/Aere... 327:21	cardinal 29:3	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadcast-orient... 195:14	builds 295:15	Calabresi 65:18	care 100:13 162:13 209:4 276:15 304:14 368:13	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadcasting 70:11 129:15 148:6,15 178:19 238:8 351:15	built 97:6 122:7 344:16	calculate 150:1	careful 160:16 199:17 232:6 272:5	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadcasts 18:13 70:13,14	bulletin 241:15 260:4	calculating 208:1	cares 255:20	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broaden 27:6	bunch 166:17 167:6 204:5 228:13,22 236:21 258:20 261:16 309:5 326:6 374:15	calculus 150:13 208:7	carpet-bombing 67:7	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadening 227:9 227:10	bundle 134:3	California 2:4 4:9 8:8 23:8 136:10 223:9	carry 20:19 65:12	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broader 64:15 66:9 230:4 241:2 258:13 259:4 277:4 278:4 289:8	bundled 133:19 246:1	call 3:2 16:15 36:13 43:8,9 63:6 120:17 136:18,20 144:17 171:8 193:11 210:11 258:12 265:9 272:21 290:4 291:5 300:20 305:13 319:1 323:18	carrying 264:6	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadest 199:19	burden 86:4,14 114:14,21 115:7 115:10,14,19 139:18 190:1 298:9 348:21 349:3	called 30:14 37:1 69:19 91:18 136:2 173:3 178:1 241:15 252:15 329:11,13 333:4 361:5	Carson 279:19	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadly 20:16 32:20 49:11 89:19 119:6 132:17 156:14 179:4 196:8 287:4 358:2	burning 271:15	calling 191:14 349:22	cart 344:14	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
broadly-enunciat... 375:11	business 75:8 95:10 122:6 134:19 196:10 199:14 285:18,21 292:4 294:11 341:22	Canada 331:12 342:15 343:3,7,13 344:1 345:8,11 383:6	case 28:18 29:6 34:20 37:1 41:12 41:13 42:6 44:8 48:18,20 54:16 68:13 71:9 74:16 78:21 79:5 88:1,3 88:6 94:17 96:6 98:7 99:9,10,11 103:20 108:3 109:6 110:3 112:7 112:19 115:12 116:12 119:7 120:1 136:10 139:8 150:4 165:4 166:12,22 174:18 177:1,2 184:8,20 185:2 190:22,22 194:5 201:8,11,12 204:2,12 206:7,11 206:15,17 207:10 214:8 220:1 234:1 237:4,8 241:15	306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	businesses 294:12 294:20			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	button 22:1			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	buy 40:14,15 205:15			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	C			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	C 1:13 3:13 7:14			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6
	C-O-N-T-E-N-T-S			306:2 310:19 313:1 324:20 328:3,8 329:1,2 332:16 333:4,5,7 343:3,21 344:22 345:12,13,14 350:22 361:12,13 370:1 371:22 374:9 377:1,5,7 377:13,15,16,21 378:1,1,6

116:20	339:15 372:2,10	chasm 52:14	21:15 22:13 23:21	313:8 315:4,13
catalyst 258:3	376:4 378:11	chattel 218:3,8	28:14 29:19 32:13	318:6 320:17
Catch-22 77:17	Chairman 243:6	chattels 218:9	33:8 34:11 36:1	321:6 335:14
categorically	challenge 362:5	cheaper 333:21,21	37:15,21 38:18	364:21 366:4
197:21 367:12	challenges 288:14	333:21	41:4 43:11 45:13	367:5 379:6
caught 203:8 213:3	369:3	check 214:12 354:1	46:9 47:17 49:6	380:21 383:13
causally 72:17,19	challenging 250:9	checksum 189:14	51:3 52:16 55:9	claim 13:10 88:5
cause 78:20 79:8	Chamber 2:10 6:15	Chief 7:9	56:11 57:2 58:13	206:18 219:15
115:20 145:20	10:17 126:5	chilled 117:3	59:21 61:22 62:16	350:1
217:6 232:3 354:8	322:22	chilling 237:7,9,12	64:14 66:13,21	claimed 88:2
causes 63:9	chance 66:19 116:3	China 331:12	67:10 69:6 71:2	claiming 104:1
causing 55:1 109:7	116:6 269:12	choice 25:18	72:6 73:17 75:9	claims 130:10
caveat 37:3 141:10	chances 209:20	choices 26:14 80:19	77:11 79:22 83:12	136:12 156:3
CCC 294:22	213:3	choose 236:18	85:9 87:4 88:15	197:7 220:6
CCNV 28:1	change 111:15	chose 27:2 136:11	90:13 91:2 92:13	clarification 33:7
CD 216:4	115:18 116:1	137:12	93:22 96:19	188:16 215:20
cell 18:17	191:15 226:4	chosen 326:15	101:20 104:6	220:16 221:18
center 2:10 6:14	234:7 249:21	355:11	106:14 107:5	224:14 225:22
10:16 76:13,19	250:16,22 254:1	Christian 1:17 9:11	109:17 113:4,6	226:2,3,4,17
126:5 322:21	262:5 263:19	322:7	116:2 117:17	230:12 231:20
central 65:10 131:2	268:11 271:1	Christian's 353:21	120:5 123:7 147:3	233:15 234:4,6
280:17 300:5	291:13 305:10	circle 93:19	149:1 156:12	235:14 236:3,7,12
centrist 174:6	324:5 352:16	circles 353:16,19	172:10 179:16	236:13,16 246:3
CEO 222:10	354:10 359:18,19	353:22	183:5 184:21	246:12 248:14
certain 32:11 56:5	changed 25:21	Circuit 29:9 63:10	188:12 194:21	249:19 250:17
102:8 105:5,5	129:5 238:7	72:17 99:10 177:2	200:12 213:11	256:3 268:11
119:21 123:3	244:13 260:11	324:21 334:8	215:9 217:7	270:22 277:10
139:5 145:8 163:5	263:16 264:3	circular 287:2,11	218:10 220:8	282:2 290:5
164:18 167:17	changes 7:3 87:19	circulation 106:4	221:3 223:17	327:12 359:19
176:4,10 196:9	148:17,19 246:22	circumstance	225:10 226:1,11	Clarification/Pos...
209:5,6 234:16	288:11 292:4	363:3	227:22 230:5	7:2
246:7 249:4 263:4	316:21	circumstances	233:1 234:19	clarified 148:15
282:9 289:7 290:6	changing 250:3	196:9 224:22	235:7 237:14	233:10 237:1
291:11,18 312:12	271:13 318:2	circumvented	239:10,18 243:13	244:22 257:3,21
333:16 358:14	325:9	226:20	245:5 247:9	clarify 14:3 83:7
359:15	chapeau 351:7	CISAC 357:10	248:17 250:11	228:20 229:14
certainly 33:21	Chapter 114:6	citation 361:2	251:5,16 253:12	236:8 243:10
44:21 57:12 67:5	characterization	378:7	256:8 258:9	254:12 261:22
75:1 102:16	96:12	cite 102:11 115:5	261:21 266:1	278:8 287:16
130:22 146:16	charge 157:1	158:7,20	268:5 270:4	clarifying 230:15
159:20 160:17	Charlesworth 2:16	cites 99:16	271:17 274:10	282:16
161:2,15 162:2	21:10,11 210:20	cities 12:6	276:17 278:13	clarity 64:17,18
163:17 209:14	211:12 218:17	citing 57:10	281:16 285:9	88:18 145:22
229:4 230:11	Charming 131:13	citizen 70:15	287:22 289:21	146:1,12,12 147:1
236:4,9 262:6	158:10 180:1,6	civil 114:21	292:12 295:4	185:17 197:14
274:22 287:3	191:20 197:11	Claggett 2:19 3:2	302:4 304:5 306:9	254:13,14 280:12
298:1 335:22	354:20 370:5,7	11:3,17 15:2,5	310:8 312:16	305:12 323:12

344:18	216:17	collectors 70:15	commend 29:1	Commission 28:5
classify 275:3	client's 138:4	Columbia 1:18	comment 16:12	Committee 15:15
clause 61:2 255:21	close 84:9 95:3	3:21 9:14 23:1	30:3 58:17 74:3	45:10 240:21
clean 83:7	112:20 113:2	322:19	87:6 136:6 153:8	290:15
clear 26:10 28:20	120:8 213:12	combat 51:2	169:4 185:10	common 26:11
31:2,17,20,22	218:12 234:21	combination 12:22	188:21 213:20	29:15 35:16
33:13,17 34:4	379:8,16	combining 165:22	218:11 234:20	101:16 216:15
35:11 36:7,13	closed 208:10	come 12:6 44:4	248:21 294:5	217:5
37:11 38:14 69:3	341:11	48:12 50:19 58:12	313:3 329:9	common-sense
82:14 87:14 91:9	closely 229:18	70:14 99:4,17	371:12 374:11	101:15
97:13,14 105:12	259:21	101:15 102:19	commentators	commonwealth
111:11 112:15	closest 94:11,19	103:13 112:20	146:8	61:15 62:7
114:10 118:4	234:9	115:5 123:22	commenter 330:17	communicate 92:1
127:10 129:2,3	closing 215:17	132:16 133:2	commenters	108:4,11 173:4
130:11 140:16,17	368:10	134:22 144:2	114:13 330:13	communicated
142:9 144:4 148:4	cloud 166:13	167:6 168:9	352:14 363:13	179:15
152:15 159:15	169:12 195:22	181:20 182:14	commenting	communicating
164:18 171:10	196:4,12 253:21	183:13,15 192:18	285:20 293:1,5,17	208:14
172:4 175:6,21	257:14 277:3,5	199:7,13 217:3	comments 4:19	communication
183:21,22 184:5	283:19,21 294:6	219:4 232:20	6:18 8:20 10:20	4:14 12:15 13:16
185:17 187:20	319:21	236:16 246:13,14	14:12 16:20 17:15	20:12 54:4 93:7
195:11,20 197:2	Coalition 1:20 5:11	256:2 258:19,21	17:16,19 18:13	106:7 107:9
198:7 214:2	125:3	268:12 273:4	19:12,18,18 27:17	108:18 173:7,9,10
240:17 242:3	coauthored 45:17	285:13 286:17	37:22 55:21 56:20	174:10 178:17,20
255:14 294:10	code 104:14,21	292:6 293:16	60:17 72:7 81:17	178:21 179:4,17
305:13 326:20	166:20	294:1 298:4	82:8 90:11 97:12	195:12 238:19
328:9,22 329:5	codification 217:19	309:11 310:5	102:9 109:22	256:17 326:3,7,10
332:3 359:14,15	298:13,14	324:17,19 325:10	118:11,16 119:4	326:21,22,22
clearance 95:15	codified 185:20	337:2 339:6	141:11 145:3	327:13 328:14
164:1,22	187:19 188:9	349:15 350:5,11	159:17 192:1	329:15 343:6,18
clearances 95:11	codify 188:6	352:16 358:17	215:13,16 217:11	343:19 344:8
clearer 110:21	codifying 188:17	361:18 363:3	221:9 225:14,15	346:9,11,13,21,22
325:14	cognizant 232:1	366:14 379:15	225:18 235:3	347:18 351:8
clearest 44:7	coherent 99:4,17	comes 36:9,14	245:17 249:2,18	372:2 374:14
clearly 32:5 40:9	colleague 151:2	94:11,19 106:6	295:12 302:19	communications
79:12 89:8 119:8	174:17 248:21	121:22 140:2,6	313:11 318:16	2:7 9:22 23:11
129:12 130:4	373:11	182:17 236:12,16	335:17 364:19	91:14 178:4
145:4 184:8 192:3	colleagues 21:1	242:20 266:11	381:4,9 384:1,3	272:14 322:11
224:21 228:15	338:8	280:20 309:11	commerce 1:20	329:16 333:2
231:1 243:7 249:2	collect 164:9	311:10,17 370:15	2:10 5:11 6:15	339:7 351:4 352:1
296:15 332:21	collecting 343:10	comfortable 48:21	10:17 125:2 126:6	community 134:16
clerks 97:20 292:19	collection 70:16	174:7	173:22 179:12	135:1
clever 75:7 108:15	117:4 155:5 189:4	coming 107:3	322:22	companies 64:11
226:22	343:1	130:4 192:2	commercial 110:18	98:12 141:14
click 244:6	collections 70:8	249:16 260:12	133:4,10 134:1	344:15 358:18
clicked 244:2	116:14 117:11	277:10 325:4	196:7 319:15	company 88:4
client 29:11 48:19	collective 334:19	341:13	383:9	124:22 169:14,21

196:13 277:15 303:6 304:13 company's 196:11 comparative 127:8 compare 136:13 349:7 compatibility 143:19 compels 174:9 compensation 369:17 competence 289:17 318:14 compiled 199:7 complaining 133:13 complaint 85:18 complaints 112:21 complete 94:20 completed 182:9 326:21 328:10 completely 44:2 45:5 76:14 78:5 161:12 227:6 260:10 316:11,16 381:16 complex 14:20 278:18 354:7 complexity 354:9 compliance 55:8 59:8,9 61:21 62:10 93:2 131:17 155:21 170:12,13 185:15 190:9,14 190:19 191:11,19 192:6 198:3 200:9 200:11 241:3 367:19 368:16 complicated 206:10 282:10 complies 119:18 364:1 comply 180:14 181:8,9 184:18 249:7 323:22 332:2 369:8 complying 185:4,5	240:10 265:7 368:20 component 352:3 components 246:17 247:8 comports 49:1 Composers 2:5 4:11 23:13 357:13 Compositeurs 356:18 357:11 compromised 358:14 compulsory 40:1 46:22 47:6,8 53:11 238:21 273:16 computational 273:1 310:17 computer 2:7 4:14 9:22 23:10 40:17 90:3 110:19 129:22 130:3 162:22 167:5,13 177:4 193:3 202:4 206:18 215:22 216:18 239:1 241:17 243:9 257:5 276:8,11 285:6 314:7 322:11 Computers 81:3 computing 166:13 169:12 195:22 196:4,12 253:22 257:14 277:3,6 283:19 294:6 conceivable 144:21 conceive 372:11 concept 53:1 60:5 80:5 101:12 104:16 136:1 177:9 178:5 179:6 179:18 195:12 238:11 256:19 288:4 299:8 300:5 329:15 345:21 360:9,14 361:3	362:12 concepts 80:7 135:5 176:20 295:22 conceptualize 74:2 concern 31:7 138:4 138:5 139:4 199:3 218:15 219:1 337:7 352:13 concerned 58:2 71:1 143:21 209:2 211:19 220:3 234:8 290:7 297:12 341:3 379:1 concerning 56:6 95:21 248:8 266:20 313:15 concerns 14:16 155:15 187:3 196:3,18 199:5 227:21 294:7 340:3 353:18 conclude 131:1 132:1 293:9 315:5 373:7 concluded 60:15 262:6 concludes 44:12 conclusion 36:10 36:15,17 38:7 44:4 67:19 93:4 198:13 315:17 concrete 118:10 concur 65:5 conditions 215:8 289:11,13 conduct 64:12 76:11 90:1 358:9 358:22 Confederation 357:9,12 Confédération 357:10 Conference 81:4 confess 233:13 confident 93:3	confine 139:9 confirm 14:3 confirming 12:21 conflate 51:13 conflicts 354:5 conformance 214:12 confronted 99:11 confused 245:10 314:22 confuses 236:14 confusing 153:2 231:3 confusion 13:8 27:8 147:21 196:3 282:5 344:20 congregate 234:11 Congress 1:16 3:19 12:13 18:1 22:21 25:21 27:20 57:7 60:14 69:16,19 70:9 89:7 91:17 99:18,21 100:16 114:4 121:2 133:21 137:22 139:22,22 144:18 144:22 146:7 147:11 196:6 213:1 229:5,8 236:17 239:8 240:4,5,9,13 241:8,13 242:9,12 242:18 243:5 249:3 254:8,12 256:2,13 257:3,7 259:16,17,18 261:4 262:6 264:16 265:16,17 265:18 267:4 278:16 290:14,16 291:13,20 292:10 308:15 370:21 371:3 374:6,19 375:19 Congresses 130:17 congressional 265:10 289:12	293:13 conjunction 38:13 281:6 312:3 connected 230:10 connection 279:21 consensus 32:7 90:18 241:1 268:15,18 274:15 274:17 277:9 342:12 consequence 314:19 consequences 70:1 87:2 271:6 342:9 348:16 350:9 consider 26:8 60:2 157:10 175:13 234:5,6 264:19 272:9 273:21 274:2 277:11 278:7 280:5 293:8 300:13 301:9,13 301:19 312:2 316:2 consideration 129:21 303:1 311:8 338:2 349:20 considerations 129:20 considered 37:12 118:22 142:7,9 166:4 184:11 221:15 considering 262:7 292:22 376:10 382:13 consistent 62:6 93:14 158:14 213:1 283:6,7 293:12 299:6 331:2 341:19 367:16 368:3 382:8 consisting 159:5 constituencies 291:21
---	--	--	---	---

constitute 32:17 206:14 319:12	201:22 207:9 214:21 218:2	CONTU 28:5	152:19,21,22 153:5 161:4 162:7	136:17,19,20 137:2,12 141:16
constituted 33:20	241:20 242:1	conundrum 144:13	177:9,22 178:5	145:5 146:6,9,14
constitutes 137:21 138:9 278:10	252:3 274:8 297:2 311:7 315:21	convened 155:2	182:19,20 186:16	146:19 148:1
Constitution 305:5	316:17 317:4	convenience 85:22	189:7 192:12	149:20 150:12
constitutional	318:18 323:13	convenient 72:14 115:7	206:19 210:10,14	151:5 153:17
185:19 289:4,19 314:16	337:11 361:22	Convention 175:18	211:21 215:22	155:1 157:9,13
constraints 17:2,12	362:13 372:22 380:15,16	307:16 312:10	216:18 217:1,18	163:16 164:20
construction 35:3 171:14 180:7 296:7	contexts 133:11 164:21 300:14	326:6 327:3,5	217:19 218:5,6	165:5 168:6
construe 24:10 180:4,7	continue 116:16 117:7,10 120:18	370:16 376:14	227:3 238:11	176:16,20 177:7
construing 29:10	contexts 133:11 164:21 300:14	conversation 52:18	267:17 271:7,9	178:1,9 185:14
consult 27:19	continued 4:1,2,3 5:1 6:1,2,3 7:1	56:4 58:21 59:5	283:6,10 291:10	186:5,17,18 188:4
consultation 340:1	8:1,2,3 9:1 10:7	68:22 228:4 384:6	301:1 311:8,16	189:6 192:3,15
consumer 122:19 123:5 259:10	10:10,12 227:11	conversations	313:18 314:4	195:7,10 198:1
consumer-made 93:6	continues 13:15	51:21 64:17 178:15	333:16,18	199:9 200:9 203:7
consumers 72:13 73:5,13 122:16 123:2 164:15 309:12	Continuing 134:8	converse 360:15	copying 109:1 192:17 283:15 361:21	206:2 207:19
contained 30:13	contours 221:10	conversion 168:11	copyright 1:1,12,12 1:15,20 2:13,15	211:8,18 214:20
containing 119:15	contract 249:22 352:11	convert 193:8	2:17,18,20,22 3:4	214:21 218:3
contains 277:20	contracting 383:5 382:17	converted 168:7 194:12	3:5,7 4:5 5:7 7:9	220:4 222:11,13
contemporaneous 121:17	contracting-out 382:17	convinced 368:19	7:11 9:8 11:4	222:21 224:15
contended 28:19	contracts 230:19 250:1 352:15	convoluted 338:20	12:11,16,18 13:1	225:5 226:4
content 77:16 149:12 187:10 196:8 309:7 319:11,17,19 328:15,18,20 329:7 372:13	353:6	copies 31:3,8 39:7 39:9 42:16,19	15:20 18:20 19:14	231:20,22 233:14
contention 29:12 152:18	contractual 250:4 382:18	43:3 51:11,15,22	20:22 22:10 23:3	233:19 234:9,13
context 20:13 34:6 42:5 61:21 69:11 73:12 98:9 103:1 106:20,20 118:19 128:19 133:5 164:7 166:5 196:2 198:19 200:4,7	contracts 230:19 250:1 352:15	52:9,10 53:7,9	24:8 25:12 26:9	234:17 235:22
	353:6	54:12 55:1 57:9	27:5,10 28:18,20	236:17,18,22
	contractual 250:4 382:18	70:2,7,20 101:2	29:17 31:8 32:4	238:2 239:6
	contradict 32:9	105:2,16 106:1,3	32:10,18 33:22	241:21 242:2,6,13
	contradicts 35:14 36:4 46:1	111:6,8 129:13	34:1 38:9 39:18	242:16,19,20,21
	contrary 36:9,10 49:3 72:3 130:14	137:20 145:16	39:21 40:3,18	243:3 245:1 246:4
	250:19	162:20 165:19	45:11,16 50:9,21	246:15,20 247:4
	contribute 138:10	169:1,18 171:10	57:17 62:14 63:19	248:6,7 249:3,16
	contributes 139:2	171:11 172:6,8	73:11 74:14,17,21	249:20 252:6,9
	contributory 79:7 79:9 210:14	175:12 187:13	78:4,16 79:21	253:7 257:8,18
	control 58:1 63:9 73:4 130:18	209:20 212:20	82:12,20 83:2	258:13 262:1
	186:16 306:7	217:21 218:4	84:17 87:16,19	264:18 268:12,16
	controls 197:12	270:11 294:17	91:9 92:16 93:9	269:5 270:2,8,16
	controversy 345:22	334:1 335:10	97:18 98:18	270:21 271:1,6,20
		372:17	104:12,13 105:14	272:1 273:13
		copy 30:15 33:19 37:19 47:15 48:5	110:14,16,21	277:11 278:18
		54:9,18 57:13	111:4,10 112:3	279:17 280:16
		63:9 74:8,11 93:7	116:18,19 119:12	281:20,22 282:11
		96:14 109:15	121:3 124:19	282:14 284:22
		148:17,18,19	130:16 133:18	285:8 286:6,14
			135:4 136:7,9,16	288:9 289:17,19
				296:1 299:19
				303:22 306:3,12
				306:18 307:9

308:10 310:3,20 311:2 312:5 315:2 315:14 316:8,22 322:3 323:22 324:22 325:1,3 327:6,7,22 328:6 330:8,10 334:1,10 336:4 339:16,19 340:16 341:8,16 343:14,22 344:4 345:7 349:3 354:17 356:2,4 358:5,20 361:4 362:13 369:4,12 370:10 371:1,7 372:18 373:22 374:5 378:16 381:13,17,19,20 381:22 382:16 copyright's 279:10 289:3 304:1 copyrighted 13:11 28:6 31:4 152:19 174:21,22 196:8 204:19 228:10 277:14,20 278:9 301:14 303:5,8,13 319:10 337:17 359:10 380:10,19 Copyrights 2:13,16 2:19 3:3,7 11:18 15:6 core 188:5 197:10 corporate 104:19 Corporation 2:3 5:21 8:5 125:16 223:6 corporations 134:16 136:11 correct 58:19 76:4 100:8 240:14 corrected 284:15 correcting 214:1 correctly 29:10 94:3 206:22 304:19 corresponds 106:8	107:1,2 corrupting 87:15 corrupts 309:20 cost 164:22 333:20 349:7 cost-avoider 65:19 costs 75:1 228:22 coterminous 339:1 counsel 2:14,16,17 5:7,17,20 6:7 7:5 7:11,13,20 8:5 9:12,18 21:5,8,11 27:4 44:8 125:2 125:12,16,21 222:7,15 223:2,6 272:1 322:8,16 counselor 308:9 count 205:14,15 208:4 counted 273:18 counter-argument 232:20 counterintuitive 31:18 counterproductive 82:11 countries 61:15 62:7 66:8 75:5 90:16 172:21 323:13 324:11 329:15 332:5,21 342:8 350:13 351:2,20,22 352:21 356:14 360:9,13 362:11 362:19 363:4,6 364:8 367:11,13 367:22 368:7 369:5,16 376:6 378:14 383:4 country 174:12 175:5 227:17 259:13 327:20 337:12 359:3 361:8 371:17,18 372:1,3,4 country's 345:18	counts 203:21 County 1:21 5:12 125:5 couple 38:22 39:4 49:8,11 89:22 95:8 110:10 133:1 147:5 158:22 165:16 252:8 292:2 360:11 365:5 couples 108:7 course 102:11 126:12 131:13 133:7 145:12 155:5,9 158:18 165:22 184:3 197:12,15 211:10 214:4 296:12 331:18 363:11 368:21 court 14:14 19:3 27:21 36:19 37:3 37:5,10 40:12,13 67:18 71:14 72:20 76:9 79:4 96:6 99:14 102:12 118:13 121:11 140:10,10 146:22 174:19 181:19 206:11 210:11 219:4 242:17 244:15 250:18 251:21,21 253:19 254:6 255:9 259:15 266:18 267:1,8,12,15 286:21 287:19 297:8,11,16 305:9 325:1,2 328:8 334:8,13 338:14 344:1,3 346:6 370:20 375:6 Court's 297:15 courtroom 69:5 86:10 courts 13:6 28:4 58:10 94:8 97:7	99:2 100:10 103:12,13 107:14 107:18 109:13 121:7 126:21 133:2 146:5,8 158:16 175:3 182:3 188:3 191:5 191:18 196:6 203:14 205:13,16 205:19,22 207:18 213:21 221:9,14 221:17 224:5 226:14 227:2 231:12 233:7,11 240:3,6,14 243:4 244:21 245:14,15 247:1 249:4 251:8 255:4 258:21 260:15 265:13 274:22 278:15 279:5 286:10 292:18,19 293:8 298:15 299:10 304:19 305:4 306:19 307:3,4 317:20 325:7 331:18 333:11 349:15 354:21 355:13 356:6 367:11 cover 13:15 20:11 48:9 60:16 89:8 90:21 93:10 94:4 119:8 126:10 131:2 169:9 180:3 181:6,19 203:17 210:18 218:7 221:7 277:5 278:5 278:12 284:5 287:9 302:20,22 336:15 375:4 covered 52:22 118:6 166:10 178:22 241:4,12 287:7 313:19,21 314:12 342:19,20 covering 91:22	92:3 277:7 380:2 380:3 covers 91:5 131:12 160:15 181:6 268:19 313:17 326:20 329:16 Cowan 23:16 crafted 26:16 crazy 220:2 create 58:3 164:8 187:9,11 189:19 196:3 203:11 282:4,4 358:3 created 54:14 128:10,16 creates 109:3 333:22 creating 79:20 157:2 310:3 creative 369:18 creativity 310:4 creators 70:18 373:10,12,20 credibility 339:16 credulity 330:16 criminal 110:16 241:21 363:10 criteria 182:16 288:20 critical 112:5 264:1 critically 158:11 criticism 195:21 criticize 104:11 crossed 265:9 crowd 259:3 crystal 112:15 148:4 198:7 cultural 306:14 culture 309:9 373:19 curious 102:10 362:8 curiously 130:14 current 13:7 24:2 24:20 53:21 60:12 69:13 72:2 88:3 94:9 95:17 146:4
---	--	--	---	--

149:13 157:21	311:3,12	370:1	defines 31:8	194:2,14,14 252:2
190:9 221:6	database 130:3	decided 71:14	defining 282:15	derives 25:13
289:11 312:6	331:5	193:17 291:12	definitely 19:13	des 356:18 357:10
314:13 349:1	Dataco 371:21	329:2 344:2	141:1 175:11	described 241:16
359:21	date 288:20	deciding 215:21	177:10 315:1	241:19
current-way 244:5	dating 131:19	decision 26:18 36:8	383:19	describes 106:13
currently 24:9	144:7	36:19 46:1,8 72:4	definition 30:15	170:3 180:20
225:2	daughter 76:5,7	94:11 100:6	31:10 34:5,6 39:6	describing 208:11
curtailed 133:12	daughters 76:22	118:14 121:10,16	95:2 111:2,3	209:15
curtain 26:22	David 45:18 99:16	138:7,8 255:7	131:6 137:19	descriptive 351:14
280:9	279:18	262:13 272:3	140:12,12 142:21	design 350:10
cut 17:10 108:16	day 14:22 17:14	297:10,15 308:19	143:1,3 145:13,13	designed 203:7,10
340:22	123:15 143:7	308:22 317:14	153:4 179:3,5	designers 203:3
cycles 238:4	171:1 172:18	333:14 334:9	182:1 291:9	desirability 73:21
cynicism 233:14	221:5 283:13	343:12	314:10	desirable 67:6
	317:12,18 342:12	decisions 44:3 72:4	definitions 122:18	68:10,12 69:1
	376:21	100:5 102:18	250:3	95:12
D	days 130:4 137:5,5	118:7 121:8 133:2	degree 13:14 97:12	desire 16:6
d 357:11	347:12	133:4 246:7	186:10 274:17	despite 286:16
D.C 1:9	de 356:18	289:20	307:10 340:6	287:19
dais 124:15 134:15	deal 45:21 200:5	declare 219:17	deja 81:1	detail 14:19 71:6
321:20	231:12,14,15,15	decreased 109:7	Delaware 1:21 5:12	116:4 188:14
damage 77:19	245:21 264:16	deemed 187:16	125:5	383:22 384:13
149:13	301:6 309:4	219:9	deliberately 111:14	detailed 65:1
damages 42:4 50:2	336:17	deep-linking	deliberations	197:17 352:1,22
80:9 87:14 88:1	dealing 143:17	349:21	366:17	374:14 375:20
88:20 112:2	216:14 239:3	defamation 263:11	delicate 81:15	deteriorating 117:5
115:13,14,18	251:9 358:12	default 111:15	delivery 38:8,11	determinative
150:2,11 155:10	deals 108:10 140:7	275:14	39:14,14,22 40:5	198:10,11
156:4,14,17,20	dealt 249:22	defend 216:4,5	41:2 42:15,15	determine 265:15
199:6 208:2 212:7	294:20 333:6	defendant 71:10,11	47:4 91:6	282:13
212:16,17,22	DeANNA 1:16 3:19	189:19 191:8	demand 20:14	determined 371:22
213:5,9 219:2,13	22:18,19 69:18	defendant's 44:8	demands 340:3	determining 24:15
219:13 230:22	113:7 116:9,10	defendants 50:4,7	democratically-g...	122:3 157:20
246:19 247:2	dear 247:16	67:21	259:13	345:9 355:19
260:1 261:19	DeBaets 23:16	defended 88:1	demonstrate 61:19	deterrence 199:11
284:20 301:7	debate 12:9 51:11	defense 88:9	189:7 211:16	260:2
383:7,8,11	64:8 77:9 260:11	defer 91:11 94:18	depart 381:3	deterrent 112:4
dancing 153:10	336:12 343:17	128:6	department 194:6	develop 53:14
danger 236:12	345:14	deference 146:22	194:7 285:19	214:4 311:3
316:19 317:2	debated 240:12,18	define 34:7 114:8	319:18	355:22
dangerous 247:3	240:18 292:6	182:1 282:18	depend 253:18	developed 66:5
darned 142:2	debates 82:3	283:5 378:10	dependence 259:14	214:8 227:12
data 151:6,17,18	decade 87:22 366:1	defined 31:19,20	depending 378:10	developing 313:4
152:17 177:16,18	decades 32:8 250:6	38:11 111:7	depends 98:2	development 65:7
179:12 193:10,11	decide 18:10 282:6	176:21 177:4	derivative 48:2	99:20 191:17
193:18 214:17	302:22 317:13	287:6	168:11,15,20,20	286:8 331:8
215:7 252:14				
253:2,3 309:3,4				

developments 310:16	differing 177:6	174:8 188:21	218:15 246:21	dispute 68:21
deviation 115:11	differs 297:22	195:4,6 322:4,4	discussed 89:15	disputed 81:12
device 68:18 85:17	298:16	332:9,10 344:21	147:14 209:10	disputing 157:4
86:1 94:13 108:13	difficult 283:1	373:5,6	246:20	disregard 301:15
devices 18:18	293:22	direct 24:18,21,22	discussing 14:7	disrespect 293:20
108:15	difficulties 218:15	25:2,5 63:7 68:2	269:2	disrupt 250:6
diagram 353:17	difficulty 126:22	69:3,8 72:13,14	discussion 12:1	dissemination
dialog 137:11	135:3	72:18 73:14 86:3	14:17,20 15:11,19	211:20 212:2
Diamond 29:7	digging 158:4	86:13,19 109:2,16	16:3,14 17:22	218:22
30:11	digital 1:13,22 2:10	172:1 178:18	20:20 52:19,21	distending 163:5
dicing 53:20	4:16 5:15 7:13	346:14,22 348:1	55:19 60:20 77:13	distinct 41:20
dictionary 26:11	8:16 20:13,17	363:2,17,20	83:18,20 84:10	245:2
differ 298:2	23:18 25:8 29:17	364:15 381:14,20	87:13,21 88:16,19	distinction 226:2
difference 96:1,3	38:8,10,11,16	382:3	124:10 126:15	342:18 364:9
103:3,16 130:21	39:13,15,22 40:5	direction 114:3	134:13 135:18	distinctions 298:21
196:7 205:4 212:8	40:10 41:1 42:14	243:5 247:5	143:22 151:21	distinguish 104:17
267:17 268:4	47:4 49:21 50:11	287:21	157:8 164:11	216:21
different 26:13	52:1,8,10,12,14	Directive 326:18	165:21 179:22	distinguishable
35:10 41:20 53:13	52:21 53:15 54:4	382:21	190:21 197:18	206:15
88:14 90:16,19	55:20 60:9 83:20	directly 46:1 56:21	201:1 206:9	distinguished
97:8 106:7 126:13	90:2 92:8,11	68:18 111:20	214:19 224:4	129:14 321:17
126:13 130:18	96:13 106:20	178:19 244:3	231:1 261:13	distinguishes
133:19 138:1	117:7 118:16	356:11	270:15,17 283:12	217:20
144:9,11 145:18	125:9 128:12,16	Director 2:13,19	289:3 320:21	distort 210:18
150:5,13 154:5	129:17 137:10	3:3,7 4:5 5:15	329:22 364:12	distorted 87:22
176:11 186:4	144:11 151:14	11:19 15:6 23:2	discussions 11:9	distorting 87:15
199:22 202:1	152:18 153:21	125:9	19:20 20:1 25:14	distracted 156:2
228:17 229:22	160:15,19 161:8	disagree 105:10	25:17 88:13 130:6	distribute 25:22
234:5 236:22	166:3 179:10	111:22 137:13	134:9 153:16	27:3 38:14 39:7
239:15 240:4,9	192:21 193:12,17	156:9 180:16	178:3 289:5	40:4 53:8,9 65:2
247:2,8 253:4	214:16 217:13,14	184:4,13 212:15	disembodied	92:3,21 105:5
287:21 293:16	222:15 223:14	disagreed 90:20	105:19	111:6,9 114:8,8
294:11,15,19	260:1 269:4	97:14 228:7	disingenuous 324:2	114:10 137:20
295:3 296:16,18	299:20 300:10	disagreement	display 92:1 106:8	143:5 145:16
298:5 300:13,14	310:22 311:12	170:8 274:19	107:10,13,17,19	151:22 180:4
313:4 316:16	318:22 323:13	370:6	107:20 108:8,10	181:4,15 287:9
319:16 324:16,17	329:12,16 374:1	disappear 68:15	108:11 109:9,14	distributed 31:4
325:11 336:1,1,12	376:3 380:1	disclaimer 357:20	118:5 119:12	38:16 113:14
336:21 337:2	digital-delivery	discourage 229:11	142:15 226:14,17	117:8 154:11
341:14 342:6,7,22	75:8	discovered 26:3	226:19,22 227:5,7	161:5 176:3,14
344:12 356:16	digitally 117:9	284:15 300:1	233:22 243:18,19	208:15 211:2
358:2 363:7	digitizing 117:1	discovery 228:22	244:10,20 296:15	319:17
364:18 367:11	dime-sized 267:10	discredit 381:16,19	299:2 305:1,16	distributing 47:1
378:13,13	dimensions 258:19	discuss 20:7 37:9	306:7	47:20 105:2
differently 58:8	DiMONA 1:16 5:8	45:18 49:9 81:18	displaying 227:13	113:18 166:15
77:2	9:9 124:20,20	88:16 90:15	dispositive 114:3	171:9 294:18
	132:6,7 173:18,19	155:22 192:11	180:8	distribution 13:19

24:7,19 25:8 30:5	270:10 275:1,2	dodge 339:9	103:14,19 121:18	276:4 277:14,17
31:1,2,11,12,13	278:10 284:5	dodged 339:11	149:22 150:17	303:5,14
31:14 32:18 33:1	287:1,4,6,10	348:5	151:4 154:10	driven 310:7
33:16,19 34:8	296:11 297:1,17	dogged 299:13	169:17 176:5	drives 303:9
39:9 40:4,11	297:18 298:1,17	DOI 151:14	181:15 182:14	driving 81:20
41:14 42:1,4,7,14	298:22 300:20	doing 50:6 64:6	195:18 203:20	87:13 234:12
42:16,17,18 43:3	302:15 313:16,19	68:7 76:8 97:1	205:7,14 216:8	324:7
46:18 47:2,5 48:9	314:9,12,13 315:1	161:22 167:10	329:17 334:7	Dropbox 277:19
49:21 50:11 52:2	319:1 323:14	185:16 189:16	335:8 342:18,19	319:8
52:8,8,12,15,21	324:15 329:12	195:15 231:18	343:8 345:17,17	drove 233:18
53:15 54:13,19,20	335:21 340:8	252:16 253:5,11	downloadable	du 271:16
55:5,20 56:2,7	342:20 380:2	255:5 281:7,8	359:11	due 129:17 149:15
57:8 60:10,19	distributions	282:21 285:5	downloaded	199:4 214:4
61:5 83:21 89:12	121:12	291:22 300:3	103:11 135:21	duplicated 57:14
92:2,8,12,20	district 36:13 97:17	301:15 308:11	150:5	DVR 332:14
94:12,14 96:4,13	286:9 287:19	309:16 316:2	downloading 76:5	dynamic 177:22
96:14 98:8 104:22	333:11	317:6 334:21	162:1 192:17	
105:1 106:22	dive 323:5	345:1,9 352:10	193:20,21 319:7	E
107:1,17 110:17	divergent 93:12	356:20	332:17 335:10	earlier 58:17 89:4
110:18 111:8	Diversey 99:10	dollar 199:8	downloads 20:16	100:18 120:9
113:16,21 114:9	116:12 138:8	dollars 88:8 113:1	42:5,9 50:17 77:6	134:9 158:10
114:16,22 115:21	201:8,13	383:10	91:15 121:12	160:10,18 189:3
119:12 131:1	diversity 331:7,7,8	domain 144:11	210:10 216:12	192:13 201:8
132:4,10 134:11	dividing 106:22	252:16,19 253:4	335:7	209:10 224:5
135:11 137:17	129:12 148:1	371:2	downside 188:17	228:19 235:12,18
138:9 139:1 142:1	Division 70:11	domestic 131:15	220:17	263:5 268:21
142:8,15 143:1	doctrinal 95:6	376:11	dozen 136:21	281:9,21 288:8
144:2 145:6,10,18	doctrine 131:13,19	dominant 309:9	Dr 113:1	360:8 367:21
147:7,12,17	158:10 160:22	dominate 252:6	draft 76:21 84:13	368:11 372:15
148:16 153:5	166:5 171:20	donors 70:15	drafted 62:4	early 52:18 144:8
155:8 160:15	180:1,6 197:12	door 19:14 273:6	128:10 224:21	167:9
161:1,8,8,9	198:7,9 217:14,15	298:20	drafter 308:10	easier 84:16
166:19 167:2	217:20 238:15	doors 379:2	drafters 83:1	easily 16:14 81:16
170:17 171:9	271:9 283:9,12	dormant 66:12	drafting 240:22	115:12 196:6
172:19,21 174:12	297:19 298:3	double-count 41:19	308:11	216:19 230:1
174:14 180:5	301:11 318:19	double-counting	drag 67:17 69:5	248:15 317:6
181:5,14 182:10	319:3,22 320:15	42:11	188:8	easy 109:11 115:14
184:12 186:6	354:20 361:9	doubled 264:5	dragging 86:10	150:6 167:15
203:21 204:4,14	370:5,7	doubt 92:18 100:3	dramatically	202:17 304:9
204:20 205:5,10	doctrines 58:20	120:15 208:1	228:21 238:7	echo 373:10
205:16 206:14,17	59:7 61:17 79:17	Dowling 28:1	draw 38:6 292:5	echoing 357:19
207:17,21 210:11	196:20 204:11	download 13:20	drawing 265:21	ECJ 329:2 371:21
210:12 212:10	document 146:20	32:17 41:14,18	drawn 280:8	ECJ's 118:13
217:13 219:9	278:22	48:1,2 50:13,15	drill 223:22	economic 54:22
224:9 240:7 241:5	documenting	60:10,11 75:17	drive 40:16 169:10	73:21 75:13
241:11 256:16,22	116:21	83:21 91:3,8,15	169:15,15,20	economically 96:17
257:3 269:7	documents 26:3	96:2,9 103:4,5,10	216:9 275:12,21	164:21
				Ecuador 331:12

Ed 27:6	eliminating 78:4	enforceability	entities 199:11	52:6 228:8 308:1
edges 148:3	elude 372:18	372:8	entitled 46:21	established 86:5
Edison 88:11	email 18:2 378:6	enforceable 327:16	279:9 340:22	228:16 271:14
Editeurs 356:18	embodied 40:6	enforcement 74:4	entity 39:21 54:11	296:21 302:1
EDS 206:22	136:5 263:9	75:19,20 76:13	157:7 193:17	et 356:18 357:11
educate 290:19	Empire 194:8	78:17 150:8 286:4	354:6	etymological 296:8
educating 295:1	empirical 309:3,15	314:2 351:21	enumerated 144:3	EU 342:21 346:19
educational 383:1	309:21	360:6 369:4,15	225:21 354:8	361:8 382:20
EFF 44:8 81:5	employees 277:16	372:19 380:15	environment 13:4	Eugene 1:16 3:19
effect 72:5 112:4	294:13 295:1	engage 186:11	20:17 128:12	22:19
149:19 179:9	enable 112:5	293:22 356:14	135:12 153:12	Europe 273:11
186:13 187:12	281:10	engaged 55:3	176:14 253:1	332:14 334:17
226:20 237:9,13	enables 111:15	164:10	264:15 300:10	335:22 336:19
345:11 360:5	enabling 74:17	engagement 230:4	311:6,19 313:3	340:5,13 346:2
effective 249:9	enacting 27:20	engages 29:18	362:6	348:5 367:3
356:1 372:18	enactment 345:10	327:21	envision 128:11	378:19
effectively 250:9	encompass 121:4	engaging 126:15	equally 348:11	European 102:12
337:16 380:17	186:6 253:21	337:15	equate 33:16	118:13 178:2
effects 146:2 149:7	encompassed	England 332:22	equated 314:11	195:13 324:3,11
157:19 158:19	314:11	English 137:6	equation 354:3	326:17 328:7,8
237:7 239:17	encompasses	357:12	equilibrium 271:15	331:12 333:5
effort 138:18 370:9	122:11	enhancement	equitable 119:11	338:8,14 339:22
egregious 42:5	encountered	244:11	301:11	340:1 346:6
Egypt 331:12	233:17	enjoy 14:21 326:9	equivalence 373:1	Europeanized
eight 37:12 321:17	encourage 14:18	380:18	equivalent 34:10	349:17
either 20:2 35:5	end-product	enjoyed 344:21	311:16 349:13,16	evaluation 272:5
81:16 126:22	122:21	380:10	350:2 371:9	312:14
127:20 139:14	end-user 55:4	enjoyment 372:19	era 26:16 29:17	event 18:14,19
183:14 185:4	62:12 68:7,9,10	ensue 264:15	299:20	253:19
187:1 189:10	68:20 73:22 74:8	ensuing 13:3	error 284:15 297:6	events 308:11
224:14 294:21	86:11,12,13	enter 58:20	ESA 343:5	eventually 227:6
305:3 323:12	108:17 114:18	enterprise 289:1	ESA/SOCAN	284:14 336:18
328:1 365:20	122:2 162:1	319:19	345:12,13	everybody 11:21
377:9	end-users 62:15	entertainment 1:17	especially 12:4,5	14:18 50:3 120:8
electronic 18:18	67:4,6 68:11	9:12 141:19,20	126:20 163:20	124:6 176:4 272:2
44:9,13 152:18	86:10 122:15	322:8 373:15	166:12 204:12	321:13
241:9	123:1,2,6 164:13	enthusiasm 53:22	267:7 272:9 279:8	evidence 13:9 49:3
elegant 346:3	165:3	234:15	317:3 351:5 362:6	100:7,8,11 101:6
348:18	endanger 376:5	entire 82:11 86:21	espouse 296:4	114:21 115:15
Elektra 94:17	endeavor 148:4	88:10 122:6	essential 116:22	170:16 201:5,10
element 86:14	ended 321:7 328:12	219:14 229:2	117:14 296:8	203:11,11 205:5
103:21 132:4	endorse 44:11	234:14 258:13	306:13	205:10,13 212:12
150:10	ends 37:7 96:7	262:2 306:14	essentially 41:21	213:22 224:8
elements 51:19	148:12 262:3	308:9 309:20	78:4 108:15 180:9	237:12 309:21
114:1 155:6 176:4	enforce 206:2	entirely 97:19	300:21 336:10	332:20
242:6	209:13 314:4	144:4 157:14	367:9	evidence-based
elevated 115:19	358:8	180:17 368:19	establish 13:9 30:1	288:20 289:5,20

308:18,21	examples 89:22	168:18,19 186:5,9	120:18 383:22	330:16 346:1
evident 47:21	269:1,11 318:21	210:18 248:15	explore 13:13	363:18
evidentiary 20:18	360:20 375:18	250:1,4 256:6	20:10 24:2,5	extremes 96:12
51:4 94:13 103:17	382:9	293:5 297:1	64:15 116:4,7	
115:7,10,14	exceeding 210:4	299:19 302:3	123:15 188:13	F
139:18 204:5,18	exceeds 164:22	342:4 344:14	384:12	fabulous 50:6
225:6 293:4	excellent 279:19	376:16	explored 87:2	face 31:20 35:12
Evil 113:1	exceptions 14:10	exists 49:22 225:2	exploring 28:11	37:11 129:2,3
eviscerate 227:6	139:8 231:2	287:13	126:18 311:11	144:14 209:3
evolution 24:7 25:7	320:16 382:10,16	expand 48:8 189:2	exponential 301:2	faced 144:12
135:3 147:8	382:19 383:2	340:8	exponentially	facie 103:20 190:1
295:22	excess 163:17	expanding 59:6	300:10	320:13
evolve 292:4	exchanges 51:13	233:19 248:12	export 376:2	facilitate 165:5
evolved 13:5	exclusive 3:10 5:3	313:21	exports 376:4	facilitators 78:7,19
evolves 374:22	12:21 14:8 20:11	expansion 226:6	expose 229:9	78:19 79:2,3
evolving 318:3	41:9 142:13 144:3	382:9	exposing 83:3	facilities 272:22
exact 36:16 352:20	155:18 169:9	expect 34:18 59:1	express 27:2 121:2	facility 273:1
354:15 357:3	173:15 174:21	306:4,6 384:7	193:2 351:10	fact 26:1 27:1,4
exactly 36:9,9	198:1 221:6	expected 98:11,15	expressed 100:22	28:4 31:2 41:13
45:20 81:6 91:1	226:10 248:9	377:22	151:5 193:1 294:9	60:16 63:22 89:4
180:19 183:8	302:20 304:20	experience 323:15	expression 137:4	89:7,10 94:6
184:21 190:14	305:14 314:17,18	351:19 362:3,4	137:10 168:8	103:22 114:2
253:18 284:3	326:9 328:5	368:15	192:16,19 193:21	116:15 131:7
334:2 375:10	363:15 364:3	experiments	239:3 252:15	132:2 133:10
379:5	367:18	129:18	extant 93:9 94:3	164:19 193:7
examination 324:8	exclusively 88:19	expert 128:5	121:3	206:10 208:6,15
examine 157:6	106:3	273:13 286:12	extend 170:2	211:1,14 252:7
examining 253:8	excuse 92:16	287:18 317:1	362:14 381:22	254:15 256:4
example 13:17	119:13 284:16	expertise 126:14	extensively 240:18	263:4 264:4 269:6
26:17 33:20 69:11	Executive 5:15 7:9	354:14	340:2	270:15 288:19
90:1,21 100:12	7:18 60:15 125:9	experts 97:18	extent 14:17 51:12	299:17 300:17
106:16 112:8	262:17 264:2	360:18	59:10 68:19 86:8	317:15 336:11
118:10 135:6	265:17	explain 27:14 94:5	134:14 146:14	347:11,17 376:7
150:16 169:14,19	exemption 332:17	explained 302:18	160:21 161:7	fact-based 289:9
174:16,18 191:2	exemptions 374:2,3	explaining 36:8	162:9 168:19	facts 261:6 267:2
207:16 224:8	374:5 375:12	293:9	185:12 186:9	267:20 268:3,3
238:11 241:11	exercise 293:22	explains 27:8 106:1	209:5 212:4,19,22	286:19 287:20
252:12,18 254:18	354:1	355:22	231:17,21 234:10	318:1,1
259:20 268:13	exercising 376:13	explanation 211:16	253:6 264:1 280:1	factual 282:12
269:3 279:1 282:8	exhaustion 161:1	explicit 39:3,13	282:6 318:18	294:3 316:16
300:15 303:11	exist 47:9 149:18	351:3	327:4 330:13,21	fail 305:1,2
319:4,9 320:3	150:11	explicitly 40:7	extorting 83:5	failed 296:5
324:21 339:22	existed 297:5 300:8	110:22 145:15	extraordinary	failing 327:7
341:12 353:21	existence 157:4	173:6 287:9	36:20	fair 34:16 63:11
360:19 361:8	248:8 333:14	exploitation 71:17	extreme 100:12	64:5 187:1 196:19
369:14 377:9,10	existing 3:10 5:3	72:1 340:4,8	extremely 73:13	216:5 318:19
377:12	86:20 124:10	exploration 27:18	79:18 119:6 200:4	319:2,9,14,22
				320:15 369:17

fairly 43:18 185:18 250:7 283:1 299:6 332:3 359:20	fellow 9:7 97:13 322:2	filters 182:3,5 183:12 235:17,19	223:20 224:12 232:11,16 234:14 238:15 242:7 249:15 271:8 275:10,10,21 283:9,12 297:19 298:3 325:5 332:19 335:16 344:22 345:4 346:16 350:18 355:21 358:20	focused 16:1 135:10 141:22 211:21 213:20 260:2 300:17 306:17
faith 100:5	fewer 51:2	final 17:14 55:14 55:21 57:21 98:21 120:11 200:19 213:13 218:11 295:10 313:11 317:7 365:9 369:2 373:3 374:11 378:9 379:13,14 379:18 383:17	275:10,10,21 283:9,12 297:19 298:3 325:5 332:19 335:16 344:22 345:4 346:16 350:18 355:21 358:20	focuses 44:17
faithful 99:18 100:14	fidelity 306:18 307:11	find 36:12 95:18 98:14 100:18 115:3,4 128:21 139:13,14,16 168:10 224:22 267:8 294:12 296:2 313:5 348:3 357:3 376:22	first-line 62:13,15	focusing 60:7 156:13 271:15
fall 167:1 231:7 238:18 335:12	fight 112:5 264:14	finding 376:15	fit 45:1 85:19 115:5 313:6	fodder 264:19
falling 166:22 334:6 353:18	fighting 377:2	fine 85:17 160:2 203:22 210:11 267:11 336:8 374:18	Fitness 37:1	folder 82:5 90:3 93:16 101:11 103:6 111:13 136:2 159:4,20 160:3 161:14 162:4,8,12 166:8 169:20 191:3 202:4,7 204:6 228:10 269:5 277:19 278:10 293:19 301:14 313:22 319:8
falls 332:13	figure 75:2 140:10 140:19,21 199:8 208:8 255:9 359:14 360:16	finder 99:21	fits 289:3	folders 167:9,20 168:2 202:10
familiar 16:9	file 25:20 40:10,15 44:13 48:6 54:18 67:7 73:1 90:2 92:20,21 93:16 97:20 98:8 100:19 103:1,2,6,7 135:21,22 136:2,3 159:5,19 160:3 163:22 189:13,15 190:1 192:13 205:7 210:3 211:2 211:14 214:15 216:2 218:17 269:4 274:16 275:15 276:4,10 283:15,16 284:10 285:5 293:18 307:3 378:17,20 379:20	finger 239:16	five 120:13 200:21 292:8 316:5	folk 151:16
family 93:18	filed 28:17 250:19	finger 239:16	fix 374:13 377:6	folks 128:7 136:21 153:2
fantasy 176:1	files 23:20 54:5 167:9,19 168:2 192:17 202:5 204:6 208:4,11 209:17 276:9 285:7 319:7	fingerprint 189:13	fixation 178:7,13	follow 41:10 55:2 93:22 118:21 134:8 137:14 345:3 349:4 352:19 359:7
far 44:2 55:6 128:5 164:22 172:3 204:15,17 245:18 245:20 249:13 264:3 297:11 349:9,14 353:14 373:14 379:13	file-share 101:10	finish 269:2	fixed 87:18 88:12 106:3 137:7 178:11 252:20	follow-up 16:22 147:4 152:14 204:22 210:21 250:14 341:7
far-reaching 299:9	filed 28:17 250:19	Firm 22:5 222:18	flag 25:3 190:8	followed 260:14
fashion 155:12 247:2 293:11	files 23:20 54:5 167:9,19 168:2 192:17 202:5 204:6 208:4,11 209:17 276:9 285:7 319:7	firms 98:14	flagged 291:14	following 58:16 130:6 272:16
fashions 133:20	filing 45:9 47:13 282:8	first 15:12 20:6,7 20:10 24:1 26:10 32:19 43:21 64:1 67:5 74:20 77:15 80:15 84:3 110:6 110:8 124:9 126:12 128:7 152:20 153:17 160:9,11,19,22 161:5,17 165:18 165:20 166:5 177:10 182:8 184:18 186:3 187:3 196:1,18 198:19 201:7 216:22 217:15,16 221:5 222:5	flags 55:14 77:12 110:2 295:10 302:7 347:5	food 264:14
fastest 376:3	filled 92:6 374:5	firm 22:5 222:18	Flava 244:16	foot 338:12
father 127:8	film 82:4	first 15:12 20:6,7 20:10 24:1 26:10 32:19 43:21 64:1 67:5 74:20 77:15 80:15 84:3 110:6 110:8 124:9 126:12 128:7 152:20 153:17 160:9,11,19,22 161:5,17 165:18 165:20 166:5 177:10 182:8 184:18 186:3 187:3 196:1,18 198:19 201:7 216:22 217:15,16 221:5 222:5	flexibility 173:11 173:13 197:14,15 245:22 249:19	Football 371:21
favor 29:11 32:11 73:20 191:7,8 220:5 278:4 374:2	FilmOn 174:18,20	films 70:13	fly 72:2 311:22	Footnote 57:15
favors 339:15	filtering 187:10		focus 14:15 15:19 16:3,20 24:3 56:1 57:22 65:10 77:8 78:7,8 80:10 83:18 84:5 85:5 122:1 138:4 154:16,22 196:14 211:4 221:13 256:13 257:10 350:21 363:19 379:20	footnotes 37:5,8
FCC 272:17 274:6				force 35:20 95:15
fear 156:17				foregoing 124:3 220:20 321:3
feasibility 157:2,6 188:6				foregone 67:19
features 379:22				
federal 177:2 263:10 265:13,21 301:18				
feel 48:21 77:1 80:20 174:7 245:19 258:15 261:15 378:4				
feeling 81:1 375:13				
feels 45:13 48:21 76:20				
fees 36:21 133:14				

foreign 9:2 14:5 75:3 227:16 320:22 321:15 323:7 330:21 342:6 351:20 371:1 373:18 382:5,7,9	311:8 327:20 328:4 367:22 370:1 378:14,15 Foundation 44:9 151:14 foundations 164:15 founder 164:14 founders 83:1 founding 131:20 four 16:5 fourth 321:13 framed 144:1 245:15 framework 51:18 256:7 290:11,21 324:17 framing 108:17 119:22 226:22 227:12 243:20 349:21 France 356:17 376:8 Francisco 22:11 81:5 222:22 frankly 43:17 212:14 234:18 267:20 269:22 Fraud 167:5 free 50:19 131:10 337:5,6,20 345:21 Freedom 81:3 freely 59:2 freestanding 38:17 188:2 189:20 frequency 59:16 frequently 61:11 61:15 70:17 friend 234:1 290:17 299:12 friendly 18:21 friends 324:3 from/to 372:20 front 15:14,21 76:13,18 143:7 305:21 328:19 341:15 Frontier 44:9	frustrated 273:6 fulfilling 188:1 full 65:21 90:12 93:10 155:4 226:21 fully 59:1 87:2 99:15 116:7 118:6 369:8 function 118:18 312:7 functionality 273:3 functioning 85:4 fundamental 32:3 75:15 133:16 270:16 331:20 fundamentally 253:11 further 35:1 49:9 53:14 84:1 100:3 111:7 123:16 132:1 182:11 221:18 224:14 225:4 235:14 236:8,14 243:22 330:7 364:22 370:3 383:22 384:3,13 future 14:16 18:13 59:1 116:17 146:22 361:12 373:20 fuzziness 148:3	125:15,21 148:9 184:18 222:7,15 223:2,5 260:17 269:15 272:1 287:5 290:4 293:10 305:6 322:8,16 323:4 365:20 generalists 305:19 generally 24:13 84:5 103:2 121:8 146:10 182:4 214:14 239:11,13 293:13 296:15 303:7 369:12 generate 134:19 generated 311:22 generational 238:1 Genetski 1:17 9:11 322:7,7 341:5,9 350:8 357:17,18 Geneva 193:16 307:15 genre 274:4 gentleman 237:5 geographic 331:6 George 1:14 3:16 22:14 Germany 325:2 328:3 356:22 376:7,8 Gertner 26:18 44:12 48:16,16 54:16,21 57:6 99:6 204:1 205:20 Gertner's 36:8 44:6 45:4,19 46:6 94:11 100:6 getting 139:3 163:2 178:1 197:10 213:11 219:22 280:8 294:22 317:8 333:21 357:6 360:17 366:17 367:2 Ghana 331:13 gin 50:1	Ginsburg 1:18 3:20 9:14 22:22 23:1 37:17,18 38:4,5 39:12 43:13 46:11 49:16 51:7 53:2,4 62:1,2 65:6 66:18 71:5 72:10 73:18 73:19 90:7,8 91:1 91:4 92:15 94:10 99:5 105:11 106:17 113:7 117:19 118:2 155:13 217:8,9 232:12 318:11,12 322:18,19 325:19 325:20 330:2 334:17 335:5 336:15 338:21 341:6 345:5,6 347:8 348:18 349:11,12 355:5 360:22 361:1,14 369:21,22 379:9 379:17,19 Ginsburg's 58:17 give 136:6 144:19 147:1 158:22 175:21 181:22 200:15 299:5 304:8 305:2 367:4 given 16:4 17:2 33:1 38:7 99:7 100:1 115:16 129:5 146:22 199:20 213:2 224:21 243:2 255:13 267:1,5,7 340:19 366:1,12 380:9 gives 282:11 371:16 giving 18:12 311:8 337:16 glad 204:11 Glazier 1:19 7:17 235:9 239:21 240:1 253:15
		G		
		game 176:1 311:20 341:21 359:11 games 260:5 gap 54:14 59:12,15 118:4 gaps 59:11 380:5 gate 153:18 gathering 248:3 GEMA 356:22 general 2:16 5:17 5:20 6:7 7:5,13,20 8:5 9:12,18 21:11 27:4 60:22 80:7 104:16 125:2,12		

256:9,11 276:22	370:8 373:4	222:3 223:19	336:22 367:4	group 165:20
285:12,15 313:12	374:11 375:3	228:17 229:11	370:18 377:9	273:12,15 281:10
313:14	377:14	232:9 233:4	382:6	284:1 358:15
global 2:9 6:13	goal 195:8 278:15	237:22 238:18,20	Goodlatte 243:6	groups 259:10,11
10:15 126:5	God 112:8	238:21 239:16,20	281:7	312:20
322:21 369:3,11	goes 44:22 45:6	242:9 246:12	goodness 320:11	growing 335:18
Glynn 2:2 4:6 9:16	74:3 78:15 102:11	247:5 248:1	Gore 300:1	376:4
23:4 322:13 328:4	129:10 152:9	253:14 254:15	gotten 26:4 48:18	grown 250:5 352:8
329:10	157:3 186:14	255:11 256:4,5,9	49:7 153:13,14	guarantee 286:3
go 15:9 21:2 30:7	188:5 299:12	258:16 269:16	155:7	guardian 242:19
31:21 32:7 34:13	359:17 372:14	270:14 271:4	governance 278:17	guess 134:8 138:2,3
41:8 42:7 43:12	going 11:6 16:7	273:6,7,7,8,9	governed 28:20	224:18 245:14
43:21 46:13 49:16	17:1,9 20:6,21	274:2,4,5 276:5	government 7:6	276:17 292:15,22
50:8 51:6 55:11	21:17 24:21 25:1	276:18 278:8	131:8 222:8	294:9 302:6
55:18 56:20 66:6	27:1 32:2,7 33:2	279:13 284:16	250:20 262:17	325:21 360:11
70:3 75:12 76:15	34:13,16 38:21	285:10,22 288:18	264:3,5,9,21	361:10 362:9
77:21 78:12,18	41:8,10 43:12	290:6,8 291:13	266:9,13 298:10	365:12
79:3,19 80:15	46:2,4 50:20 51:6	292:6,7 294:2	306:1 368:15,22	guidance 15:19
81:17 83:14 85:7	53:9,16 54:7	295:9 299:12	government's	225:4 243:2 248:8
85:22 88:21 89:22	55:11 56:17 59:22	302:7,21 303:14	257:10	249:16 268:12,16
96:21 97:22 101:6	61:20 63:20 64:8	306:3 307:4	governments	269:6,17 270:2,9
101:22 104:8	67:14,20 69:9	308:18 309:1,22	193:16 368:13	271:2,12,12,20
110:7 113:6 115:9	73:4,21 77:2,3,4	312:17,18 313:2	grandfather-in	272:6 274:7
116:8 117:19	78:13,15 80:2,12	316:21 317:20,22	352:17	281:20 282:2
118:1 120:15	82:10 83:14,16	318:2,3,5,9	grant 380:18	285:16 289:10
123:13 124:14	84:6,12 88:22	320:20 321:7	granting 71:15	290:5 292:17,21
141:8 158:2 165:8	94:17 96:16,21	323:3,8 335:9	granular 293:15	305:3 354:19
169:4 172:3 178:3	101:22 103:18,20	338:15 339:10	graphics 154:14	356:5 366:13
187:3,4 188:22	103:21 104:8,14	341:6,11 344:11	grapple 29:16	guide 104:20 330:8
191:7 203:14	109:19 110:1,7	350:21 362:9	272:18	guides 306:19
204:14 214:3,10	111:19 113:6	364:21 374:21	grayed-out 244:4	Guild 225:16
233:4 239:20	115:9 116:8,15	375:19 377:13	great 38:18 67:1	guilty 33:22 35:6
240:13 243:17	120:7,9 121:9	378:22 379:2,4,8	223:17 242:15	165:4
247:4 253:14	127:17 128:18	Goldman 27:5	264:21 279:18	gun 80:21
256:2,9 259:8	129:18 134:21	good 11:3,14 15:3	301:6 334:4	Gunter 244:17
267:3 268:7,22	138:20 139:12,14	21:7 22:18 52:7	376:15	guy 247:20 374:3
271:11 276:18,20	139:20 140:22	61:19 76:18 90:13	greater 166:20	guys 16:9 245:17
281:21 282:15	141:2 150:7 158:7	100:8 145:20	284:2 300:11	246:6 338:3
284:20 285:10	158:20 165:3,8,19	146:9 163:7	greatly 132:20	gymnastics 104:19
287:21 295:9	168:13,17 176:2,3	185:10 199:14	228:16 303:18	
302:10 304:16	176:5,6,15 181:10	200:5 204:9 214:5	green 22:2 92:9	H
305:1,9 307:20,21	188:13,13 192:11	217:16 230:13	156:21 281:5	habits 83:4
310:2 321:20	195:1 201:21	232:18 233:7	Gregory 1:13 7:12	half 221:5
325:15 344:11	208:8,19 212:5,11	237:19 258:17	222:14	halfway 52:12
346:4 350:7,18	215:4,11 216:19	282:8,8 285:7	grew 127:9 308:5,9	hallmark 121:22
358:7 359:1,1,2	218:12 219:21	290:17 291:3	Grokster 79:5	Halpert 1:19 5:10
362:10 364:6	220:13 221:21,22	318:21 321:12	groundswell 78:14	125:1,1 149:5,6
				156:22 159:16

163:11 165:8,11 174:3 185:7,8 198:15,16 207:12 207:13 Halpert's 157:17 hand 77:18,20,22 96:4,5 238:18 375:3 handed 174:17 handful 265:12 286:9,17 handle 196:20 handled 247:6,6 hands 148:17,19 338:9,13 happen 54:7 140:7 255:11 261:10 289:8,8 375:1 happened 50:16 112:9 114:22 138:17 162:19 176:22 260:10 263:14,17 280:1 353:10 happening 48:4 153:12 252:4 259:1 273:3 312:1 332:13 happens 54:19 108:14 136:1 216:7 265:11 267:5 277:12,16 277:18 278:1 301:3 361:17 happily 132:16 happy 19:15 156:8 246:8 378:7 hard 36:8 40:16 66:1 84:21 139:17 142:2 169:15 198:2 216:9 217:3 273:20 275:12,21 276:4 277:17 292:1 307:1 309:4 309:14 325:12 330:19 harder 114:15	hardware 186:21 harm 146:4 197:8 211:1,1,8 212:1,1 219:11,12 300:11 301:3,16 harmonization 233:15 Hart 1:20 4:4 23:2 23:2 hash 311:15 hashtags 216:17 hasten 198:10 hat 163:14 306:16 308:7,8 hate 205:21 314:14 hats 306:16 Hayes 22:6 222:19 head 22:19 175:16 health 153:19 hear 16:6 17:13 49:4 201:9 233:14 246:5 335:8 377:13 378:5 heard 36:14 105:9 124:9 126:11,20 130:10 134:13 158:22 195:22 201:6 229:8 233:21,22 280:5 281:1 288:8 324:4 340:2 377:11 378:3 hearing 76:3 124:8 234:3 240:21 308:16 heart 234:10 hearts 234:22 247:16 heirs 70:19 held 33:22 57:19 63:20 77:4 206:11 324:21 377:7 help 77:8 127:19 279:14 280:3 357:15 374:1 378:22 helped 136:14	151:13 helpful 127:21,22 132:14 133:9 192:2 200:5 225:4 248:6 291:1 305:18 306:3 312:13 335:6 354:17 355:4,17 355:19 356:4,5 369:9 383:21 helping 261:12 heroic 158:3 herring 196:2 Hey 182:22 Hi 222:14 318:12 hide 249:12 high 80:9 109:10 307:10 357:21 361:5 high-res 108:19 109:6,11 244:8 higher-level 364:7 365:13 highlight 26:7 highly-patented 253:5 highly-unlikely 253:19 hinder 206:1 Hinging 333:14 hip 230:9 hire 48:19 historical 70:5 288:16 290:12,20 historically 237:22 238:3 306:13 historically-signi... 70:12 histories 70:6 history 14:13 24:4 24:6,14,17 25:7 26:9,19 27:18,20 28:3,11,22 29:10 29:13,22 30:3,21 31:21 32:21 33:1 33:13,15 35:5,13 35:18 36:4,15	37:9,14 38:1 39:2 42:22 45:3,7 58:11 65:3 89:4,5 89:6 110:15 115:2 126:19 127:1,5,15 128:6,21 130:13 131:22 132:13,19 133:9 134:6 142:6 143:16 144:5,20 145:5,19,21 147:8 147:10 148:10 149:8,17 158:3,8 172:17 175:14,19 198:12 280:6,15 281:14 295:19 306:14 307:6,17 308:3 317:11,17 HMH 306:2 hold 70:20 116:15 138:19,20 234:21 holder 57:18 holders 70:18 holding 129:19 237:19 342:10 hole 362:1 home 30:12 75:21 home-recorders 67:18 honoring 262:22 hook 73:5,14 89:16 hope 48:18 66:2 82:21 133:5 243:3 261:3 264:13 339:19 353:15 hopefully 18:1,8 55:14 92:10 134:4 hoping 347:3 hornet's 371:13 horrible 381:15 host 215:22 Hotaling 34:19 138:7 201:8 237:4 House 1:8 15:14 57:10 98:19,19,20 142:7 148:11,12 housecleaning 220:12	household 127:9 huge 78:13 150:10 human 148:4 humble 153:5 humbly 154:17 hundreds 294:17 Husick 1:21 5:12 125:4,4 143:13,15 163:10,12 175:7 188:19 189:2 208:20 213:19 hyperlinks 338:16 hypertext 119:17 hypothetical 250:15 253:17 309:5 hypotheticals 378:5
I				
ICMP 357:8				
iCraveTV 377:1,7				
idea 121:2 133:17 144:8,10,14 167:8 228:8 242:5,15 296:11,18,20 314:6 381:16 382:2				
ideal 224:19				
ideas 362:18				
identifiable 151:19 214:18 311:4,14				
identification 312:12				
identified 242:13 242:14				
identifier 151:14 167:11				
identify 19:8 54:21 154:4,5 222:1 229:17 312:4				
identity 189:21				
ignorant 270:1				
ignored 198:21 296:6				
ignores 96:10				
illegal 101:2 166:18 208:14 216:18				

283:21	implemented/rat...	imposes 110:16	345:12	227:21 260:5,6,7
Illinois 244:17	369:6	impossible 50:9	incorporating	322:11 341:21
illogical 339:4,5	implementing	104:2 164:18,19	343:15	357:22
illustrate 145:4	186:16 197:16	164:21	incorporeal 192:22	inevitably 280:8
illustrates 353:21	362:20 376:10	impression 143:15	193:20 217:21	inextricably 145:7
illustrations 318:21	implicate 44:16	improper 27:11,19	218:3	inference 204:5
image 108:16,19	187:2 197:22	29:13	incorrectly 251:8	inflammatory
109:9,11 244:3,5	363:15 364:3	improve 82:18	increase 109:10	42:12 48:12
244:8,12 277:14	367:18	improved 146:12	increasingly	influenced 156:2
303:13 304:9	implicated 131:3	improvements	279:13 309:8	inform 308:3
images 23:19 109:4	274:18 332:2	261:16	380:11	informal 146:16
109:6 179:7	implication 155:18	inadvertently	indefatigable 11:17	information 2:1
223:16 227:13,16	232:15 341:22	282:4	independent 12:8	5:18 7:22 24:18
227:19	344:6	inappropriate	index 303:4	99:8 119:16
imagine 162:6	implications 141:3	206:19	indexes 277:19	125:14 127:18
293:15 294:2	157:3 163:7	inchoate 71:21	indicate 242:9	141:13,15 142:3
381:19	186:20 198:20	inclined 59:18	indicated 114:13	143:18 151:16
imbalance 252:9	343:1	include 18:12	indicates 45:17	152:4,12 153:21
immediately 281:3	implicit 160:17	114:9 143:4	355:14 367:15	154:1 167:18
impact 50:20	218:19 225:20	259:10 291:17	indicating 297:10	186:14 187:5,6,7
116:16 230:19	implicitly 327:5	330:15,18 333:2	indicators 245:18	187:16 193:4
232:11 267:19	implied 293:3	351:10	individual 39:14	194:13,16 214:16
impacted 238:11	314:15 346:3	included 132:3	67:18 72:22 79:13	215:3 223:4
impetus 340:17	importance 301:22	includes 57:12	112:12 211:21	240:20 253:1
341:17	368:8	91:14 145:15	305:7 325:6	272:19 299:21
implement 84:4	important 12:2,9	157:21 287:5	333:18 334:1,5	312:12 326:17
89:2,20 186:19	28:18 59:4 60:19	303:12 331:3	358:14	353:9 357:6
221:19 323:7	61:3 69:2 70:13	345:16	individually 326:15	360:17 362:18
327:7 331:1	79:19 84:15 87:11	including 26:17	355:11	informative 220:11
implementation	112:3 118:3,18,19	70:9 119:17	individuals 63:18	221:5
9:2 24:10,16	122:17,18 132:14	201:13 226:8	63:20,22 64:4,4	informed 51:13
131:9 173:12	133:20 134:6	326:12 329:12	75:13,20 78:12	informs 121:15
241:1 320:22	158:11 186:1	342:1 343:15	358:15	Infrastructure
321:16 323:11,15	191:16 200:4	353:4 355:8	inducement 79:6	240:20
329:5 331:17	205:18,20 278:7	inconsistencies	inducing 79:11	infringe 57:16,19
339:7 345:18	290:13,19 300:7	140:8	industrial 67:20	79:11 203:7
350:15 365:14,21	309:22 310:1,16	inconsistent 334:16	industries 260:20	infringed 116:13
365:22 366:1	317:9 338:1 358:5	inconsistently	309:16 311:2	219:3,5,16
367:10,16 369:15	366:11,16 368:18	102:17	369:18	infringement 13:10
implementations	369:13 372:7	incorporate 168:6	industry 1:14,19	20:18 34:1,2,5,7
176:18 342:6	379:22	179:13 344:17	2:1,8 3:17 4:14	51:1 54:22 63:8
implemented 12:17	importantly 140:21	359:9	5:18 7:18,22 9:22	64:2 68:7 69:8
90:17 102:13	144:10 166:6	incorporated	22:16 23:11 32:7	72:18 73:4,11
198:5 225:9 326:1	350:13	193:22 311:21	50:4 67:8 70:19	74:18 78:7,17
327:19 331:15	importation 297:17	342:3	75:14 78:22 88:10	79:7,9,21 85:10
332:6 353:2 363:1	297:20,22	incorporates	125:14 141:13	86:13 109:2
368:2 376:9	impose 170:18	154:13 327:9	143:18 223:4	112:17,19 119:11

139:17 162:6 165:6 191:5 209:19 210:15 212:9,10 213:6 275:1,4,17 276:2 276:14 320:15 324:22 325:2,3 361:4 381:14,21 382:3 infringer 62:13,15 62:21 68:9 69:3 72:19 86:4 109:16 182:18 227:14 363:17 infringers 50:3 67:16 68:3 72:13 72:14 73:14 86:19 111:17 219:18 380:20 infringing 50:16 119:15,16 138:16 163:3 187:15 209:21 210:5 358:22 364:11 inglorious 370:15 inherent 180:22 initial 149:3 198:22 204:9 224:2 346:9 346:10,21 347:18 initially 245:13 298:10 325:2,8 328:16 Initiatives 2:3 5:21 8:6 125:17 223:7 injunction 159:18 199:15 injunctive 119:10 150:18 301:10,10 301:19 injury 115:15 inline 108:16 innovating 199:13 innovation 188:8 198:20 inopportune 339:12 inquired 368:16	Inquiry 16:22 330:11 insert 185:13 inside 234:11 insight 25:6 insistence 299:13 insofar 176:9 330:3 inspired 370:3 installed 293:19 installs 275:11 instance 128:9 182:22 233:21 268:19 326:3 instances 134:1 278:6 303:22 instinct 281:4 instinctively 358:6 358:16 institution 100:15 280:21 308:11 institutional 279:11,22 307:12 318:14 institutions 278:19 383:1 instructions 177:5 177:6 instructive 132:14 336:22 342:8 instructs 131:14 instrumentalities 361:18,21 insulate 75:8 intellectual 2:9 5:18 6:13 7:21 9:3 10:15 125:13 223:3 322:21 358:4,13 369:11 intelligence 140:15 143:10,11 intend 89:8 139:22 140:1 intended 44:15 118:9 137:22 147:15 238:13 240:4,9 242:18 293:21	intending 147:11 intent 128:22 147:17 284:20 293:13 304:2 intention 240:15,16 242:2 277:6 371:3 intentioned 344:19 intentions 242:4 interactive 106:20 154:10 195:11 interactivity 195:9 interacts 298:22 299:1,2 interest 64:9 153:14 242:20 376:15 interested 14:8 107:8 205:9 360:17 interesting 26:1 27:15 39:5 51:20 51:22 152:7 171:6 215:2 262:11 278:16 279:16 295:21 307:16 308:7 317:17 345:7 382:7,10 interestingly 297:9 interfere 18:18 268:1 interference 18:22 intergovernmental 175:17 intermediaries 64:11 85:16 intermediary 68:17 79:15 86:15 111:17 267:16 intermediate 93:6 344:1 Internal 104:13 international 2:15 2:18,20,21 3:4 11:19 15:7 16:10 21:6,9,13 24:11 55:8 59:8,9,13 118:12 131:17	132:21 151:12,13 155:21 158:14 180:14 181:9 184:19 185:15 188:1 190:10,12 190:19 193:15 200:11 209:5 264:7 266:20 268:1 297:2 324:1 324:7 327:15,16 329:5 331:17 337:5,14 350:20 353:13 354:14 355:2,16 357:7,8 357:12,19 370:11 370:12,19 371:14 Internationale 357:10 internationally 293:12 internet 1:20 5:11 9:3 22:10 25:20 40:16 51:1 65:10 69:12 79:21 103:8 125:2 131:10 135:1 153:12 167:9,12 173:22 176:19 187:15 193:4 222:21 226:15 253:1 272:20 273:17 300:2 313:3 314:1 321:1 324:14 331:10 338:16 367:20 376:12 378:21 internet-accessible 228:11 interplay 298:3,4 interpret 93:9 127:19 143:8,12 183:10 185:3 191:18 232:14 304:20 354:22 370:10 interpretation 9:3 29:4 34:17,21	35:6,8,21 54:15 58:6,12 59:13 61:4 62:6 92:19 93:14 130:13,15 131:15,16,18 180:10 192:4 199:20 267:20 271:21 316:11 320:22 321:16 330:1 331:2,20 340:7 347:9 349:14 368:4 380:1 interpretations 93:13 102:15 191:10 198:8 315:8 317:21 344:13 interpretative 157:22 158:17 interpreted 57:4 58:8,10 62:5,8 94:2,7 119:6 121:7 158:13 171:16 188:3 190:18 191:12 200:10 226:15 240:7 258:6 267:16 359:4 interpreting 28:7 36:20 102:7 240:3 316:9 interprets 108:9 interrelationship 156:16 239:14 intertwined 145:7 261:20 intervene 238:3 intervening 266:9 267:17 intervention 279:7 280:13 intrepid 29:5 introduce 20:22 21:1 124:16 265:1 321:21 Introduction 3:9
--	---	--	--	--

Introductions 3:8 5:4 7:4 9:5	62:21 66:12 68:21 69:15 75:12 80:11 81:22 91:11 99:11	336:5 345:4 351:20,21 365:22 384:1	Jonathan 1:12 5:6 7:10 124:18 143:6 165:16 166:1,8 222:12 246:16 249:17 257:20 283:14 293:21 300:15	214:5 285:19 297:13,13 328:8 338:14 346:7
intuitively 358:21	100:17 120:19 131:2 155:1,19	issuing 292:17,21 294:22 354:18	Jonathan's 217:10 299:13	Justices 37:12 280:4
invented 88:11 334:12	156:14,20 157:9 160:19 166:7	item 116:13 342:3	Joseph 1:16 5:8 9:9	justification 160:1 170:2
investigate 288:18 288:19	172:15 211:8 230:2 236:14	items 116:21 117:12	jot 331:16	justify 42:3,8 289:12,13
investigating 288:7	251:11 255:5,6 257:9 260:19,20	iteration 294:19	jour 271:16	<hr/> K <hr/>
investigation 288:4 289:9,16	261:5 262:16 263:15 264:2,14	ITU 193:14	journalistic 187:13	Kagan 297:13
investigator 50:14 50:15 101:4	264:17,22 265:15 265:22 270:7	iTunes 40:15	judge 26:18 36:8 36:14 44:6,12 45:4,18 46:6 48:20,22 54:15,21 57:6 65:18 88:6 94:11 98:2 99:6 100:5 184:15 204:1 205:20 301:18 317:12,14	Karyn 2:19 3:2 11:17 15:4 184:20
103:10 203:20 205:7,14,15 207:16 210:10 213:22	271:16 272:18 273:18 274:13 275:9 277:3 279:3	<hr/> J <hr/>	judges 26:8,17 97:18 100:13 251:22 265:14,21 280:4 292:19 301:12 305:18 306:22 317:22	Kasunic 279:19
invitation 334:3	283:15,19 284:19 291:6 301:21	J 1:16 5:8 9:9	judgment 227:15	keep 69:2 97:1 135:9 190:18 192:6 215:16 276:6 311:15 363:12
invite 313:3	316:15 328:12,19 334:7 335:13	Jacqueline 2:16 21:10 299:16	judicial 44:3	keeping 77:7 191:19
invited 273:12	337:5 339:13 342:16 344:10,20	Jammie 42:6 213:2	Judiciary 290:15	keeps 48:15 131:16
invites 17:15	354:10 357:14 358:1 360:4 372:7	Jane 1:18 3:20 9:14 22:22 102:3 322:18	jump 52:13	Keith 2:1 5:16 7:20 125:11 186:15 189:3 191:6 223:1 291:9 294:8
inviting 189:16	377:4 380:8 384:4 384:13	Japan 331:13 333:1 368:16 369:22	jumping 16:13 80:21	Keith's 185:10
invoke 28:21	issued 98:21,22 253:20 270:2,8 286:7,10 315:11	Jay 2:6 6:6 9:18 125:20 174:1 247:13 322:15 341:12	June 54:8	kept 288:10
invoked 66:6 96:8	issues 19:16 20:18 26:20 28:9 49:10 56:18 64:8 66:2 73:12 81:19 87:12 116:6,7 117:7 123:16 126:10 146:14 168:21 185:19 221:13 224:1 228:13,20 229:6,18 239:9 249:11,21 251:20 254:21 259:19 260:13 268:21 271:2 283:2,3 299:15 308:4 317:5 325:13,14	Jerry-rigged 138:21	juries 112:9	Kevin 2:14 21:5 142:21 149:4
invoking 226:9		Jim 5:10 125:1	jurisdiction 328:1 359:6	key 198:17 257:2 298:1
involve 64:7		job 50:6 99:7 158:4 178:15 233:7 242:22 317:18	jurisdictions 359:16	kick 127:7
involved 73:6 152:5 174:18 178:20 206:18 223:15 225:8 234:1 243:21 254:9,12 266:14 300:18 353:10 356:11		Joe 124:20 322:4 341:12 342:16	jurisprudence 65:8	kind 50:1 60:2 66:5 83:7 101:14 143:2 149:6 168:16 177:14 227:7,15 236:2 238:12 239:3 246:5 247:4 256:3 260:17 264:14 268:22 274:4 276:19 280:13 291:20 299:7 333:17 334:15 350:7 354:18 358:2 361:7
involves 52:10 121:8		Joe's 335:17	jury 42:3,8 48:13 50:2 77:5 112:13 112:20	
involving 25:15 30:14 127:2 206:16 362:7		John 1:13 3:13 7:14 21:21 22:5 51:8 222:17 225:12 373:11	Justice 37:2,3,4 100:11 102:12 118:13 158:6,7	
IP 1:21 5:13 125:6 126:5 164:17		join 12:6 37:4		
iPad 190:2		joinder 82:15 228:20		
irrelevant 57:15 207:11		joined 151:15 353:3		
irreparable 219:12		joining 124:7		
issue 25:19 26:22 30:11,22 41:12 55:15 56:19 60:8		joint 225:15,18		
		Jon 377:19		

kinds 119:21 140:8 163:6 178:14 209:1 364:18 382:16	268:2 269:22 274:9,16,21 275:1 277:8 278:17 280:17 284:11,18 285:5,5 287:7 291:2 293:20 294:15,21 296:12 316:16,20 317:9 317:13,22 335:2 336:6 337:18 339:10 343:21 347:20 348:21 358:16 360:10 362:8 364:12 366:22 374:2,7 375:10 382:1,6	30:18 33:13 35:11 35:14 39:3,20 40:8,22 41:2 56:6 95:1 102:6,21 110:13 113:11,13 114:10 127:12 137:18 142:11 143:8 145:9 158:1 171:22 172:7 193:6 218:7 248:16 307:17 308:4 326:1,16 343:8 344:7 350:22 352:11 355:6,14 378:16	9:15,17,21 12:14 13:17,20 14:3 22:5 23:1,6,10 24:2,20 25:4,8 30:19 32:4,5,5,11 35:17 41:12,13 46:6 57:1 60:12 60:16 63:19,22 64:18 67:11 69:13 72:2 74:14,17,21 75:3 76:1 80:13 87:16,20 89:3,18 89:20 90:5 92:6 92:11 93:9 94:3,5 94:9 97:18 98:13 98:22 102:22 104:13 105:1 118:4 119:7 131:11,15 132:2 134:12 135:4,4 152:21 155:3,6 163:19 175:18 176:16,21 177:7 180:7 181:4 184:8 185:20 187:20 188:7,9,18 190:9 190:22,22 192:5 195:16 197:4 198:2,12,19 200:7 201:12 203:17 204:12,15 211:4 214:3 220:4 221:8 221:18 222:18 223:10 224:7,10 233:10 234:13 236:22 238:9,10 240:3,5 241:21 242:6,17,21 246:22 249:22 256:13 257:18 263:10,10,11 268:18 272:12,14 280:15 284:12 291:2,13 293:5,7 297:5 298:6 299:19 305:10 306:18,22 315:2	317:15 318:1 322:19 323:22 324:5 325:12 331:17,19 333:19 334:9 337:5,14 338:10 339:16,19 342:17 343:6 351:1 352:2 353:1 354:14 357:19 363:8,16 364:3 367:10,19 368:14 370:10 371:14 373:1 374:5,13 375:13 382:5,7,16 382:22 lawfully 57:9 Lawrence 1:21 5:12 125:4 laws 14:5 195:13 323:7 330:21 331:5,6 332:21 341:8 350:10 351:6 364:8 lawsuit 71:13 101:8 lawyer 41:22 190:12 lawyers 84:21 97:20 104:20 112:22 136:20,22 279:5 307:1 350:20 layered 342:2 layering 343:9 layers 65:16 lead 170:5 184:11 260:19,19 leader 369:11 leading 152:10 260:20 279:20 leads 140:8 198:13 leaked 347:15 learned 98:16 lease 31:6,16 43:5 145:11 270:12 leave 49:20 136:11 led 255:1 299:22 307:17
King 297:15 Kingdom 357:1 kinks 233:8 Kirtsaeng 28:1 297:8 kludges 258:22 kludgy 258:20 knew 299:4 Knife 1:22 5:14 125:8,8 knitted 231:6 know 11:16,22 12:10 16:10 19:6 25:11 39:5 41:7 42:18,22 50:18 65:18 67:8 72:3 78:6,12 80:19 94:3 99:14 102:4 102:10 103:6 107:16 112:22 113:17 115:3,4,11 121:18 122:17 129:1 132:9 134:17 136:12 139:5 140:1,16 147:5 148:7 153:3 154:10 164:19 167:3,17 169:12 174:1,15 180:19 192:18 193:8 196:13 202:11,17 202:19,19 203:5,6 203:12 209:18 211:22 212:14,22 213:2,5 214:14 216:4,16,17 227:5 229:11 230:9,12 231:4 232:6,19 239:2,6 245:15 246:2,6,9 254:18 255:12 256:18 259:6 264:3 266:11,17 267:3	knowledge 2:6 6:5 8:13 73:9 125:19 223:12 261:7 302:18 306:19 361:11 known 334:12 357:11 knows 50:4 54:7 79:7 143:18 264:10 Kupferschmid 2:1 5:16 7:20 125:11 125:12 128:3,4 141:5,6,19 165:9 165:14,15 180:11 180:12 183:8 206:5,6 223:1,2 233:5 235:8,10 276:21 281:18,19 294:8	lap 140:9 large 48:12 50:2 82:6 83:5 90:18 100:20 108:19 109:6 290:16 291:21 319:11 320:5 362:22 365:17 large-scale 112:5 112:19 largely 26:16 27:8 65:8 81:18 207:10 378:4 larger 354:6 359:18 lastly 237:3 284:7 late 321:7 Latin 362:11,17 367:3 Laughter 45:12 56:10,13 66:20 69:20 97:16 140:4 141:17 171:17 174:5 235:1 266:7 284:13 304:11 315:15 366:7 laundry 85:2 Laura 2:6 6:4 8:11 125:18 223:11 284:7 law 1:18 2:2,4 3:22 4:7,9,13 7:3 8:9		
	L			
	labeled 380:20 labels 209:6 273:2 lack 185:17 197:14 298:13 lacks 145:22 LaMacchia 241:14 lands 48:7 landscape 128:12 349:19 language 28:19			

Lee 1:22 5:14 125:8	295:19 307:6	195:16 199:13	227:7,18 250:7	364:17 381:14,21
Lee's 183:1	308:8 317:11,16	209:9 229:10	304:14 311:5	382:3
left 109:20 200:15	341:18	285:1 346:15,19	336:1,6 343:2	list 226:10 351:9,17
203:9 295:8 365:2	legislatively 226:5	347:1 348:19	344:15 351:20	359:1 361:7
legal 3:17 4:5,11	231:14 236:9	349:2 350:14	356:15 380:4	375:20
5:9 6:9 9:7,9	legislature 296:16	360:5,9,14 361:3	life 148:12 213:3	listed 103:6
14:11,19,20 22:15	legitimacy 123:4	361:15 362:12	381:22	listen 121:17
23:3 76:6 124:21	legitimate 166:14	363:2,5,6,17,20	lifetimes 163:18	listing 351:13
126:2 134:18	301:12 327:1	364:15,16 371:16	light 22:2 24:9 54:5	lists 358:10
159:3,8 160:2	364:10	381:14	54:8 88:14 204:12	literary 137:3
199:21 299:8	legitimately 283:20	liable 34:1 63:7,21	228:3 370:10	192:22 252:19
322:2,5 378:13	lending 31:6,16	68:6,18,19,20	lights 176:3,12	326:8
legally 109:8	33:19 43:5 145:12	77:4 82:17 86:18	LimeWire 88:6	literature 127:9
169:17 283:20	270:12	112:10 119:9	limit 17:4 47:6 54:4	litigant 68:11 69:1
legislation 98:1	length 45:19	138:20,20 285:22	147:11,17 383:7	litigants 61:12
224:20 236:5	lens 183:20 358:19	libraries 70:4,8	limitation 47:2	67:15 68:12
241:1 246:4	lessen 139:18	117:1,10 119:1	113:12 297:19	221:17 224:13
249:15 251:11	let's 50:17 74:9	229:9 237:7	limitations 14:10	litigated 78:21
260:9 286:8	79:14 100:20	382:22	138:15 139:7,9,16	232:17 234:2
317:21 336:17	106:10 137:1,11	library 1:12,16	141:3 162:16	254:21 255:1
legislative 14:13	176:1 211:13	3:19 5:7 7:11	187:1 282:22	343:22
24:4,6,14,17 25:7	219:9 237:9,10	17:22 22:20 33:19	382:11,18	litigating 100:2
26:9,19 27:18,19	288:19 289:2,4	33:22 69:16,19	limited 17:20 108:3	273:9 347:14
28:3,8,21 29:10	300:18,19 319:5	70:9 116:12	147:18 148:8	litigation 3:17
29:13,21 30:3,17	337:20 348:15	118:16,19 119:8	181:13 186:12	22:15 67:7 74:1
30:21 31:21 32:20	letting 231:12	124:19 173:21	258:15 283:22	75:1 82:10 83:8
33:1,12,15 35:4	285:6	222:12 229:8	310:6	85:2,22 103:3
35:13,18 36:4,15	level 54:10,22	license 40:1 46:22	line 64:1 67:5	114:14 204:9
37:9,13,22 39:2	97:21 99:12	47:7,8 53:11	120:12 121:11	228:16 229:3
42:22 45:3,6	143:10,11 230:11	71:12,15 162:10	129:12 148:1,2	272:2 292:7
58:11 65:2 89:4,5	279:7 282:5 301:2	162:11,11 210:3,5	201:13 292:5	312:22 316:15
89:6 98:21 110:15	318:4 331:7	214:13 227:1	374:18	325:16 360:15
115:2 126:19	357:21 361:5	250:10 273:16	lines 254:4	litigator 22:11
127:1,4,15 128:6	levels 127:10	304:9 334:20	linguistic 324:16	127:20 219:1
128:21 130:12,22	Lex 331:5	336:2 339:17	link 119:17 277:21	222:21
131:22 132:13,19	liability 58:20 59:3	346:3 352:18	277:22 287:1	litigators 103:12
133:8 134:6 142:6	59:6,14,17,20	licensed 196:5	328:21 339:17	158:7
143:16 144:5,20	60:1,5 61:14,17	210:1,1 244:11	348:19	litigious 199:21
145:21 147:7,10	61:20 62:8,11	338:17 340:20	linked 328:18	little 24:3 51:5 77:1
148:10 149:8,17	63:7,12 69:7 73:8	341:1 356:13	linker 348:21	87:10 88:17 89:3
158:2,8 175:14,19	73:10,16 74:4,16	357:14 380:6	linking 108:16	90:15 92:8 116:4
198:12 224:15	75:6 79:18 80:8	licenses 214:9	118:11,18,21	123:11 133:6
226:3 231:18	114:21 138:10	238:21 273:22	119:14,21 135:22	137:15 141:9
242:8 246:13	139:2,15,16	294:22 352:15	192:14 244:19	144:19 154:18
247:7 248:13	149:14 170:18	licensing 2:10 4:16	269:12 347:19,21	173:20 180:17,17
262:4 264:19	183:15 184:12	8:16 23:19 71:10	349:20 350:12	180:21 181:10
268:11 280:6	186:15 187:1,11	124:22 223:14,15	362:7 364:7,10,10	182:2 188:14

189:3 201:4,6 206:8 245:9 254:14 256:14 258:1 263:18 268:21 270:1 308:6 321:7 335:2 336:11 346:17 360:2,19 live 166:13 312:22 located 74:22 244:4 location 119:15,17 167:18 228:11 locker 74:9 319:21 locus 372:6 logic 193:9 266:14 logical 135:22 204:4 311:16 339:2 logically 192:14 logistical 15:10 21:22 logistics 11:9 20:1 London-Sire 26:18 54:16 57:6 204:2 long 12:3 84:17,18 150:11 158:5 209:12 259:18 351:17 longer 43:7 117:11 165:21 229:14 233:9 249:7,8 longstanding 217:19 look 14:2,5 29:13 30:20 32:8 36:18 38:6 39:6,11 88:18 97:9 99:3 100:13,17 102:22 107:11 111:1 112:8 114:6 126:9 126:14 127:14,17 131:22 135:17,19 137:2 142:5,11 145:21 148:21 156:7 158:17 161:15 176:17 179:2 194:17	201:20 220:15 226:13 235:15 239:14 243:20 244:16 245:16 247:7 268:17 269:15 273:2 279:3 281:11,20 282:11 289:4 291:11,15 305:20 306:15 309:6,15 316:22 320:10 331:6 337:1 342:15 348:16 350:10 358:1 370:18 378:12 382:6,9 384:11 looked 128:1 136:15 255:4 259:22 331:14 369:10 374:6 looking 11:22 35:7 39:2 96:7 107:11 109:14 114:19 127:19 135:11 156:3,19 158:18 176:13,16 181:13 181:17 183:19 241:14 245:1 259:19 281:12 290:11 299:18 302:16 323:14 332:5 336:11,19 337:20 342:5,16 345:1 348:13 355:19,20 382:5 383:4 looks 55:13 145:5 163:15 171:8 366:5 looming 160:13 loophole 375:8 loose 186:1 lose 186:1 246:7 255:19 losers 290:9 loses 299:15,17 losing 259:2	lost 279:10,11,21 lot 26:4 34:22 51:20 56:8,18 59:1 72:15 77:11 77:13 80:6,7 85:14 87:13 88:12 96:11 98:17 100:1 100:5 117:6 132:9 134:14 152:17 158:4 171:8 178:9 178:12 180:21 181:7 183:9 216:2 227:21 229:22 246:17 253:17 259:2 260:22 261:6,7 280:6 290:14,19 335:11 340:17 343:17 344:14 358:4 lots 75:5,5 76:15 112:10,10 218:18 218:21 319:4 loudspeaker 351:16 love 261:12 low 279:7 low-level 280:13 lower-level 265:13 lunch 17:18 188:15 218:13 220:13,21 Lunney 2:2 4:6 9:16 23:4,5 30:9 33:3,6,7,8,10 34:16 64:20,20 66:14,16 71:4 72:9,11 82:8 96:22 97:1,2 102:1,2 105:11 118:1 322:13,13 323:19,20 328:4 338:7 348:9,10 352:5,6 373:5 378:8,9 Lunney's 350:19 Lyons 2:3 5:20 8:4 125:15,15 129:7,8 134:20,21 147:19	147:20 150:22 151:1 152:20 165:9 167:8 175:9 175:10 179:17 188:20 192:9,10 194:22 195:1 208:21 214:6,7 223:5,5 233:5 235:9 237:16,17 239:11 251:16,17 269:19 271:4,18 271:19 288:5 302:11 310:13,14 312:18 <hr/> M <hr/> M 1:14 3:16 machine-indepen... 151:17 193:18 machines 167:11 Madison 309:10 magic 365:15,16 magical 378:15 main 138:3 195:8 203:5 343:4 maintain 307:12 356:1 363:20 maintained 177:16 177:18 369:1 major 136:10 majority 181:19 191:7 235:16,20 297:10,12 makeup 297:11 making 1:3 11:5 12:14 13:11,16 20:12 24:11,16 30:2 34:2 39:22 46:2,22 47:20,21 48:5 49:10 50:12 52:5,11 53:1,7,19 54:1,9 55:17 60:4 60:11,16,20 61:6 62:11,14,19 64:11 66:11 67:14,15 80:5,11 81:6,21 82:14 83:6,10,17 84:1,4 86:17 89:1	89:2,8,17,21 90:4 90:10,19 91:5,13 93:11,20 94:4 95:4,14 96:16 100:19 101:11 102:20 105:8,8,12 105:15,18,22 106:2,6,9 107:21 109:4 110:18,22 111:14 114:4,5,16 114:19 118:6,11 118:22 120:1 121:5 122:1,11 131:3 132:3 154:7 155:4,18 156:18 157:21 160:3 166:3,16 168:11 168:14,20 171:1,3 171:6,11 172:6,8 172:14,15 173:1 173:13 174:9,13 174:22 180:15,18 180:22 181:16,20 182:6 183:11,17 183:17,20 185:11 185:22 186:3,13 187:6,13,16 191:1 191:3 194:1,15,18 195:17 196:8,17 197:3,16,21 198:3 199:1,2 201:11 202:11,18 203:13 204:3,13,18 206:12 207:3 209:17 210:13 215:21 221:7,15 221:20 224:7 225:8,20 226:9 235:21 238:17 241:3,12,17,20,22 243:8 248:9 252:2 256:15,19,20 258:4,7 260:14 261:19 264:11,21 265:2 266:10 268:17 272:9 274:3 277:4 278:4
---	--	---	---	---

282:16 287:13	21:8 132:7 206:6	343:10	170:13 174:13	243:10 277:15
291:6,16 294:16	274:13,14 373:6	Matthew's 72:12	177:3 178:16	279:17 290:14,19
294:16 296:9,21	374:12	maximum 112:20	180:19 181:4	291:14,20 292:10
298:14,16,22	Maria's 141:9	113:3 213:10	182:2 183:16	303:2 314:8
300:18,22 301:22	253:17	MD5 189:14	189:12 194:18	326:13 355:9
307:19 308:19,22	marker 350:6	mean 36:7 45:6	199:2 214:20	358:3,17 379:12
313:20 318:16,22	markers 242:7	49:4 52:4 68:14	256:15 258:7	379:14 383:16
320:11 323:8	market 58:2	79:15 81:19 86:2	271:9 282:16,17	memory 177:13,13
324:8,12 325:17	marketplace	86:11 95:6 99:22	282:19 298:15	177:15,15,17,17
326:2,12 327:4,14	117:12 310:4,5,6	106:11 113:15,19	305:22 326:11	233:17 279:11,22
328:2,11,20,21	markets 309:12	113:21 128:19	330:1 334:11	307:12 333:20
329:7 330:1,4,5	Martin 284:11	138:15 139:4	340:9,21 355:7	Menell 2:4 4:8 8:7
330:14,15,17,18	mass 165:5	140:5 143:12	379:5	23:7,7 25:3,10
331:2,3,15,21	massive 42:4 50:22	148:6,9 160:21	meant 34:9 62:3	28:16 34:14 36:2
332:1,22 333:8	50:22 149:13,14	161:12,22 164:21	97:15 129:22	36:6 43:13,22
340:11,21 341:18	199:10	182:20 190:14	143:12 148:18	44:1 45:15 46:15
342:1 343:15	match 359:5	192:12 198:18	153:6 172:3 243:8	48:15 56:14,16
344:6 345:10,15	material 31:9,12,13	199:1 209:12	299:4 344:19	57:3 62:17 64:19
346:7,12 348:1	31:15 33:5 38:2	210:15 211:7,10	measure 289:18	64:22 66:17 80:3
349:22 350:2,16	42:19,21 44:17	212:4,11 213:7,9	measured 289:11	80:16,17 87:9
351:11 352:3	51:11,15,21 52:9	216:16 232:17	measures 310:2	92:18 96:22 97:4
355:8 356:15	55:19 99:4 119:15	236:8,9,21 237:7	mechanical 334:20	97:5 112:1 117:21
360:7,14 361:19	158:4 182:15	245:19 246:17,20	mechanically	158:3,21 215:19
361:22 362:20	materials 32:8 70:6	254:10 260:17,18	150:19	223:8,8 226:12
363:1,14,22 364:2	70:16 98:10 117:5	261:14 272:14	mechanicals	228:2,3 237:4
367:17 368:2,17	117:8 144:7	282:19 283:9	356:19	256:10 257:22
371:9,14 372:6,9	229:12 364:10,11	284:15,19 285:7	media 1:13,22 2:10	258:10,11 275:6
372:22 373:18	364:18	291:17 304:13	4:16 5:15 7:13	276:21 278:13,14
376:17 377:17	Matt 23:9 34:13	305:17 306:5	8:16 23:18 125:9	288:5 295:20
379:3,22	51:6 322:10	312:19 316:12	222:15 223:14	302:11 306:11,12
manage 311:4	matter 64:6 73:22	339:9 340:4	310:7	Menell's 290:10
management 30:15	92:6 103:15 124:3	353:13 364:11	medium 38:17 48:7	mention 58:22
managing 137:9	127:12,17 138:12	366:20 381:15,18	189:5	69:22 94:2 169:3
252:22	140:18 142:3	382:19	meet 19:15	262:2
mandate 239:8	184:16,18 189:4	meaning 36:5	meeting 19:13	mentioned 15:4
314:16	189:10,17,18	66:10 127:11	273:11 384:15	39:12 60:17 72:7
manifest 35:9	205:3,11 209:12	161:9 171:2 200:6	meets 175:5	138:6 143:6 151:3
manner 147:18	220:20 231:10	231:22 327:12	member 82:16	160:11 169:12
158:14 240:3,8	252:7 255:13	364:1	125:5 170:16,17	201:7 213:18
340:20 356:1	269:22 280:20	meaningless 215:1	175:1 202:9 204:6	214:9 228:19
manufacturer 86:1	298:18 321:3	meanings 26:12	228:6 358:18	235:12 237:6
manufacturers	332:4 346:18	138:1 241:7	365:17	262:15 268:9
85:17	349:14 363:1	means 40:5 42:17	members 13:22	272:12 278:2
map 92:9	377:10	43:6 56:9,12	18:6 19:11 70:19	283:4 284:8
March 177:2	matters 370:7	62:12 82:16	76:15 110:20	343:11 349:18
Maria 2:13,17 3:6	Matthew 2:7 4:13	102:10 108:12	169:20 180:3	354:20 360:8
11:7,11 15:2,4	9:20 341:11	127:12 135:12	202:2,6 241:18,18	362:5 367:21

384:2	minus 354:6	month 329:3 378:20	multiply 48:3	6:7 8:5 9:19
mentioning 48:15 148:12	minute 111:21 129:20	months 343:13	multiplying 199:5 208:7	125:16,22 173:11
mentions 187:14	minutes 17:6,20 109:20 120:10,14	moral 263:8,17,20 370:16	murder 284:12	199:22 201:14
mere 33:18 42:5 71:14 270:21 333:2	200:15,21 215:16 295:8 310:11 313:11 365:2,5	morally 79:14	music 1:16 2:6 5:9 6:7 9:10,19 20:15 76:5 124:21 125:22 132:12 154:14 176:2,11 179:14 225:15 276:3,6,9 310:20 322:17 344:17 357:8,9 359:12	206:7 207:5 223:6 240:20 242:20 322:17 331:18,19 331:19 349:15 367:10,11,19
merely 27:21 91:14 164:9 181:16 191:1 204:13,18 296:17,22 298:17 302:2 328:10	misinterpretation 375:7	morass 272:13	Musique 356:19	nations 362:14
merged 357:2	misinterpreted 107:15,20	morning 11:3,14 15:3 21:7 22:18 132:11 134:13 135:18 155:8 195:22 205:2 228:4 229:7 237:5 287:8 299:16 335:5 336:13 354:21 372:15 373:12		nature 128:14,17 146:16 162:21 230:16 289:9 357:4
merger 104:18	misplaced 266:22	Mosenkis 2:5 4:10 23:12,12 174:17		near 247:16
merit 86:9	misreading 172:13	motion 2:8 6:10 70:10 98:12 126:2 159:6 260:7	N	nearly 113:2 131:20 228:5
meritorious 374:4	missed 307:8	motivation 115:18	N 354:5,5	necessarily 95:6 120:2 123:6 140:13 156:5 166:12 167:17 170:13 197:7 202:18 247:1 249:14,21 256:5 268:10 289:6 320:14 350:22
mesh 286:11	missing 186:13	move 38:1 49:12 152:15 165:10 232:4 283:11 295:6 336:16	name 19:8 21:19 22:4,9 29:6 124:16 189:4 222:2 321:21 322:1	needed 17:12 18:4 47:6,7,22 48:8 51:1 52:1,2,13 68:1 85:2 90:9 117:12 139:19 140:17 144:13 149:18 153:11 163:4 187:20 197:6 198:11 199:17 201:20,22 210:17 214:3 218:20 226:16 233:13 241:6 244:9 246:3
message 27:22	missteps 109:13	movie 151:15	Nancy 2:10 4:15 8:15 23:15 118:3 223:13 234:1	
met 1:8 86:5 189:22	mistake 75:15 296:8	moving 179:12 231:16	Nancy's 320:3	
metadata 117:14 312:9	Mitch 1:19 7:17 245:11 295:17	Moy 2:6 6:4 8:11 125:18,18 169:6 223:11,11 276:21 277:1 285:14 302:9,13	Napster 72:16 75:16,18 76:5,9 260:10,10	
metaphor 96:8 231:5 232:2	Mitch's 315:8	Moy's 318:15,20	Napster's 76:11	
method 135:7 152:6 192:13 214:9 252:13	mitigate 131:21	multi-stakeholder 157:8	Napsters 78:20 79:1	
methods 152:8 177:8 194:11 206:1 214:8	mobilize 381:12	Multimedia 29:7 30:12	narrow 254:3 374:2 375:12	
micromanage 317:20	modality 113:14,15 309:9	multiple 26:11 47:22 65:16 95:11 122:6,7 133:17,22 306:16 340:3 353:22 354:2	narrowed 122:9	
microphone 22:2	model 74:7 75:8 122:7 227:18	multiplicity 133:15	narrowest 171:16	
middle 335:12	models 134:19 199:14 292:4 380:12 382:5		narrowing 27:4	
million 42:8 77:5 77:19 219:18	moderate 16:14		narrowly 108:9 121:8 172:22 339:8	
millions 159:11 160:4 211:3	moderated 15:13 81:2		NAS 308:21	
mind 122:20 142:4 159:1 284:19 325:9 363:12	moderators 15:21		Nashville 22:6 247:21	
mindful 16:8 149:11	modernized 23:18 66:1		nation 234:13,14 281:11	
minimize 104:21	modestly 82:18		national 2:3,6 5:21	
minor 103:16	moment 46:20 60:9			
minority 181:11 191:8 213:21	moments 302:8			
	MONDAY 1:5			
	monetary 119:9			
	money 67:22 88:8 100:1 112:11 373:18			
	monkeying 214:3			

250:17 257:21	203:10	201:16	354:4 365:15,16	16:17 120:17
262:4 274:1	neutral 121:9,21	non-volatile 177:13	365:17	159:14 165:21
278:11 284:4	never 69:18 109:2	177:17,21	numerous 93:17	170:6 255:17
288:13 298:13	113:2 146:11	nonprofit 164:14	<hr/> O <hr/>	263:2 291:17
300:6,12 301:20	207:6,8 226:22	normal 193:3	o'clock 124:1	352:2 363:4
303:1 306:17	227:13 233:16	normally 208:2	object 37:20 38:16	366:11
309:18,19 316:1,2	254:21 294:2	365:4	44:17 55:20	occasion 233:17
317:3,18 348:15	307:7	norms 185:16	151:14 152:21	occur 197:8 270:10
349:6 359:14	new 28:5 134:19	notably 74:15	153:6,9 233:18	301:17 303:14,17
365:8 371:7	168:7 239:2	370:16	280:14 311:12	338:20 339:18
373:13,19,20,22	254:15,15 256:4	note 27:16,21 28:12	objectives 124:12	371:16,17,18,20
377:6,8 378:2	282:4 288:13	45:8 116:11 146:3	objects 31:9,12,14	occurred 71:18
380:17	296:21 311:22	164:4 248:3	31:15 33:5 38:2	119:22 219:9
needed 48:11	320:12 322:5	287:17 347:22	42:20,21 106:4	297:7 302:16
181:14 201:5,11	327:6 328:15	379:11 382:12	193:12	340:1
268:10 338:16	338:22 345:20	noted 175:10	obligation 60:14	occurring 54:10
needs 59:11 114:11	346:8 351:13	notice 16:22 19:21	267:19 327:15,16	166:2 300:9
149:10 157:6	353:6 376:15	27:11 119:19	obligations 13:2	occurs 64:2 303:15
161:6 166:4	newer 152:8	129:9 147:22	14:4 24:11 55:8	Octane 37:1
231:22 237:10	newfound 340:20	214:20,21 215:6	60:4 75:22 104:4	odds 35:21 304:1,3
240:13 266:9,13	news 347:12	312:5 330:11	131:17 155:21	offer 35:20 92:3,21
312:5 339:17	newsworthy	349:4	158:15 181:9	149:11 207:7
372:21 375:14	347:20	noticed 376:7	184:19 185:3	270:13 326:22
380:8	Nicaragua 331:13	notices 84:19	188:1 190:11,15	329:6 355:14
negatively 50:20	nice 348:15	notion 40:9 49:21	190:20 191:11,20	offered 34:18 50:18
negotiating 172:17	nifty 93:4	78:11 79:5 135:21	192:7 200:11	130:14 197:21
negotiations 16:10	night 25:5	138:21 139:7	209:6 249:8	206:21 207:8
140:7 240:19	NII 240:19	140:11 145:6,6	262:22 265:7	246:15
neither 164:8 349:6	Nimner 45:16,18	167:19 168:1	266:12,20 267:3	offering 13:19,22
nervousness	99:17 280:19	177:3 252:1	267:15 268:2	33:18 39:7 54:11
260:22	nine 37:12 158:6	254:11 266:18	293:11 353:2	90:22 91:2,7,7,8
nest 371:13	nineties 151:10	267:21 342:2	369:15 370:11,13	91:22 111:5,9
NET 241:13 243:7	Ninth 29:9 72:17	notorious 361:8	370:19	137:20 145:15
257:4	no-brainer 82:1	notwithstanding	observation 84:15	149:22 170:19
network 110:19	100:19	214:5	364:14 368:5	174:14 180:3
159:12 160:6	NOI 16:21 19:21	novel 252:18	observations	184:10 195:19
169:16 189:5	384:4	novels 252:21	364:19 365:19	287:9 302:16
191:4 202:3,6,9	non 55:7 173:16	nowadays 373:17	observing 56:4	313:18 314:9,22
202:13 204:7,20	218:7 383:8	null 382:19	obsolete 258:18	328:9 330:14
208:10,15 209:16	non-commercial	number 13:13 16:4	288:10,17	331:21 333:3
212:13 241:17	319:13 383:12	17:3 38:7 93:18	obtain 227:15	345:16 367:17
243:9 257:6	non-compliance	105:10 110:2	obtained 40:1	372:13
277:17 311:5	198:9	118:10 132:16	obtaining 150:7	offerings 186:22
314:7 319:6	non-legalistic	208:4 221:8	obvious 32:9 96:15	offers 34:21 71:21
networked 303:13	122:19	263:10 268:8	145:4 172:3	91:15 114:9 143:4
networking 310:17	non-public 319:12	276:18 318:20	353:16	380:2,3
networks 20:15	non-tangible	319:12 320:5	obviously 14:12	office 1:1,8 2:14,15

2:17,18,20,22 3:4 3:6,7 11:4 12:12 15:6,20 18:20 19:14 20:22 27:5 45:11 92:16 130:16 145:21 146:6 149:20 155:1 156:1,6,19 157:10,13 192:3 207:19 224:16 225:5 231:20,22 234:9,17 235:4 236:17,18 239:6 242:13,16,19,21 243:3 245:1 246:4 246:16,20 247:4 248:6,7 249:3,17 249:20 261:3 262:1 268:12,16 269:5 270:2,8,16 270:21 271:2,7,22 277:11 278:18 279:17 280:16 281:20,22 282:11 282:14 286:6,14 289:18 306:4,13 306:18 307:9 308:10 315:14 316:8,22 330:11 336:4 340:16 341:16 354:17 356:4 Office's 25:12 146:15,19 Officer 7:9 official 278:22 officially 368:1 offshore 227:16 372:17 oftentimes 177:20 310:19 oh 46:14 64:6 112:8 149:5 169:3 175:7 188:22 203:16 219:10,12 231:19 250:12 262:9 267:21 273:20	316:22 320:11 348:14 okay 20:5 21:15 28:16 33:10 38:4 46:14 51:9 75:17 75:18 76:9,10 79:14,22 83:19 107:5 136:15,22 138:19 157:15 159:9 165:13 167:13 170:4 176:2 182:13,21 183:1,10 210:9 215:19 216:9 221:3 233:4 239:12 285:20 321:6 325:21 332:10 334:3 342:12 383:19 old 137:5,5 169:1 237:8 284:10 353:6 older 195:13 on-demand 106:19 195:11 once 52:19 65:15 86:4,16 95:19 107:22 161:2 215:3 229:19 243:10 271:4,11 one's 209:13 one-third 297:9 one-to-many 257:12 onerous 115:22,22 ones 68:3 78:19 331:14 ongoing 139:1 162:20 316:15 online 13:4,11 108:1 111:12 112:6 119:14 212:21 226:19 270:19 301:4,14 362:6 Oops 284:11,18 open 19:13 26:12	29:20 120:9 127:3 208:21 257:8 259:9 261:1 269:14 273:5 295:11 298:20 306:22 318:9 367:1 371:12 379:2 opening 3:2,5 11:12 19:4 61:2 222:3 229:20 opens 229:20,21 operating 65:11 176:13 operation 96:18 operations 151:20 152:1,2 154:2,8 176:10 193:6 operators 203:3 opinion 29:15 36:11 44:6 45:5 45:19 46:7 48:16 48:16,17 130:21 153:6 195:7 212:16 246:15 285:18 286:4,7,11 286:14 287:16,18 297:12 305:3 338:14,21 339:3,4 opinions 14:14 44:3 103:12 286:10 287:19 290:5 292:20 305:13 opportunistic 372:12 opportunistically 74:22 opportunities 257:17 opportunity 4:19 6:18 8:20 10:20 69:22 109:21 133:6 146:18 200:16 260:18 opposed 141:18 183:17 231:13	317:4 349:1 opposite 36:16 187:6 359:8 opposition 381:13 option 231:18 order 3:2 41:21 71:18 83:10 189:11 205:7 225:22 257:9 275:19 276:20 283:5 285:11 308:1 314:4 323:22 332:2 334:1 376:8 380:17 ordinary 177:14 187:12 188:4 organization 9:3 21:20 56:3 organizations 22:8 175:17 225:19 247:19 367:3 organize 279:5 original 57:13 105:16 108:20 167:12 240:15 304:17 339:1 348:22 originally 262:20 348:20 orphan 229:21 279:1 ought 63:22 83:8 237:11 260:19 281:2 308:12 outcome 35:14 48:22 49:1 115:6 234:5 246:8 333:19 339:20 341:2 outcomes 325:11 outlier 329:14 outside 28:8 66:7 74:10,18 115:10 361:21 375:18 outsider 202:8 overall 60:3 150:14	336:14 369:3 overarching 351:7 overdue 239:5 overestimating 303:19 overlap 230:18 296:13,14 343:13 overlapped 186:8 overlapping 353:22 380:8 overriding 140:14 overtaken 121:15 overused 231:5 overwhelming 235:16 342:11 overwhelmingly 367:15 owner 39:19,19,20 40:3 150:3 186:17 189:6 211:8,19 349:3 owner's 206:2 owners 12:16 13:1 50:9,21 77:17 112:3 233:20 356:2 ownership 31:6,16 43:4,6 47:12,14 47:14 48:11 51:17 52:3 54:17 58:3,5 105:3,17 145:11 182:12 270:12 owns 95:22
P				
P 1:15 3:14 7:16 P-R-O-C-E-E-D-... 11:1 p.m 220:21,22 221:2 321:4,5 384:14 P2P 103:1 PACA 2:10 4:16 8:16 23:18 223:13 page 44:12 244:12 paid 134:2 273:9 Pakistan 331:13 palatable 68:4				

Pallante 2:13 3:6 11:8,14 261:2 262:1	137:7 151:7 156:21 252:20 281:5 332:20	84:7 90:1 98:3 105:19 107:9 108:6 113:13 134:15 186:17 195:8 202:7,11 217:18 218:5 237:2 239:9 242:1 249:5 260:3 283:10 285:21 286:19 287:20 323:16 324:8,18 330:22 336:9 357:14 368:17 369:12 371:22 374:6 375:12	252:13,14 patents 152:5 163:21 path 259:14 282:15 pathological 82:19 pathology 260:3,3 patient 257:16 patina 123:3 Patrice 2:3 5:20 8:4 125:15 223:5 254:19 pattern 206:10 252:5 256:4 347:12,17 patterns 97:10 254:15 pause 273:17 350:17 pay 95:18 96:17 178:12 219:20 374:8 paying 98:13 309:9 374:7 pays 122:20,21,21 pecuniary 85:21 peeked 26:22 peer 202:11,15,20 203:2 peer's 202:10 peer-to-peer 20:14 159:11 160:5 191:4 201:21 202:3 203:4 204:7 204:19 209:16 211:13 216:10 275:11,13,22 276:7 319:6 378:18 peers 112:10,13 penalties 110:17 Pennsylvania 125:6 people 16:8 25:15 31:18 41:22 56:11 70:3,22 73:3 75:16 76:22 78:9 81:9 85:6 90:20	95:8,18 96:17 98:18 111:18 133:13 147:6 153:13 156:9 159:11 160:4 163:8,9,16 164:5 166:17 176:7 183:10,22 195:18 200:19 202:2 203:8 213:14,15 218:18,21 233:9 235:18 244:9 245:19 247:17 252:20 259:7 273:6 276:18 279:12 280:9 283:3,4 284:1 289:6 291:2 295:9 296:4 299:3 306:4 306:5 309:12 310:10,19 312:22 313:5,22 314:21 319:12 340:22 344:5 347:21 378:11 380:18 people's 89:13 perceive 234:16 percent 266:6 perennial 377:3 perfect 108:3 109:6 118:7 120:1 218:1 234:2 243:22 244:14 254:17 349:5,6 perfectly 61:18 159:8 160:2 301:11,17 perforce 208:12 perform 136:4 142:2 151:19,22 152:1 154:2,8,11 164:9 174:21 176:10 193:5 312:7 performance 48:1 91:21 92:1 93:1,5 95:1,2 96:5,13
Pallante's 258:12 Pandora's 261:1 panel 21:18 54:2 66:22 81:2 82:22 84:3 91:11 110:6 111:3 116:5,7 118:12 120:17 122:14 124:7,9,12 126:9,13,17,18,21 128:7 130:11 133:7 138:7 141:4 141:11,11 145:8 155:14,22 160:12 160:18 161:21 164:5,6 170:9,22 172:13,18 177:11 177:11 188:11,15 191:14 197:18 200:17 201:7 209:10 213:18 216:22 221:12 228:7 229:7 235:13 269:8 277:2 278:3 303:2 321:8,9 346:16 351:18 353:8 365:3 381:10 panelist 17:5 97:13 205:2 panelists 3:9,12 4:3 6:3 7:4 8:3 9:6 10:12 12:5 16:4 17:3 41:11 145:9 155:11 197:13 220:9 223:21 224:3 268:9 315:5 318:8 320:19 321:18 381:1,3 panels 221:22 268:21 329:21 377:20 panoply 65:21 380:5 paper 92:10 137:6	papers 122:14 305:20 paragraph 57:22 355:21 parallel 209:7 parameters 282:21 paraphrased 104:12 parenthetically 164:4 333:10 parliamentary 382:14 part 3:11 5:3 12:9 39:19 42:10 59:7 60:2 79:6 82:19 98:11 103:19 118:5 124:11 133:20 157:5 160:5 195:8 212:12 231:1 232:3 242:8 263:6 274:18 306:19 307:3,16 308:2 315:1 320:1 342:13 349:20 Participant 15:18 participants 5:5 15:16 16:2,6,7,19 17:17 18:1,16 19:5,6,10,12 20:3 21:3 32:11 118:1 120:16 123:10,13 202:12 313:12 321:9 379:17 383:15,16,20 participate 18:10 202:3 participating 136:9 participation 18:9 213:13 302:9 321:10 365:6,7,11 373:8 381:7 particular 35:19 43:16 55:14 80:13	particularly 103:1 118:15 134:17 148:5,11 199:20 311:18 318:15 parties 59:1 63:11 67:14,16 73:5 86:22 87:1 115:3 130:19 221:17 224:13 250:1,1 partisan 289:6 partners 368:12 parts 39:4 228:17 229:22 party 68:6,22 86:12 183:15 206:13,21 207:6,7 208:13 217:3 pass 165:12 passage 57:6 99:19 passed 343:14 paste 108:16 Pat 152:9 patchwork 53:21 91:19 95:17,21 241:4 350:1 patent 36:22 135:4 136:12,21 156:19 163:19,20 164:7 164:10 176:21 252:10 261:2 272:12 patented 152:6		

106:8,22 107:2 120:22 121:6,13 122:9 132:12 142:14 152:2 179:1 186:7 238:20 240:8 241:5 249:6,9 251:9 252:12 256:16 257:1 266:21 267:13 272:11 273:22 274:2 296:14 299:1 320:6,8 324:15 329:13 332:12,18 333:3 334:11,19,21 335:21 340:10 342:21 343:7 351:16	perspective 122:8 167:22 341:14,20 357:22 perspectives 358:3 persuasive 115:8 pertinent 280:5 petabytes 378:20 Peter 2:4 4:8 8:7 23:7 25:2 94:18 223:8 230:9 phone 136:18 phones 18:17 Phonogram 307:15 phonograms 12:19 308:2 phonograph 88:11 phonorecord 38:8 38:10 39:13,15,22 40:5 41:1 42:15 47:4 48:6 96:14 phonorecords 31:3 31:9 39:8,10 42:19 43:3 47:1 47:21 53:10 57:9 105:2 111:6,8 137:21 photo 320:2 photocopies 319:18 photograph 101:4 photographs 88:4 phrase 38:8,12 60:18 61:1 76:6 226:8 353:4 physical 37:20 38:17 70:20 129:13 148:18 152:21 153:6 172:8 217:20 218:8,9 pick 259:20 299:3 picked 307:14 picking 179:20 231:6 237:2 picture 2:8 6:10 70:10 98:13 126:2 159:6 260:7 314:3 piece 28:12 159:6	257:2 pieces 95:7 231:16 239:15 251:14 328:2 371:8 pigeonhole 168:22 pile 210:9 piracy 109:10 112:6 362:5 373:9 378:10 379:21 place 81:4 94:15 169:19 176:18 179:8 235:18 293:18 307:10 314:7 326:15 350:6 352:16 355:10 placed 275:22 placements 309:18 places 115:10 275:12 301:13 382:21 placing 169:10 278:9 plain 28:19 36:5 40:7,22 47:10 127:12 158:1 171:2 172:7 174:13 364:1 plainly 44:14 49:22 plaintiff 71:10,18 183:14 191:7 208:3 212:11 343:4 377:16 plaintiffs 59:19 65:19 85:15 88:7 112:22 187:4 205:6 218:16 219:4,15 plan 285:21 platform 15:17 19:7 21:2 124:15 plausible 44:21 46:3 play 167:7 176:1,4 176:7,10 177:10 183:16 252:5 259:11,12 284:21	311:17 319:2 339:10 347:10 played 65:7 306:13 players 65:16 134:14 playing 280:2 311:20 plays 128:21 176:7 281:5 plead 79:8 pleading 75:2 please 16:7 17:11 18:3,17 28:14 50:18 120:12 151:1 192:10 219:5,7,10,10,12 237:17 310:13 315:14 379:15 381:5 pleased 87:8 pled 112:21 plenty 133:22 plus 381:22 podium 120:13 379:15 381:6 point 17:8 33:4,12 33:14 35:1 37:19 38:1,15,22 40:10 40:11 44:21,21 45:10,20 46:1,3,3 46:18 47:12,19 48:20 49:20 53:12 55:20 57:14,15 58:19 60:1 61:10 61:12 72:12 74:13 76:18 80:22 81:6 85:8,20 99:21 106:15 118:3 142:21 148:16 152:16 156:18 157:1,18 161:6,11 161:12 178:8 184:17 186:15 187:18 191:15 195:18 200:8 205:17,19 210:15 237:13 239:12	240:2,6,12 246:3 253:10 254:7 255:12 256:1 259:5,18 271:3 275:8 290:12 291:3 292:9 295:7 295:16 299:11 307:13 337:4,18 341:10 342:12 344:10 345:9 348:12 353:16 359:18 368:14 369:2 370:17 376:21 382:4 pointed 60:13 61:11 88:7 155:14 246:16 263:11 297:8,14,21 299:16 330:3 377:19 pointing 115:9 338:7 points 15:10 59:4 110:10 165:16,22 192:11 295:15 336:14 366:10,20 368:9 poke 239:16 polemic 155:12 poles 335:7 policy 2:14,17,19 2:21 3:3 4:5,13 9:21 11:19 15:7 18:20,21 19:14 21:6,9,13 23:3,10 52:7 56:18 64:15 80:19 158:19 159:12,22 169:8 170:2 242:21 264:10 298:7 policymaking 233:14 political 130:18 242:7 politics 257:18 porn 82:10 88:4 ports 167:11
---	--	---	---	--

pose 17:1 250:15 262:12	practical 103:15 127:11,16 138:12	367:12	previous 61:10 114:13 138:7	problem 73:1 74:6
posed 331:1	146:2 149:7 157:3	present 1:10 2:12	145:8 146:15	75:4 79:2,20 95:5
posited 245:14	157:19 158:18	170:2 259:4 265:4	149:4 155:14	120:3 133:1
positing 211:4	189:4,9,18 205:3	306:1	157:17 159:17	138:11,15 143:17
position 32:16	205:11 221:13	presentation	161:20,21 164:6	143:19 170:1
61:12 91:13	231:9 312:15	277:13 303:12	169:4 203:15	209:4 213:4
190:16 249:10	341:22 359:17	presented 126:17	329:21 377:20	227:17 231:21
250:19,21 251:6,8	practicalities	251:22	previously 86:18	246:10 276:16
262:15,19 264:1,6	157:12	presents 44:10	price 101:3	279:20 294:19
265:2,5 270:18,18	practicality 157:11	preservation 117:2	prima 103:20	295:3 304:10
271:7 290:8 296:3	practically 149:19	117:4 229:12,15	189:22 320:13	309:6 315:19
307:22 328:22	358:6	preserve 70:21	primarily 133:4	333:13 353:20
371:6	practice 205:5	116:17,17	223:16	358:12 361:16,16
positions 271:14	240:22 285:7	preserved 372:4	primary 62:20,20	362:5 371:14
298:11	practices 295:1	President 3:16 4:11	principal 62:20,20	374:1 377:6,14
positive 92:6,11	303:7,7 306:4	4:13 5:9,17 6:9	principals 95:5	problematic 54:4
118:4 373:16	344:15 359:21	7:6,18,21 9:9,11	principles 308:14	62:10 73:13
376:2 380:16	360:12 364:9	9:21 22:15 23:10	principle 29:3	320:10 346:2
possessed 182:20	praises 36:11 44:7	124:21 125:13,21	171:13 212:17	problems 78:20
possession 183:7	pre-1976 34:19	126:2 222:7 223:3	principles 209:9	254:19
possibility 54:11	pre-legislative 28:2	300:1 322:5,16	350:14 375:12	procedure 336:9
236:11 277:4	preamble 355:21	pressure 150:14	print 137:6,7 151:6	349:5,6
372:4 374:20	precedent 74:15	288:12	prior 117:1 126:21	procedures 167:16
384:2	121:14	presumably 162:5	130:10 321:19	proceed 285:21
possible 14:17,19	precedents 359:3	276:5	323:3	proceeded 28:21
64:18 93:8 171:16	precise 200:6	presume 218:20	pristine 369:1	proceeding 146:17
199:19 232:8	precisely 44:16	presuming 94:13	privacy 81:3,4	238:16
294:3 354:22	256:14	presumption	263:12	proceedings 19:4
356:2 369:14	predating 27:20	219:11	private 32:6 70:15	156:10 188:4
possibly 186:21	predicate 73:15	pretend 68:2 86:3	83:4 93:5 122:5	271:22 272:8,17
226:8 244:22	predictions 289:6	140:18	371:13	356:11 384:8,10
271:1 364:15	preexisting 144:6	pretty 32:5 35:15	proactive 259:17	process 16:11
post 315:10 384:7	168:6 179:14	38:14 114:10	probable 339:20	29:18 30:17 32:12
post-Berne 327:10	311:20 352:18	119:7 142:2,9	probably 25:14	40:17,19 68:16
potential 188:17	prefer 236:15	148:13 149:9	52:7 70:7 72:2	95:16 97:7 108:4
199:4 237:6	249:15	159:15 171:22	91:10 100:12	108:13 116:21
250:17 354:4	preferable 325:13	172:1 175:5	132:1 138:16	135:13,15,16
potentially 19:17	preferred 131:18	195:20 208:3	145:19 149:14	140:6 149:15
159:10 160:4	prejudice 326:5	214:22 217:16	152:12 167:21	154:6 155:2
187:11 229:9	prematurely 371:2	240:16 242:3,22	210:4 225:1	156:21 157:8
353:6	premise 149:17	259:9 286:5	231:11 254:8	189:17 192:2
power 65:13	184:4 263:17,19	307:22 313:15	255:11 265:8	194:15 199:5
177:16,18	preparation 331:5	prevent 78:17	274:17 275:3,16	215:5 234:12
PowerPoint 277:13	preparations	303:8	290:3 292:7 299:5	240:21 242:8
303:12 320:3,4	339:22	preventing 163:3	319:14 362:3	243:4 251:19
powers 233:19	prepared 110:18	preview 83:16	364:13 365:8	259:8,9 261:7,11
		previewed 88:22	375:13 382:1	280:3 281:5

323:21 324:13	258:10,11 275:6	proper 192:4	248:7 269:17	186:6 223:11
325:16 330:12	276:21 278:13,14	properly 190:18	282:1 349:3	228:12 235:2
334:12,16 336:2	280:19 288:5	191:12,18 313:6	360:21 362:18	238:19,19 241:18
337:16 356:13	290:10 295:20	property 2:9 5:18	369:14,17 383:17	241:19 243:10
processed 154:2	302:11 306:11,12	6:13 7:21 9:3	provided 115:17	249:6,9 251:9
193:5	318:11,12 322:13	10:15 125:13	119:10 284:2,3	252:16,19 253:4
processes 156:5	322:18 323:19,20	223:3 322:21	293:8 323:11	256:15,21 257:2,6
processing 311:19	325:19,20 330:2	358:4,13 369:11	provider 68:17,18	257:12 259:2,4
produce 150:20	334:17 335:5	proponents 160:14	86:2 119:5,8,13	266:21 267:13,13
produced 117:8	336:15 338:6,21	proposal 91:22	119:18 195:17	270:11 272:10
producers 164:16	341:5 345:5,6	proposals 157:12	providers 85:16	273:22 274:2
producing 149:12	347:8 348:9,10,18	376:11	provides 155:4	279:15 286:11
product 142:3	349:10,12 350:19	proposition 53:13	279:2	296:14 299:1
309:18	352:5,6 355:5	prospect 326:21	providing 166:15	302:17,18 305:16
products 141:15	360:22 361:1,14	prospective 230:21	166:20 180:7	306:6,20 314:8
373:15	369:21,22 373:5	345:16	281:14 293:6	320:6,8,12 324:15
professionals	378:8,9 379:9,16	protect 13:1 50:10	334:4 361:17,20	326:4,7,10,12,14
234:10	379:19	65:20 314:17	363:22	327:13 328:12,14
professor 3:20 4:6	professors 12:7	373:19,20	proving 75:3	328:15 329:13,16
4:8 8:7 9:14,16	66:17	protected 178:10	provision 30:14	331:22 332:12,17
22:22 23:4,7	profit 319:19	312:4 358:11	105:21 148:14	333:15 334:11,19
25:10 28:16 33:6	profusely 17:8	protecting 12:14	175:14 312:11	335:20 339:8
33:10 34:15 36:6	program 130:1	50:21	343:16	340:10,19 342:21
37:17,18 38:4,5	135:6 136:4	protection 78:5	provisions 26:15	343:6 345:21
39:12 43:12,13	154:12,13 177:4	155:20 164:20	119:19 238:10	346:8,13 347:22
44:1 45:15 46:11	193:3 216:8	178:9 308:1 356:1	326:6	351:4,8,15 352:1
46:15 49:15 51:7	program/comput...	369:4 373:13	provoke 77:8	355:8,10 371:2
53:2,4 56:14,16	130:3	protections 14:4	PTO 92:9 240:19	374:14 380:3,11
57:3 58:17 62:1,2	programming	116:19	public 1:3 2:6 6:5	381:12
62:17 64:19,20,22	178:17	protects 165:3	8:13 12:15 13:17	publication 27:9
65:5 66:16 71:4,5	programs 168:5	protest 78:14	13:22 14:12 20:13	30:4 32:22 33:17
72:9,10,11 73:18	176:13 206:12,12	protocols 272:20	31:5 32:10 53:8	33:21 34:5 39:6,9
73:19 80:3,16,17	214:10,11 239:1	proudly 78:21	53:10 57:8 60:11	89:11,13 94:18,21
82:8 87:8 90:6,8	progress 288:21	provable 216:19	64:7,9,13 75:21	101:12,13 111:4,5
91:1,4 92:15,18	304:2	prove 69:8,10	76:13,16,18 77:3	111:7 129:11
94:10 96:21,22	projects 168:4	103:4,4,22 114:15	77:8,9 82:5 84:22	131:6 134:11
97:2,4,5 99:5	promised 247:13	114:16 139:17	91:21 93:1,21	135:10 137:16,19
101:22 102:2	promote 304:2	150:4 156:9	94:22 95:2 96:4	137:21 142:8,14
105:10,11 106:16	promotes 288:21	208:10 212:5	96:12 100:20	142:16 143:2,4,22
112:1 113:7	314:19	218:21 219:6,8,10	101:11 105:3,16	144:1 145:7,13,14
117:19 118:1,2	prong 71:13,16	219:13,16 224:9	108:12 109:7	145:17 147:6,13
127:8 155:13	prongs 107:1	235:20	110:20 118:16,19	147:21 148:8,8,20
158:3,21 215:19	proof 86:5,13,14	proven 208:3	120:22 121:6,13	154:7 270:9,15
217:8,9 223:8	103:19 150:10	provide 13:18,21	122:9 125:19	287:1,5,6,8
226:12 228:2,3	206:1 208:13	19:21 24:18 66:10	132:9,15,18 148:9	298:18 314:10
232:12 237:4	217:2 218:16	146:18 155:6	173:9,10 175:1	publications 34:17
256:10 257:22	220:2 355:16	180:15 183:16	178:21,22 182:10	publicity 263:12

publicly 107:13 277:21	101:10 110:14 191:2 210:2	269:21 275:6 278:16 288:6	150:12 174:6 184:8 199:22	ratified 331:9 368:1
publish 25:21 26:2 30:5 89:14 135:12 147:13,18	251:13 260:5 271:14 274:15	292:16 297:4 299:7,16,18	241:12 249:1 261:14 287:2	rational 73:3 261:19
published 147:22 270:3,20 330:10	288:12 314:6 315:9 316:12 350:17	304:17 306:15 318:14 323:4,6	294:21 313:5 330:2 334:21 365:16	rationale 42:10 293:6
publishers 1:11 2:5 2:6 4:12 6:7 7:7 9:19 23:14 125:22 151:11,12 152:11 222:9 225:16 322:17 357:8,9	Q	327:2,17 330:4,22 331:20 341:7,15 347:4 350:7,12,13 350:18,21 351:18 352:7,20 353:12 354:15 357:21 363:21 364:13 365:13 366:6 367:9 368:11 372:8,20 374:12	quotation 376:13 quote 37:6 44:13 44:16 54:9 57:5,8 142:12 330:19 quote/unquote 105:22 quoted 113:12 145:9 quoting 88:8	rationalization 233:16 rationalize 83:9 84:21,22 Rayburn 1:8 re-codified 197:9 re-litigate 344:9 re-skew 241:6 reach 35:14 44:15 57:7 92:19 344:11 reached 365:15 reaches 36:16 reaching 48:21 react 259:16 261:5 289:7 318:15 read 14:11 20:7 27:22 39:19 41:2 45:4 57:14 90:11 99:15 105:13 143:16 194:10 196:13 315:19,20 315:20 377:15 378:7 readily 294:21 reading 25:4,19 98:3 144:5 readings 339:3,4 reads 315:12 ready 246:7 249:4 real 17:12 53:19 54:1 64:8 165:4 167:12 170:1 211:7 233:13 282:3 313:2 335:18 340:14 341:2 343:1 real-world 348:16 350:9 351:19,21 realistic 113:2 225:1 reality 134:1
pulled 79:5 98:6 307:5	quaintly-named 299:21	question-and-ans... 18:7,11	R	
purchasing 101:5	qualifying 131:5	questions 13:14 15:20 16:21 17:1 17:4 18:12 19:19 19:22 20:9 24:22 27:17 47:22 49:9 51:5,14 56:21 59:22 64:16 69:9 72:18 80:12 84:7 98:14 109:22 110:6 120:12 126:11 155:10 156:8 180:21 200:19,22 222:4 281:11 289:18 300:6 309:2 360:11 364:7 365:1,9 366:11,14 366:20 384:5	R&D 319:18 rabbit 163:14 radar 84:18 radical 48:22 49:1 radically 335:7 radio 70:14 96:9 raise 75:1 118:9 166:6 283:2 364:13 366:20 raised 15:16 16:21 19:16 25:3 46:4 77:12 110:6 123:19 155:11,16 156:15 190:8 200:17 294:7 341:13 342:17 345:4 352:14 368:11 384:1 raises 82:8 96:15 217:4 258:4 ramifications 232:8 rampant 378:11 range 17:13 213:1 rapidly 13:5 rarely 66:18 Rasset-Thomas 112:7 rate 104:15 121:10 365:20	
purely-online 270:3	Quality 297:15	quick 147:4 204:21 213:19 312:14 347:7		
purpose 27:6 28:10 173:2 236:19 258:15 289:4,19	quantum 201:5,10	quickly 16:18 94:1 116:11 169:7 231:3 312:16 315:9 320:20 374:22		
purposes 52:20 69:7 83:20 178:1 180:5 208:1 257:4 264:9 314:2	Quentin 347:13	quite 27:14 43:17 43:19 47:15 62:9 95:3 131:19 134:6		
push 22:1 312:17	question 13:5 16:13 24:1 25:2,6 26:1 29:22 30:6 32:3 41:11 49:13 49:17 51:17 55:15 62:18,19 63:2,3 63:14,19 64:10 65:1,17 66:1 67:4 69:4 71:7 74:20 76:10 82:15 83:17 84:2 88:22 89:20 90:14 91:16 92:5 93:15 96:16 97:5 122:10,12 126:15 126:17 131:14 135:10 137:15 139:4 141:8,9 142:5 147:5 149:3 149:4 155:3 156:3 156:15 159:14 163:13 165:10 170:5 178:2 179:21 180:2,9,13 184:4 186:7 188:22 190:7,13 197:11 198:18 201:20 207:22 215:20 223:20 224:3,11 240:17 245:13 250:15 256:12 257:15 258:2,5 262:11 268:8,14 269:15			
put 34:22 76:18 82:4 88:13 98:4 99:21 100:4 103:18 104:3 106:3 135:14 150:13 154:22 163:13 167:22 190:9 196:11 227:16 228:10 235:17 238:3 242:10 249:6 250:8 257:20,22 283:20 285:4 309:14 329:11 332:20 344:7				
putatively 333:17				
puts 111:12 200:10 269:4 303:11 348:21 349:2				
putting 60:8 76:12 77:16 90:2 93:15				

realization 300:7	realm 117:7 201:16	recommend 341:17	279:13	reinforce 35:5
realize 191:13	201:17	383:4	referenced 106:16	reintroduce 348:6
258:14 260:21	reason 26:5 41:22	recommendation	330:11	reiterate 17:7
308:14	76:18 119:13	149:21 193:14	references 142:17	33:11 191:21
really 25:18 27:12	138:14 159:12	292:1	217:18	242:16 251:17
28:7 56:1 64:12	163:15 164:12,17	recommendations	referred 29:9 105:9	253:9 267:7
65:10 70:4 78:10	169:8 178:6 203:5	246:21 291:16	119:4 158:9 164:7	reiterated 157:18
79:20 82:2 84:20	217:4 220:3 240:5	recommending	237:5 281:9	328:22
85:12 87:13 94:1	243:1 258:17	254:4	308:19 328:4	relate 81:11 108:20
102:4 103:7	279:9 290:13	reconsider 168:17	355:5 372:15	360:5
107:21 109:13	307:3 315:18	record 70:3 78:22	referring 30:18	related 30:12
110:1 128:11	reasonable 180:4,6	96:8 98:12 124:4	106:12 114:7	229:19 242:12
136:3,14 138:11	180:10 299:6	124:5,14 164:1	119:14 144:6	246:17 258:1
138:14 139:14,19	reasonably 229:18	220:21,22 274:21	173:2 190:4	268:8 330:8
139:21 141:22	301:16	313:5 321:4,5	250:22 354:19	365:22
147:15 153:11,13	reasoning 184:14	357:6 362:19	refers 26:19 44:5	relates 36:21 61:6
153:17 154:12	253:18 254:6	366:19 370:15	106:2 175:11	82:7 259:20
155:12 159:1	reasons 27:2 48:12	375:17	reflected 97:12	relating 242:5
160:18 161:6	52:7 64:5 68:12	Recorded 22:20	refusing 207:18	relation 301:7
165:19 167:12	85:14 191:19	70:11	regard 94:6 128:7	relationship 134:10
168:17 172:5	203:1 204:16,18	recording 1:14,19	142:18 173:13	137:16
181:13 184:16	281:1 292:2	3:17 7:18 18:19	249:5 294:6	relationships 250:5
196:16,18 199:3	rebroadcasting	22:16 30:12 39:16	regarding 24:6	relative 349:7
202:17 205:11	351:15	39:21 40:7 67:8	35:3 113:10 114:6	relatively 103:5
207:3 209:11	rebuttal 192:18	75:14 88:10 260:6	regardless 185:2	146:16 263:18
210:12 211:7,16	recall 72:4 148:14	307:18	212:6 294:1 301:2	365:18
212:1,7 213:4,12	148:20	recordings 70:14	319:22	release 18:2
215:20 216:12	received 18:2 179:7	records 307:11	regards 172:16	released 159:6
219:6,22 221:10	194:5 245:18	recover 377:17	294:13	relevant 14:13
221:13 226:18	334:3 384:6	red 196:1	regime 149:13	61:10,20 68:22
227:17 231:15	recently-released	redefine 177:7	163:15 164:13	111:20 219:2
238:13,22 246:5	82:4	redefining 230:17	165:3 219:14	327:3
247:17 252:9	reception 101:13	redraft 225:1	260:13 261:18	relief 119:9,11
253:21 254:13	recipient's 54:18	reduce 228:21	regimes 200:1	150:18 301:10,10
255:9 261:12,16	reckless 301:15	383:11	343:2 358:5	301:19
262:18 263:22	recodification	reduced 300:22	378:13	relived 81:10
274:1,8 280:14	197:3	redundant 296:11	region 362:10	rely 97:19 143:3
281:9 287:8	recodify 197:6	296:22 298:17	regions 365:21	relying 258:21
290:11 297:11	recognize 92:11	302:3	Register 2:13,16,19	remain 95:16
308:6,10 310:1	204:16 207:18	reevaluate 238:9	3:3,7 11:7,18 15:5	remaining 163:18
312:5 316:1 324:6	310:18 361:9	reevaluated 312:6	26:2 242:2 258:12	310:11
336:13 337:7,8	recognized 40:12	refer 28:2,4 35:4	261:1 262:1	remains 74:7
344:22 347:7	111:10 203:14	42:14 118:15	registered 163:20	293:12
348:19 359:7	297:22 333:1	142:12	registry 311:15	remand 255:9
366:8 368:13	334:18 346:5	reference 41:8	regular 362:15	remark 217:10
374:18 377:10	recognizes 110:21	122:15 130:12	regulatory 271:21	317:7
378:22 379:2	recognizing 12:14	244:7 276:19	272:7	remarkable 36:12

remarks 3:2,5 11:7 11:12 15:18 19:4 70:1 110:4 120:14 123:18 200:22 222:3 295:10 368:10 379:13,15 383:17	reporter 19:3 reports 142:7 315:11 316:19 317:6,21 repositories 229:10 represent 134:15 151:16 247:19 252:13 344:16 357:7,22 representation 153:21 179:11 192:21 310:21 356:20 representative 27:7 173:22 174:1 281:7 368:22 represented 193:7 214:16 representing 21:20 22:7 56:3 137:9 222:19 represents 50:5 132:11 141:13 164:16 reproduce 38:13 reproduced 189:10 211:10 reproduction 41:19 42:2 43:10 48:8 53:17 54:5,10 55:3 57:17 63:2,4 63:5,14,16 65:12 65:13 96:3 107:18 108:7 138:17 142:13 153:1 161:18 162:5,18 166:2,11,14 167:1 209:3,11,20 210:6 211:5,6,6 212:8,9 213:6 216:1 241:5 244:19 275:4,17 276:3 283:17,21 299:14 300:17,21 305:17 335:21 340:10 372:16 377:21 Republic 131:20	request 12:13 require 14:5 67:12 101:13 102:5 103:19 115:22 170:10,16,17 179:22 180:3 184:6,7 205:4 227:3 230:16 required 115:15 178:7 182:12 186:11 205:11 requirement 30:20 35:12 103:17 150:3 163:21,22 189:21 355:16 requirements 214:13 225:6 293:4 requires 31:10,11 31:13,14 51:18 91:20 130:12 180:15 280:18 287:10 requiring 109:14 174:14 288:19 rescue 345:22 research 2:3 5:21 8:6 28:13 32:9 71:8 97:22 98:6 99:12 125:16 169:19 223:6 288:16 307:15 319:13,15 resell 161:4 reside 227:1 resolution 344:12 resolved 167:11 254:22 resolves 299:14 resonance 263:4 resort 35:13,19 59:2 resorting 33:12 resource 35:18 resources 70:5 respect 32:3,16,21 49:10 58:18 63:19	69:10 73:3 91:10 92:4 94:8,22 95:21 115:21 129:17 148:15 220:4 221:14 250:16 264:8 265:2,7 274:15 276:3 277:9 297:3 298:2 324:5,13 325:5 350:9 351:22 361:13 372:16 382:22 respected 29:14 respond 19:19 30:8 33:4,5 72:12 77:15 149:3 157:17 169:7 190:8 200:16 204:22 213:17 223:21 262:9 275:5 308:15 381:9 responding 160:10 378:5 response 20:4 36:3 38:3 41:7,17 47:18 77:12 78:2 106:17 110:5 123:18,20 157:1 163:12 172:11 198:22 200:22 241:14 253:16 289:14 320:4 364:20 383:18 responses 16:20 17:4 32:16,20 49:7,12 120:11 149:2 responsibility 75:22 78:9 112:13 157:10 263:8 responsible 79:12 79:12,14,16 restoration 371:1 restrict 187:8 restricted 187:5 253:8	restructuring 372:12 result 44:18 71:22 93:2 201:15 209:8 256:1 258:6 298:5 301:3 338:15,19 339:6,18 342:1 results 146:17 150:20 294:1 337:1,2 retain 58:5 rethink 253:11 retransmission 325:5,7 retrospective 230:21 return 67:4 73:19 revealing 295:21 revenue 104:14 376:16 revenues 88:10 reverberate 229:2 reverse 104:18 reversed 275:20 reverts 283:16 review 25:4 37:13 258:13 262:2,3 264:18 reviewing 293:2 338:3 revise 238:1 revision 264:19 revisit 339:13 348:6 revisited 241:8 reword 144:18 rhetorical 159:14 RIAA 29:7 30:11 richer 99:3 rid 137:7 151:7 ridiculous 84:17,19 rigged 32:11 right 1:3 11:5 24:7 24:12,16,19 25:8 29:5 30:2 31:1,3 33:17 34:8 41:9 42:1,2 47:3,6,8
---	--	--	--	---

48:18,19,20 49:22	173:14,15 174:9	326:9 327:4,13,14	241:2 245:2 246:1	220:14 237:21
50:11,12 51:8,14	174:10,11,12,21	327:22 328:6	248:10,12 250:10	247:17 259:7
52:2,11,16 53:5	175:4 178:20	329:7 330:5 331:1	253:7 263:8,11,18	329:22 331:19
53:15,20 54:1,5	180:5,8,15 181:1	331:15 332:1,2,12	263:20 293:3,4	rooms 25:14
54:13 55:6,21	181:5,21 182:7	332:18,22 333:9	300:8 302:3	root 133:12
56:2,7 57:2,17,19	183:3,11,13	333:15 335:9	304:21 305:14	roots 317:10
60:4,21 61:5	184:19 185:11,22	336:16 340:12	306:5,8 311:5	Rosenthal 2:6 6:6
62:11,18 63:18	186:3 188:3	341:18 342:2,20	313:21 314:5,18	9:18 125:20,20
65:12,14 66:11	189:20 190:2	342:21 343:6,16	330:9 335:1,19	247:14 322:15,15
67:9,14,16 71:17	195:13 196:17	343:18,19 344:8	336:2,7 340:10,21	335:15,16 356:9
72:1 74:10 81:1	197:4,16 198:1,3	345:11,15 347:10	342:4 343:9 350:1	356:10 366:5,8
82:14,20 83:6,17	199:1,12,18 200:2	351:5,11 352:7,9	350:16 351:10,14	Round 370:22
83:22 84:4,10,18	209:3,11,20 210:6	352:14,17,22	354:8 356:20	roundtable 1:3,8
84:20 85:6,11	211:5 212:3,9,10	354:3,5 355:15	358:8,10 359:2,4	1:21 5:13 11:9
88:3 89:3,9,21	213:7 215:17	360:7 361:19	359:14 370:2,16	15:10,12 20:10
90:19,20 91:5,13	216:1 221:7,11,15	363:16,22 364:3	372:19 373:22	125:6 321:14
91:17,22 92:2,8	221:20 224:7	367:18 368:3,17	380:6,8,17,18	Roundtables 11:4
92:12,15 93:1,11	225:9,20 226:14	371:10,15 372:6	382:10	route 248:13 346:6
94:12,18 95:1,4,9	226:17,18,19	372:11,16 373:1	rights-holder 213:8	routinely 26:8
95:14 98:8 99:22	227:7 228:15	374:7,8,14 376:13	rights-holders	row 285:11 373:4
100:22 102:5,10	230:16 233:22	376:17 377:6,18	209:2	royalties 343:9
104:22 105:1,4,4	235:10,21 237:20	377:22 379:4,22	rightsholders	rubric 293:7 328:1
105:8,9,12,22	238:17,20 240:7,8	380:2	340:18	rule 249:4 250:18
106:2,6,10,12,21	241:20 243:18,20	right-click 109:11	ringtones 96:6	251:8 293:10
107:9,9,11,12,22	244:10,16 245:20	right-like 376:10	ripped 216:4	ruled 37:6 346:7
108:8,8,9,10	246:9 247:21	Rightly 185:5	ripple 238:14	rules 267:1,12
109:14 113:5,13	248:9 249:6,9	rights 3:10 5:3	239:17	296:6
113:21 115:5	251:10 252:12	12:16,21 13:15	rise 371:16	ruling 132:20
118:5,6 119:12,13	255:5 256:17,21	14:6,8 20:11,13	risk 95:11 116:20	253:20 255:16
121:1,5,7 122:1,9	256:22 257:1,4	41:21 47:22 50:21	282:3 339:14	267:22,22
122:12 123:21	258:8 259:7	56:3 65:20,21	340:15 375:2,5	run 136:4 176:20
124:13 131:1	260:16,21 264:11	70:17 71:12 91:19	road 150:20 227:14	195:2 375:5
132:3,4,9,10,15	265:3,8 266:11	94:4 95:10,22	344:11	running 136:3
132:18 133:11	269:7 274:9 275:1	106:9 107:12,20	roadblock 83:11	168:5 176:14
134:2 135:7 137:1	275:2,4,18 276:3	121:3 124:10	Rob 279:19	runs 95:10
142:1 143:14	276:14 277:1,5	132:12 133:15,18	robust 373:22	
145:10 149:18	278:5 282:17	133:22 139:6,10	375:14	<hr/> S <hr/>
152:22 153:4	283:17 284:5	142:13 144:3	role 24:13,14 61:1	s 290:6
155:4,9,18 157:2	296:10,21 297:1,5	150:3 155:6	65:7 70:20 126:18	S-E-S-S-I-O-N
157:5,22 161:1,3	297:20 298:14	159:13 163:2,5	126:19 127:4	221:1
161:18 162:7,13	299:14 300:21	164:2 168:18	128:21 216:13	SACEM 356:17,20
164:11 166:11	301:18 302:1,20	186:5,9 206:3,17	252:5 278:17	sake 359:18
167:1,2,13 168:10	305:1,16,20 306:6	209:13 210:18	280:2 284:21,21	sale 31:5,15 35:12
168:19 169:9	313:16,16 314:13	217:21 218:3	roles 126:14 176:7	43:4 48:10 51:16
170:3 171:9	318:5,17,22 320:8	221:6 225:7,21	176:11 306:14	52:3 90:22 104:18
172:15,19,22	323:8 324:9,12,15	226:7,7,10 229:15	room 1:8 15:15	105:3,17 145:10
173:1,4,4,7,9,10	325:17 326:2,3,7	230:17 233:19	92:17 140:3 181:8	160:20,22 165:20
				166:5 217:15

232:11,16 238:15	57:6 92:10 103:8	scientist 309:1	249:13	251:11 324:5
242:7 270:11	127:12,13 129:1	scientists 319:5	section 12:22 13:14	seeks 355:22
271:8 283:9,12	137:19 149:21	scope 24:19 34:8	22:20 24:8 31:7	seemingly 338:22
297:19 298:3	158:12 159:4,8	61:4 93:11 139:9	36:22 37:7 39:11	seen 63:13 85:15
Sam 2:5 4:10 23:12	171:6 218:4	185:10 195:10	40:2,22 42:18,21	89:12 126:20
174:17	255:13,21 270:9	206:16 293:3	44:15 45:15 46:19	209:19 276:14
San 22:11 81:4	284:14 300:15	301:1 330:5	46:21 47:2 52:22	339:8 347:13
222:21	334:11 380:12	331:22	53:6 57:7,18,20	351:6
sanction 199:10,16	scale 199:9	scratched 175:16	61:2 71:17 72:1	sees 108:18
sanctions 327:8	Scalia 37:4,4	script 347:14	110:15 111:4	segue 61:19 107:7
Sanders 27:17	100:11 158:6	SDRM 356:19	113:11 119:3,4	self-evident 35:15
Sandra 1:12 7:8	214:5	se 149:22 193:21	120:3 161:9	sell 183:1
222:10 224:17	Scalias 158:7	244:19	186:12 187:2	semiconductors
231:10 295:17	scapegoats 64:12	search 279:9	217:17,22 218:4	114:7
Sargoy 27:6	scenario 282:12	313:22	225:8 238:15	Senate 76:3 142:6
satellite 178:18	284:4 313:1	searches 244:6	241:16,21 257:4	Senator 76:3
satellites 178:4	320:10 374:20	seated 15:21	271:8,10 314:9	senior 2:17 3:16
satisfies 113:15	scenarios 59:2	seats 321:8	318:19 320:6	5:17 7:18,21 9:11
184:9	293:16 294:3	second 17:21 20:20	secured 57:17	21:8 22:15 81:5
satisfy 52:1,2,4	309:5	37:19 38:1 52:14	see 17:21 19:2	125:12,21 223:2
60:3 113:22	scheme 75:7	63:10 76:17	26:12 27:1 32:19	322:16
114:21	scholar 230:2	161:11 185:1	34:19,20 66:6,9	sense 32:6 40:19,20
satisfying 51:18	307:2 357:20	191:14 247:22	77:11 85:19 87:19	85:21 101:16
sausage 140:20	scholarly 279:2	324:21 334:8	99:1 103:5 109:21	122:19,19 140:13
save 283:11	scholars 12:8	345:1 350:17	115:5,19 128:15	140:16 144:21
saves 55:7 277:13	353:13	382:4	137:17 138:13	148:16,18 217:5
303:13	School 1:18 2:2,4	secondarily 68:6	152:11 183:9,12	218:1 291:20
saw 120:9 182:3	3:22 4:7,9 8:9	68:19 86:18	198:2 200:21	296:5 297:1,3
saying 64:6 69:3	9:15,17 23:1,5	secondarily-liable	202:9,14 203:2	325:13 374:17
76:4 81:8 91:17	223:9 322:19	86:6 87:1	209:18 213:4,12	sensible 81:21
136:18 139:21	schools 35:17	secondary 58:20	213:16 215:6,12	298:6,6 352:10
143:14 145:14	Schroeder 152:9	59:3,6,14,17,20	219:19 223:21	sent 40:10,15 77:1
146:7,8 153:20	Schruers 2:7 4:13	60:1,5 61:14,17	230:3,4 237:9,10	179:8 265:20
157:7 160:1,14	9:20 23:9,9 34:15	61:19 62:8,11	237:21 252:14	sentence 57:21
161:7 163:14	49:15 51:7,10	63:12 69:7 73:8	261:4 267:18	separate 51:14
180:18 211:18,22	55:12 56:15 58:14	73:15 74:4,16	273:17 274:1	64:6 79:9 112:9
217:1,12 219:4,7	58:15,16 61:8,9	75:6 79:18 80:8	280:9 281:4 295:3	112:14 258:2
224:19 231:19	64:21 66:15 67:2	111:17 183:15	295:11 297:6	302:1 305:15
232:6 251:6	67:3,13 80:3	186:15 199:12	302:7 318:9 324:2	343:16
254:19 263:8	83:14 84:9,12	209:9 285:1	325:12 337:1	separately 19:15
269:6 325:1,3,4,8	85:11 113:7,10	346:15,19 347:1	345:7 347:4,20	133:18 173:8
334:18 348:14	322:10,10 338:5,6	349:2 350:14	364:4 376:17	separating 107:17
349:8 350:8 373:8	347:5,6 353:11	360:4,9,13 361:3	seeing 59:16 90:9	sequence 152:1
375:18	373:5 375:21,22	361:15 362:12	340:12 347:11	sequitur 173:16
says 27:5 32:5,5	Schumer 76:4	363:5,6,17 364:16	seek 19:17 164:9	serial 30:14
39:7,8 45:9 49:4	science 288:21	Secondly 35:1	235:2	serious 141:15
53:7,14 54:16	304:2 314:19	186:10 248:5	seeking 88:7 174:4	185:18 188:8

308:1	Shackelford 22:6	shoe 338:11	333:6 347:11	277:12 284:6,8,17
seriousness 337:19	222:18	shoehorn 48:10	376:19	294:10,11 302:21
served 108:5	shaping 301:19	short 18:7 123:22	similarity 335:18	303:10 327:21
220:10	share 103:6 111:12	134:5 291:22	335:19	332:15 333:7
server 74:10,22	111:16 122:11	332:13 334:6	similarly 335:10	337:9,12 347:21
108:6,6 109:1,15	152:12 161:13,14	335:12 368:6	simple 47:15 172:1	369:9 374:6
227:2,3 333:20	162:4,8,12 202:5	short-run 281:13	simplest 172:7	383:12
372:17	210:3 234:18	shorter 261:9	simplified 95:15	situations 57:13
serves 216:13	269:4 274:16	shorthand 104:12	simplify 228:16	169:13,17 196:15
service 68:17 85:16	275:15 277:22	shortly 345:9	simply 16:13 21:18	196:20 241:9
86:1 119:5,8,18	293:19 294:7	show 22:2 103:14	34:2 53:15 68:3,5	254:16 278:1
122:22 174:19,20	shared 90:3 93:16	103:21 332:21	68:16,20 89:12	294:4 302:14
186:21 195:16	159:4,20 160:3	showing 30:4,4	90:2 116:13 138:8	324:18,19 346:18
216:10 260:4	166:7 169:10	228:9 242:1	150:19 154:9	six 245:2 304:20
264:21 281:15	191:2 202:4,10	309:15 320:4	157:6 186:16	305:14 354:7
325:6 358:14	204:6 208:11	shows 50:3,15	187:11,22 189:22	skeptical 308:22
services 20:15	210:1 211:15	114:3 376:14	208:4 263:14	sketched 308:13
195:11 196:7	218:18,20 277:17	shut 378:17	292:3 296:8	skill 177:15
376:3,12,16	278:9 283:14,15	side 28:12 81:16	297:16 300:16	skirmishes 97:8
SESAC 1:13 3:13	284:9 285:4	93:1 94:12 141:15	380:15	100:3
7:15 22:7 222:19	301:14 303:5,9	141:20,20 164:11	simulations 176:6	slap 238:21
225:14,17	319:8,20	217:22 333:2	simultaneously	slices 95:10
SESAC's 122:8	sharees 93:17	359:8 363:10	58:4	slicing 53:20
session 3:10 4:2 5:2	sharers 73:1	380:4	sing 178:11	slightly 268:7
6:2 7:2 8:2 9:2	shares 43:8	sides 344:5	Singapore 325:1	341:14
10:10 17:14,19	sharing 25:20 67:7	sideshow 308:6,7	327:19	slip 42:11
18:5,8,10 20:6,7	98:8 103:1,2	sight 186:1 299:15	single 48:3 50:13	slippery 170:1
20:17,20 28:3	159:10 166:19	299:17	57:18 87:15 88:1	slope 170:1
56:22 58:9 123:14	209:17 216:3	sign 202:8 379:12	96:18 98:7 211:6	slowly 95:13
124:1 126:12	276:10 378:17,20	sign-up 17:18	266:10 284:17	smack-dab 152:3
215:18 220:10,15	379:20	signal 16:15 194:5	301:1 374:20	small 103:5 244:1
275:7 295:8	sheds 24:8	signator 262:22	single-work 199:16	273:14
320:21 321:11,14	sheet 17:18	signed 18:3 198:4	sit 20:8 159:19	smart 344:5
365:7 381:2,7	Sheffner 2:8 6:9	202:2	site 50:16 108:20	snapshot 314:3
sessions 15:9,12	126:1,1 154:20	significance 137:18	109:8 150:7	so-called 136:16
16:5 19:5 321:19	157:15,16 188:20	267:10	348:20,22	176:5 271:8
323:3	190:5,7 201:18,19	significant 74:6	sites 362:7	SOCAN 343:5
set 45:21 121:11	205:12 217:4	142:22 336:13	sitting 15:16 74:9	344:22 353:21
173:8 278:20	Sheffner's 163:13	significantly 50:20	162:16 173:21	soccer 176:2
281:9,11 320:20	211:15	70:22 363:7 379:1	202:6 247:20	social 93:19 309:1
380:16	shelf 138:9,22	383:11	359:8	Société 356:17
setting 225:5	151:3	SIIA 141:12	situation 146:4	Sociétés 357:11
settle 162:18	Sheppard 23:16	Silicon 22:11	170:3 202:16,22	societies 334:19
settled 44:2	Shift 328:3	222:22	203:9,16 209:15	343:1 356:14,17
settlement 83:5	shifted 154:18	silver 378:15	210:19 216:14,15	357:7,13,15
severely 253:7	shocked 98:5	similar 126:10	231:4 245:21	society 2:5 4:11
SG 254:4	shocking 360:10	272:7 311:12	249:7 250:8	23:13 32:4 76:20

326:17	Sony 28:2 67:17	358:20 365:13	specifically 24:4	standards 73:8
Sofia 1:15 9:7	soon 226:16 354:2	368:9 369:17	25:2 30:8 32:21	312:20
322:1	382:15	376:21 377:3,12	120:22 156:20	standing 241:7
soft-core 88:4	sooner 261:10	381:12	186:12 188:18	standpoint 85:21
software 1:17 2:1	sophistication	sorts 64:5 104:19	208:3 225:6 226:9	85:22 121:6
5:18 7:21 9:12	303:19	271:5 346:17	241:22 274:13	stands 70:21
125:14 135:6,15	sorry 33:9 59:8	Sotomayor 37:2	286:15 287:17	start 11:6 20:21
141:12,14 142:2	141:20 169:4,6	sound 22:20 34:18	342:16	21:4,21 33:7
154:12,15 159:7	194:7 203:17	39:15,21 40:6	specifics 323:5	72:22 84:8 86:16
186:21 187:12	207:13	42:4 70:11,13	specified 326:8	90:6,9 99:3 102:3
206:12,19,20	sort 26:20 35:7,7,8	274:20 285:17	spectrum 96:7	104:5 126:16
207:4,5 223:4	35:16,17,18 44:14	307:18	speech 158:22	137:11 158:1
260:5 275:11,13	45:1 48:15 51:17	sounding 42:12	spelled 243:8	163:5 172:2
275:21,22 276:7	51:20 52:4,13	sounds 152:16	spells 26:5	221:22 222:4,5
276:10 285:4	68:1,15 72:17	179:7 217:16	spend 43:16 52:17	223:19 224:19
293:20 322:8	73:8,15 76:19	360:10	spending 373:19	230:15 232:6
382:20	81:15 84:13 85:1	source 35:8 93:7	spent 100:2	240:3 250:2
solely 125:7 343:18	95:15 97:21 98:17	102:7 150:5,7	spirit 355:1,20	251:19 269:18,21
solution 91:18	103:16 107:7	sources 127:18	split 146:5 190:22	271:4 292:15
211:20 346:3	128:6 138:21	373:18 376:15	191:5 343:7	302:10 304:15
solutions 258:20	139:1 140:2,5,10	space 81:15 325:7	spot 342:13	312:13 313:4
somebody 42:20	140:15 141:10,15	Spain 361:2,4,12	spot-on 130:5	323:4,6,21 325:21
49:2 113:20	158:17 160:12	362:4,4 376:7,9	spotting 291:7	334:4 351:6
122:20 129:1	184:10 185:22	spawned 343:20	square 344:3	357:18 358:9,11
136:17 148:11	196:1 200:2	speak 14:18 16:16	squarely 195:9	381:6
150:16 159:19	205:13,22 206:1	149:7 213:15	squeezing 232:1,3	started 20:5 98:6
171:19 196:10	206:10 208:10	331:16 356:21	stacking 343:9	102:4 108:2 317:8
199:8 202:17	210:17 229:1	367:12 368:14	staff 2:12 6:5 8:12	321:22 338:7
203:13 208:14	230:15 232:1,7	speaking 16:8	11:22 14:11	starting 150:1
273:13 277:16	235:17 236:13	22:12 120:21	125:18 279:18	261:3 290:12
284:8 285:4,20	238:1 244:18	125:6 225:17	stage 66:12	291:3 344:4
301:13 347:19	253:20 255:15	296:16	stages 204:9	starts 91:12
377:22	257:14 266:21	speaks 368:7	stagnated 66:5	state 12:13 21:18
somebody's 152:6	272:4 275:14	special 129:21	stake 64:10 146:13	24:2 46:6 63:21
someone's 83:4	276:12 279:3,6	334:15	256:20	94:9 192:3 194:6
somewhat 51:13	280:2 283:16	specific 16:21 26:5	stakeholders 234:9	194:6,8 263:10
77:17 92:10	284:10 287:3	55:15 80:12 84:6	247:16 248:1	284:19 338:9
181:11 206:10	288:3 289:5	88:19 148:14	290:7 291:19	stated 152:1 286:11
272:7 283:18	295:15 304:16	157:1 185:2	376:12	statement 105:20
338:20 370:14	308:17 312:8	223:22 225:7	stand 121:14	146:15 169:7
382:8	317:16,19 323:21	241:9,13 259:20	151:13 167:10	214:2 234:17
son 121:15	325:15,16 338:8	267:2 268:3 269:1	237:1 246:6 249:3	236:10 340:16
song 159:6 178:11	339:13,13,21	269:11,16 276:1	standard 73:16	374:16,17 375:4
247:21	342:10 347:9,11	276:20 307:17	91:8 115:11	statements 102:9
songwriters 225:16	347:16,16,20	323:9 341:12	289:12 312:8	128:8 177:5 288:9
247:19 305:8	348:6 353:16,20	353:8 358:10	standardization	states 12:3,17 59:7
sons 76:22	354:5 355:21	359:6	312:11	60:21 61:5 66:7

74:10,18 84:5	115:13,13,18	203:11	193:18 214:17,17	subset 173:5,7
89:2,18 102:13,16	130:22 131:15	story 27:14 81:11	215:7 252:14	substantial 93:18
119:5 131:8,16	149:13 150:2,10	315:10	253:3 311:12	substantially
170:11,16,18	155:10 156:4,14	straightforward	341:7 351:13	112:17
172:22 178:22	156:17,20 171:13	207:17	352:17	subsumed 327:14
198:1 219:18	199:5 208:2 212:6	strange 254:20	structured 137:5	success 366:2
221:19 250:20	212:17 213:5,9	255:2	272:19	successive 130:17
262:15,17,22	219:2,13 230:22	stream 91:8,16	structures 152:17	131:10
263:6 264:9,20	246:19 247:2	96:2,10 329:17	179:12 193:11	such-and-such
265:6 298:10	254:1 256:7	342:18,20 343:7	253:2 352:2,22	104:15
314:8 325:18	271:20 272:6	streamed 150:5	structuring 152:4	sudden 78:13 150:9
329:10 332:13	296:7 301:7	streaming 20:15	193:11 252:19	337:19 375:7
333:12,16 337:13	350:10,22 383:6,8	121:13	311:3	suddenly 265:20
340:6 363:8,21	383:11	streams 91:15	struggle 362:14	sue 63:17 64:3 68:4
365:17 369:7,10	stay 290:3 291:15	334:22 335:6,11	struggled 13:6	76:15 80:8 85:9
371:3 372:20	stays 84:18	street 299:3	221:10 245:16	85:12,15,19
373:17 376:18	stealing 170:21	stretch 313:20	struggling 224:5	sued 71:10 77:4
static 177:22	steam 195:2	314:14 315:2	245:14 247:22	183:14
stating 265:1	steer 195:15	strict 73:10 348:19	373:10	suffice 292:8
statute 13:7 25:13	step 83:8,22 101:18	strikes 324:1	stuck 159:1 297:14	sufficient 91:19
25:16,16 28:7	103:18 104:3	strong 2:17 21:7,8	studied 353:14	114:20 115:17,17
29:11 30:16,18	117:1 249:16	124:6 126:7 128:2	studies 239:6,8	181:17 184:11
31:1,10,22 35:22	274:1 335:3 381:5	129:7 130:7 132:6	281:10 299:22	198:10 213:7
39:4,5 40:22 41:3	steps 92:5,7 182:9	134:7 141:18	309:3	237:11
47:9 49:2 60:7	182:11 280:22	149:9 152:14	studios 98:13	sufficiently 13:18
86:20 97:14 98:3	281:2	171:19 201:2	study 12:12 157:5	93:17 121:4
121:4 130:11	Steve 126:4 149:6	250:14 251:1,4,12	279:1 300:6	suggest 137:22
137:2 138:15	158:9 172:10	291:16 321:12	308:21 309:15	154:17 161:2
139:8,15 141:2	174:2 180:16	323:1 325:19	316:3 336:5	212:20 214:19,22
144:18 145:17,22	189:1 284:11	329:18 332:8	stuff 212:21	293:14
149:10 157:21	322:20 336:14	338:4 341:4 343:8	Subafilms 74:15	suggested 29:2
158:2,12 162:15	370:4,17	345:2 347:2 348:8	subcommittee	166:9,9 273:15
190:18 191:15	Steven 2:9 6:12	349:10 350:3	136:7,16	288:5 295:17,18
192:5 198:6	10:14 156:12	352:19 354:11	subject 67:6 106:2	330:17
224:20 225:2	stick 201:21 378:16	356:8 357:16	150:17 155:13	suggesting 27:18
232:21 235:15	stipulation 63:11	358:4 360:1	186:22 197:19	41:13 147:16
238:2 255:13	255:1	361:10 362:2	241:10 242:12	172:2
258:14 262:2	stock 34:22 306:2	364:5 365:12	297:18 327:8	suggestion 67:11
statute's 28:21 37:9	stood 265:19	369:20 373:2,13	343:17 353:14	191:22 218:16,19
statutes 267:4	stop 76:7 98:18	375:16 376:1	submission 190:17	239:4 282:8
354:22 363:9	135:18 159:18	378:8	submit 235:4	312:15
statutorily 178:6	236:21 291:22	stronger 261:18	submitted 225:14	suggests 89:7
statutory 29:3	292:9	strongly 131:18	subparts 374:15	147:10 338:22
30:13 33:13 35:3	stops 53:20	struck 25:18	subscriber's 325:6	suing 68:5 72:22
37:11 50:2 61:13	storage 48:7 74:9	structure 139:6	subscription 334:4	superficially-app...
77:19 80:9 87:14	189:5 319:20	150:14 151:6,17	subsequent 38:9	217:12
88:20 112:2	store 96:9 168:3	151:18 153:22	328:17	Superhighway

299:21	364:12	273:2 292:11	179:11 187:21	Telekabel 329:2
supplement 357:5	swallow 330:20	303:1 304:14	192:20,20 194:20	television 70:13
366:19	swarm 82:17	313:1 318:16	207:10 219:3	334:5
support 354:19	sweater 231:7	337:11 339:14	229:1 239:1	tell 70:17 96:1,2
supportable 40:12	sweeping 253:21	340:22 341:17	255:15 270:21,22	144:20,21 367:14
supported 262:14	Sydnor's 72:7	348:15 350:19	280:10 284:22	telling 280:15
supports 132:19	symbolic 193:6,9	354:17 356:5	323:9 335:20	355:12
suppose 74:9 92:17	symmetry 217:12	361:11 362:9	360:3	tells 65:3 68:13
93:8 94:20 264:4	synonymous 30:5	370:18 379:20	talks 39:17 283:10	temperature
371:5	32:22 89:13	takedown 119:19	tangent 87:11	237:20
supposed 115:6	142:10 147:15	261:18 349:4	tangible 106:4	Temple 2:19 3:2
197:8 284:3	synonymously	taken 12:22 63:11	148:18 153:8	11:17 15:5
Supreme 27:21	142:20	94:15 109:13	175:12 178:8,13	temptation 273:19
36:19 37:10 79:4	system 30:15 62:14	130:16 228:9	201:17 311:9	ten 200:21
250:18 255:8	65:11 73:2 74:2	270:18 281:2	Tarantino 347:13	tend 234:11 258:11
259:15 286:21	77:7 82:12,20	315:21 338:2	target 48:7 62:20	tendency 370:8
297:7,15 305:9	83:2 84:17 85:3	342:7,14 371:6	85:7 154:5 260:8	tends 233:10
344:2 370:20	116:22 146:10	takers 61:7	targeted 372:1	Tennessee 22:7
sure 18:21 32:15	159:3,8 164:1,2	takes 63:18 233:9	targeting 81:8 85:6	Tenth 99:10
34:21 41:6 42:17	192:14 196:12	271:3 276:15	Tasini 28:1	Tepp 2:9 6:12
62:4 79:14 80:10	199:21 219:22	350:8	tax 104:15,21	10:14 126:4,4
162:11 171:12	220:3 228:18	talk 19:20 56:17	330:15 376:12	130:8,9 145:1,2
191:17 201:19	229:3,22 246:13	80:20 89:17 90:16	taxes 104:21	154:19,21 170:20
230:17 236:7	247:7 250:7	101:10,18 106:9	teaching 25:19	170:21 172:12
240:10 242:10	271:14 309:20	112:12 118:13	technical 103:16	173:5 189:1
243:18 251:13	311:15 333:22	129:10 133:6	176:17 194:11	196:22 197:1
253:16 258:2,4	381:20 382:14	141:2 154:8	216:11 251:20	198:17 322:20,20
264:22 266:5	systematic 308:17	158:22 177:8,9,12	253:9 291:1	329:19,20 362:21
278:7,11 288:3	systems 196:4	177:21 179:3	Technological 28:5	362:22 364:14
294:16 296:13	203:4	185:21 269:10,12	technologically	367:7,8 370:4
320:9 324:6		305:5 310:19	121:9,21	term 65:2 66:6,9
336:19 377:15		talked 70:2 89:3,10	technologies 13:7	81:22 98:21
surely 330:6	T	132:10 194:3	177:1	100:21 106:1
surer 381:12	table 15:13,21 20:8	204:16 221:6	technology 64:11	119:6 129:2 131:4
surprise 103:9	63:12 200:20	232:9 268:20	99:20 108:15	144:2 150:12
surprised 98:10	242:11 257:16,20	287:13 291:7	121:15 122:2	171:1 172:15
surrounding 25:20	257:22	301:6 346:16	135:3 141:14	185:18 187:19
survey 331:4	tag 101:3 136:1	talking 39:1,3	186:17 194:19	198:18 200:6
suspect 53:21	192:14	40:21 41:1 80:6	202:1 216:3	282:19 364:2
311:9	tailored 14:9 73:11	81:18 98:20 105:7	226:20 227:11,20	381:22
suspicious 307:5	take 50:19 66:9	106:19 110:12	238:7 257:13	terminology 25:13
sustain 70:21	69:21 78:9 83:22	128:9 135:9,20	288:11 292:3	122:14 129:10
116:18 117:12	84:15 100:20	136:3 141:22	318:2 334:10	180:22 296:10
Svensson 328:8,12	117:2 162:13	152:17,22 154:17	335:4 374:21	terms 19:22 24:9
338:14 345:20,20	175:12,19 181:10	161:20,21 163:4	telco 273:12	24:18 25:6 30:3
346:20 347:9,17	209:4 211:15	168:18,22 171:11	Telecommunicat...	31:19,20,22 32:20
360:3,19 361:13	220:13 237:20	172:6,8 178:18	193:15	33:12,15 37:22
	248:13 258:16			
	261:9,11 271:7			

55:19 60:7 64:1	101:20 102:2	354:11 356:7,8	244:13 248:22	111:11 113:12
66:4 74:1 80:7,12	104:6,10 106:14	357:16 360:1	257:19,20 259:15	114:2,12 115:8
83:19 84:1,7	109:17 113:9	364:5 367:5	263:12 269:13	116:3 118:2 119:2
88:17,22 94:5	116:2 117:16,17	369:19,20 373:2	281:6 288:12,19	119:3,7,20 120:2
106:11 126:11	120:5 123:7,9	375:16 379:6	289:7 291:12	121:1 122:16,17
128:9,15,22 131:9	124:2,6,17 126:7	380:21 381:1,2	305:17,19 313:2,5	122:18 123:3,5,12
134:12 139:21	128:2,4 130:7	383:13,19 384:11	328:2 329:11,13	127:11,13,16
141:21 142:8	132:5 134:7 141:6	384:13	340:2 353:18	128:14,20 129:4
143:12 144:1	145:2 147:2,3	thankful 14:14	354:16 355:3	131:2 132:13,15
146:2 147:6	150:21 154:21	Thanks 11:13	356:3,12 359:21	133:8,11,16
156:16 172:4	156:11,12 160:7	110:9 113:4	375:1	134:12 139:4,19
173:11 177:4,12	165:7 169:2	116:10 130:9	think 13:3 27:13	140:2,14 141:1,5
181:4,8 183:21	173:19 179:16,19	132:7 292:14	29:14,14 32:1,2	141:8 142:19,20
188:14,15 210:4	185:8 192:8	321:2 332:10	32:17 34:15 35:6	142:22 143:9,13
215:17 221:19	194:21 195:3,3,6	373:6	35:16 38:5,14	144:16 145:3
224:2 248:12	196:21 197:1	theft 241:9	40:22 41:7 42:3	149:8,19 150:13
260:11 262:12,21	198:14 200:12	theme 246:6	44:1,7 45:2 46:11	150:22 156:1
264:5 268:17,18	201:2 206:4	theories 59:17	47:9 48:16,17	157:5,13 158:11
282:15 285:3,11	207:13 208:18	61:14,20 86:17	49:6,14,22 51:5	159:14,16 160:14
293:10 298:11	215:9 217:7	183:15	51:22 53:2,4,5,18	161:16 163:1,10
300:14 301:6	218:10 220:7,8,9	theory 346:14	54:3 55:5 56:14	163:13 165:10
329:4 337:7	220:19 221:3	361:15	56:20 58:14,18	168:2,17 169:22
351:19 354:16,18	223:17 225:10,13	thigh 230:10	59:4,11,18,21	170:4 171:4,12,18
355:19 367:13	227:22 230:5	thing 22:1 29:8	61:18 62:9,13	172:10 174:15
382:4 383:21	233:1,6 234:19	35:4,10 38:15	64:8,14,19 65:8	175:5 179:20
terrific 319:9	235:7,11 237:14	48:14 55:7 68:8,9	66:7 67:10,14,19	180:1,20 181:7,10
Terry 1:20 4:4 23:2	237:17 239:18	77:22 95:20	68:4,11 69:9,16	182:17 183:9,19
tertiary-liable	240:1 243:13	122:13 146:7,9	71:3,9,12,14,20	184:1,16,17 185:1
86:22	245:5 247:9	158:16 168:16	72:6,7,15 73:1,12	185:3,7,18,21
test 108:7 150:8	248:17 250:11	203:6,12 230:13	74:5 75:14 76:2,3	187:2 188:7,19,21
Texaco 319:16	251:12 253:12	231:7 238:1,22	76:7,12,14,22	190:5 191:6,16
text 37:7,11 43:1	256:8,11 258:9	261:22 263:6	77:6,7,12,15 80:2	192:1 193:3
47:9 60:6 127:10	261:21 266:1	271:9 272:4	80:6,17 81:14,18	195:20,21 196:4,5
131:5 171:8	268:5 269:20	287:11 298:8	81:21 82:2,11,19	196:14,15,17
325:22 330:8	271:17,19 274:10	300:4 313:14	83:8 84:14 85:3,6	198:16 199:17
332:4 355:1	277:1 281:16	318:5 355:18	85:11 87:1,11,14	200:4,14,18 201:3
thank 14:21 15:2	285:9,15 287:22	381:18 382:2	87:18 88:16 90:8	201:7,19 205:18
21:15 22:13 23:21	289:21 292:12	things 16:17 75:17	90:12 91:10 92:7	206:5,8,21 207:11
25:9,10 29:19	295:4 302:4 304:5	84:22 105:5	93:10,12,16,20	208:19 210:12,13
32:13 33:8 34:11	306:9 310:8 313:8	116:17 127:7	94:10,15 95:1,5,6	210:22 212:11
36:1 37:15 38:20	315:4 318:6,8	132:16 133:3	95:17 96:6 97:6	213:14 215:11
41:4 43:11 46:9	320:17,19 321:13	154:5 160:13	97:11 98:17 99:5	217:5,15 218:2,11
49:18 51:3 55:9	323:1 325:20	167:6,12,22	99:6,17,22 100:13	220:2 221:4
56:12 58:13 61:22	329:18,20 332:7,8	203:18 209:7	100:16,17 101:1,7	223:19 225:3
66:13 71:2 73:17	335:14 338:4	214:4 220:5	101:9,17 107:10	226:6,11,13 227:9
75:9,11 79:22	341:4,9 345:2	229:12 233:12	107:14,19 108:2,6	227:19 228:4,7,7
83:12 87:4 96:19	347:2 348:8 350:3	236:8 238:14	108:8 109:12	228:14,21 229:4,7

229:13 230:1,8,19 231:1,9,17,21 232:6,7,16,17,19 233:3,7,10 234:12 235:8,13,19 236:2 236:13 237:16,21 238:13 239:20 240:6 241:15 242:5,11,15,18 243:11,15 244:13 244:18,22 245:7 245:13,16 246:12 247:3,5,11 249:11 249:13,19 251:5 251:18 253:10,17 253:22 254:5,7,13 254:14 255:20,22 256:12,19 257:7 257:19,22 258:17 258:17 259:12,17 260:12,18 261:6 261:12 262:5,16 263:3,14,22 264:20 265:8,12 266:3,8,15,16 267:11,21 268:2,7 268:8,10 269:22 270:6,20 271:11 274:14,16 275:2 277:2,10 278:2,3 278:6,20 279:6,10 279:12 280:7,11 280:14,22 281:13 281:22 282:1,7 283:1 285:10,16 286:2,4,5,13,20 287:14 288:15,18 289:16 290:2,5,10 290:13,22 291:2,4 291:8 292:1 293:21 295:8 296:2 298:8,9,19 299:15 301:20,20 301:21 302:9,19 302:22 303:3,10 303:16,16,21 304:1,15,17,19,22	305:2,4,11,17 307:9 308:3,12,15 309:19,21,22 310:6,10,18 313:6 313:10 314:13,21 315:18,22 316:2,8 316:10,18 317:2 317:18 318:16 319:21 320:2 321:7 324:10 326:19 327:1 329:4 330:2 332:11,20 333:13 333:18 334:6,7,9 334:16 335:2,4,6 335:12 336:22 337:10,10 338:1 338:18 339:9,18 341:2 342:5 345:8 346:2,4,19 347:7 348:4,5 349:10 352:13,20 354:16 355:12 356:3 357:1,20 358:19 360:18 361:12 362:13,22 363:11 363:19 366:4,12 369:13 370:17 372:21 375:11,13 378:11 379:9,21 380:7,9,14,14 383:3,9 thinking 71:8 159:2 247:20 248:12 260:13 283:18 302:14 316:7 338:10 342:9 347:10 376:22 377:13 thinks 42:20 77:3 190:4 327:11 third 79:8 86:22 206:13,21 207:6,7 217:2 third-party 319:10 thirdly 248:11 Thomas 88:11	213:2 Thomas-Rasset 42:6 68:13 thorough 46:7 307:7 thought 34:9 43:18 43:20 62:3 76:8 83:2 92:22 95:22 142:19 144:13,15 161:6 181:18 242:4 262:10 266:17 280:10 310:14 313:15 318:20 341:1 344:18 350:5 372:21 374:9 378:10 thoughts 60:22 201:12 370:3 thousands 211:2 thread 231:6 threat 83:3 380:19 three 17:6 22:8 112:9,13 162:17 162:19 310:10 373:3 threshold 155:3,17 265:9 327:17 threw 113:20 throw 269:9 throwing 113:18 thrown 140:9 265:16 thumb 63:8 thumb-based 63:6 thumbnail 244:2,6 thumbnails 109:5 thunder 170:22 tie 153:4 tied 107:18 195:19 244:21 tier 86:22 tiered 278:20 Tim 167:14 time 12:3 17:2,9,12 17:15 18:15 25:1 36:8 43:16 52:18	67:21 87:18 99:19 113:19 120:15 123:12,13 128:11 132:2 140:7 147:14 165:12 175:2 178:19 182:14 192:18 201:3,3 214:5 215:11,17 226:16 231:16 233:8,11 241:7 242:3 244:1 249:14 258:16 259:22 261:9 263:3 286:12,13 303:15,15 326:15 339:11,12 345:1 348:4 355:11 368:6 time-sensitive 229:14 timely 253:10 times 28:22 38:7,13 105:10 112:14 288:11 354:4,5,21 timing 275:9 tinker 220:17 tip 16:8,11 323:17 Title 3:11 5:3 20:11 24:5 29:22 60:18 80:14 124:11 220:18 221:7 titles 290:4 title 331:16 to-15-year 325:16 today 11:10 12:6 13:13,18 14:17 15:11,19 17:2 18:5 19:12,16,20 20:2 22:7 45:14 49:7 66:3,22 71:8 87:17 101:9 103:2 122:15 128:13 155:13 167:21 175:20 176:16 224:5 229:2 233:22 243:18 259:12 272:12	287:18 288:8 290:22 304:18 309:7 314:1 344:10 373:9 377:12 383:20 384:6 today's 17:21 124:7 told 309:17 Tom 72:7 tool 158:18 tools 51:2,2 112:3 119:17 157:22 210:16 top 98:13 topic 43:17 118:8 170:6 245:18 247:15 291:6 topics 246:21 338:3 Torrent 82:16 288:14 tort 73:10 362:15 363:8 tortured 299:8 toss 365:12 total 383:7 totally 40:17 328:9 touch 303:17 touches 32:3 170:6 270:7 tough 180:13 tougher 263:15 track 50:13 70:5 211:7 trade 131:11 264:7 264:10 324:4 327:8 337:6,6,20 343:4 358:17 373:16 376:2 Trademark 156:19 tradeoff 242:11 257:19 trading 368:12 traditional 310:2 traffic 109:8 378:20 trained 97:21 trains 350:4
---	---	--	---	--

transaction 44:14 44:18 86:12 383:8	tread 232:22	trillions 88:8	107:6 110:3	U.S 1:1 2:10,13,15
transactions 105:6	treat 297:4 334:22	triple-count 41:20	200:20 201:4	2:16,18,20,21 3:4
transcoded 194:12	treated 300:16	TRIPS 327:9	215:12 264:13	3:5,7 6:15 7:3
transcoding 168:13	treaties 9:4 91:9	troll 82:10 186:18	268:3 347:3 360:2	10:17 12:14 14:3
252:2	102:5,6 110:13	trolls 164:7	365:10	24:10,15 60:3
transcribing 19:3	121:22 122:12	trouble 72:16	turned 72:21	74:15,17 89:20
transcript 12:11	131:10 153:7	337:22	263:15	90:5 126:5 131:11
81:13 384:8	170:10,15,17	troubling 348:3,7	turning 93:5	132:1 155:3,6
transfer 31:5,15	171:15 175:18	trove 99:3	325:22 328:13	178:7 185:20
35:12 43:4,5	178:2 179:21	truculent 370:18	turnover 290:15	187:20 188:3,7,9
44:13,19 47:11,13	180:2 184:6	true 78:17 98:17	turns 267:2	197:4 198:12,19
47:14 48:6,10	240:11 263:1	118:17 156:13	TV 272:15 328:3	199:21 200:7
51:16 52:3 54:17	296:20 307:21	259:9 298:8 310:5	TVCatchup 333:5	221:14 235:22
105:3,17 145:11	321:1,17 327:10	317:9	twice 49:19 96:17	245:22 266:13
182:11,19 270:11	330:9 331:10	truly 312:5	343:10	268:18 273:14
313:18 314:4	332:3 341:19	trust 317:19 318:4	twist 220:5	297:4,5 307:22
transferee 182:13	355:2 365:14	truth 174:4 315:16	two 5:3 17:5,20	322:22 323:22
transferor 58:3	366:3 367:20	try 31:21 71:21	47:22 51:14,19	337:17 338:10,12
182:9	368:1,4,7 369:6	83:9 110:10	52:19 53:18 55:14	339:19 342:17
transferor's 58:4	treats 326:2	111:17 135:9	96:7 124:7,11	343:5 358:17
transferred 86:21	treaty 12:18,19	142:4 143:11	133:14 136:10,14	363:16 364:3
204:8 206:20	13:2 14:3 59:9	185:13 229:17	137:22 144:9	368:13,22 373:1
215:4	104:3 105:14	249:12 264:16	145:3 165:22	375:18 376:1
transferring	106:11,12 132:22	279:4 281:4 302:7	182:3,4 183:12	379:5
202:20 203:2	171:22 172:3,14	305:2 307:6 321:8	200:18 213:15	Uh-hum 251:3
transfers 164:1	174:9 180:14,20	348:10 359:4	215:14,16 235:17	UK 382:12,22
202:15	183:21 190:10,15	362:14 371:5	248:22 279:17	ultimately 37:5
transform 86:17	190:19 191:11,20	381:21	295:15 313:10	64:9 114:12 115:1
transformation	192:6 195:8 198:4	trying 25:15 26:19	323:4 329:21	198:17 236:20
189:12,16 194:4	240:19 249:8	26:21 27:13 28:9	332:11 335:19	255:18 264:15,18
transmission 13:21	266:12 267:3,15	29:16 35:20 58:9	345:4 347:4 350:4	265:15 296:2
38:12 39:15 91:6	267:18 304:4	65:20 75:2 83:3	352:13 355:3	344:2
94:14 122:4,4	324:1,7 327:6,8	99:19 100:14	356:3,16 358:2	umbrella 12:20
166:3 257:1	332:4 353:2	101:14 128:15	365:9 368:9 370:3	91:18 262:20
328:11 329:6	355:20,22 365:18	139:13,18,21	373:3	263:21 265:5,18
334:14,15	377:3,9 380:12	140:19 168:22	type 196:20 199:16	286:18 287:14
transmissions	trends 365:20	177:7 196:3	224:8 235:13	293:1 296:4
20:14 122:6,7	trial 41:21	199:13 220:17	236:10 237:12	298:12 304:18
160:15 335:1	triangular 104:18	231:13 240:10	243:20 246:14	342:13
transmit 108:11	trick 93:4	272:6,17 281:9	272:10 284:4,5	un-responded
179:4,5 255:21	tried 99:17 136:13	293:15 302:13	305:12 332:15	49:20
transmitted 161:3	257:12 280:19	336:16 360:16	types 105:5 196:15	unambiguous 56:7
transnational	286:17 331:6	Tulane 2:2 4:7 9:16	278:5 282:20	unanimous 37:3
372:9	tries 279:3 374:19	23:5 322:14	335:19	205:17,19 228:5,6
transparency	trigger 27:10 150:1	turn 11:11 16:16	typically 97:21	unanimously 79:4
23:20	triggered 340:11	18:17 33:2 60:6	205:6 358:8	unauthorized 57:8
	triggers 355:15	80:4 91:20 94:1		70:2,7 101:2
			U	

203:21 205:16	17:10 107:18	unsuccessful	312:7 314:20	veer 243:4
348:20 349:1	108:7 109:3 121:5	362:16	useless 315:18	veered 240:14
361:6	184:15	unusual 196:9	user 54:9 111:12	vehicle 271:13
uncertainty 148:7	uniform 170:12	unwieldy 16:17	226:21 267:9	vein 368:10
230:14 348:7	356:2	unwillingness	275:10 303:2,4,18	vend 25:22 100:21
unclear 379:5	uninformed 252:3	205:22	303:20 305:6	100:22
unconstitutionally	unintended 70:1	unwise 229:5,13	users 62:20 77:20	vending 101:9
187:19	239:17 243:5	update 25:16	77:21 80:9 119:14	venerable 131:19
uncovered 89:7	271:5	287:16	208:12 211:3	Venn 353:17
underline 81:3	Union 102:12	updated 286:14	224:13 255:19	ventures 164:14
underlying 182:18	193:15 324:3,11	upholds 293:11	uses 28:6 172:15	venues 228:15
246:5	328:7 331:13	upload 150:16	277:5 278:12	verb 85:12
underneath 171:7	333:5	162:7,12	296:16 304:15	verbatim 326:16
understand 26:21	unique 289:17	uploaded 166:7	324:14	verdict 42:8 77:5
28:9 56:22 90:10	uniquely 311:13	208:5 211:5,22	usually 50:4 111:16	verdicts 48:13 50:2
201:22 221:10	339:12	uploading 69:12	111:16 154:7	verify 189:21 205:8
288:13 289:2	united 12:3,17 59:7	162:3 319:7	238:5	verse 247:22
290:21 304:20	60:21 61:5 66:7	uploads 162:3	utterly 84:16	versus 75:13
317:19 358:21	74:10,18 84:5	178:3 275:10	130:11 207:16	135:10 147:7
368:20 375:1	89:2,18 131:7,16	284:9		177:13,21,22
382:13,14	170:11 172:22	upset 86:20 344:13	V	218:3 293:20
understandable	178:22 198:1	353:5	v 29:7 30:11 67:17	vested 262:18
167:15	219:18 221:19	upsetting 359:22	108:3 177:1 204:2	viable 74:8
understanding	250:20 260:6	upshot 346:20	234:2 243:22	vibrant 146:20
17:11 35:17 56:17	262:15,17,21	urge 363:12,19	244:14,17 306:2	Vice 3:16 4:11,13
91:21 127:1	263:6 264:9,20	urged 363:13	343:5	5:9,17 6:9 7:6,18
147:13 174:8	265:6 298:10	urgent 251:18	vague 187:19	7:21 9:9,11,21
200:3 250:4 293:6	325:18 329:10	Uruguay 370:22	valid 265:6 290:11	22:15 23:9 124:20
understands	332:12 333:12,15	use 29:1 34:6 61:15	Valley 22:11	125:12,21 126:1
264:11	337:13 340:6	63:11 64:5 65:20	222:22	222:7 223:2
understood 172:16	357:1 363:8,21	81:22 83:3 85:13	valuable 216:13	299:22 322:4,16
196:16 300:4	369:7,10 371:2	106:10 108:14	261:16 281:14	video 18:2 154:14
327:19	372:20 373:16	115:1 127:20	value 137:8,9 151:8	260:5 311:20
undertake 156:6	376:18	142:16 187:1	165:1 309:13	341:21
354:9 369:16	Universal 67:17	196:19 206:13,19	358:13	videotape 384:9
undertaking 12:12	university 1:18 2:2	207:1 208:17	Vanuatu 74:12	videotaped 17:22
156:7 157:7	2:4 3:21 4:7,9 8:8	215:8 216:5 231:5	Vanuatuan 74:14	videotaping 19:1
undue 288:12	9:14,16 23:5,8	232:2 248:1 273:8	variations 335:11	Vienna 175:17
unduly 133:12	223:9 273:14	279:1 287:15	380:11	view 63:4 168:14
unearthed 295:20	unlawful 359:5	296:10 312:19,21	variety 263:12	174:7 181:11
uneasy 173:21	unlawfully 57:10	313:1,22 318:19	382:18 383:1	201:15 251:14,20
unequivocally	unnecessary	319:2,9,14,22	various 153:22	264:8 271:12
44:12 149:21	230:18	320:15 336:2	168:3 176:7	274:21 315:17
unfolded 261:8	unpalatable 63:17	340:12 355:6,13	203:18 225:7	323:12 330:14
unfortunate 229:13	unprecedented	365:5 383:9,12	332:21 341:8	367:16 373:21
338:19 340:15	330:19	useful 36:16 37:13	vary 31:21 43:1	viewed 54:21
unfortunately	unstinting 371:4,10	45:3 288:22 304:3	vast 181:18 191:6	114:20 272:10
			235:16,20	

viewing 83:4 108:18	W	344:9 348:2,6,19 359:9,11 365:5 372:11 373:7,10 375:15 376:5,17 379:14 381:1 383:19	90:11 93:9 94:7 95:9 102:20 112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	244:12 277:21 278:18
viewpoints 17:13	wait 111:19 229:14 261:5 305:3,10	wanted 24:3,5 25:5 27:1 37:18 42:7 46:17 53:12 60:6 60:22 66:16 75:12 89:19 102:3 110:11 122:13 157:17 165:15 169:7,11 175:18 217:9 218:14 224:3 241:10 248:20 251:13 268:22 269:14 295:14 345:19 381:8	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	webcasts 18:13
views 89:13 134:10 134:18 146:19 170:15 201:10 205:10 250:16 294:8 352:4	waiting 147:6 149:3 213:14 259:15	wants 30:2 114:4 123:18 210:11 213:17 217:2 234:4 235:4 260:22 339:18 349:11 366:5 378:6	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	website 226:21 227:4 244:3,4,7 270:3 328:17 346:9,11 349:21
violate 71:15 80:14 90:5 149:14 305:15	wake 343:12	war 77:1,2 238:2	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	website-blocking 329:1
violates 174:20	wanes 201:4	warm 11:21 12:7	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	websites 328:17
violating 159:13 199:9 300:8	want 12:4 17:7 26:7 28:12 29:8 30:8 32:19 33:4 36:18 41:22 43:15 45:10 46:13 49:11 50:8 51:10 52:17 55:16,18,22 57:5 64:7,13 67:3 69:4 69:21 70:2 72:11 74:1 80:4,10 82:2 83:22 85:5,15 86:9 88:19,21 89:21 97:1 104:4 104:11 107:5 109:20 112:14 116:11 118:15 123:9 127:14 133:9 138:19 159:3,7 163:15 164:12 165:2 166:6 169:8 175:2 185:16 186:18 189:6 194:17 200:15 202:5 203:4,5,8,16 206:7 210:8 213:12 216:20 219:11 220:9 221:13 223:21 230:3 235:19 237:3 242:10 246:6 249:2 254:1 261:5 271:11 275:5 278:5 280:9 283:2 292:2 304:16 307:7 309:2 312:1 318:13,15 319:1 320:19 335:17	Washington 1:8 194:7 315:10	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	Webster's 26:13
violation 29:2 42:1 42:2,12 60:12 71:19 74:14,21 83:21 167:4,4 190:10 216:1,6,11 219:8 228:8 245:3 245:4 269:7 283:17 300:20 301:2 303:22 320:8,13,14 328:5 333:8 337:8,14 346:14,22 348:1 370:2		wars 76:20	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	wedge 71:21
violations 48:3		wasn't 76:10 120:16 148:2 240:17 338:7 346:11 375:18 378:1	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	week 36:19,22
virtually 50:9 182:5		watch 191:16 345:18 361:7	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	weeks 384:9
virtue 93:6 118:7 275:13 289:17		watched 135:2	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	weigh 157:13
vis 243:9		water-down 78:16	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	weigh-in 51:11 318:13
vis-a 243:8		Watson 2:21 21:12 21:12	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	welcome 11:4,21 12:4,7 14:16 204:22
visual 107:21 108:4 226:18,22 227:5,8 227:19 243:19 244:8,12 305:7 306:5		waves 97:10	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	well-established 359:20
volatile 177:12,15 177:21 311:18		way 30:10 50:1,8 62:5 63:10 67:17 72:16 75:6 85:12	112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	well-intentioned 359:19
volitional 111:13 255:6,10,17,18,19 267:8			112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	well-settled 43:18 43:19
volunteer 76:21			112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	went 75:15 98:5 124:4,4 136:13 181:12 220:21,22 244:2 321:4,4
vu 81:1			112:16 135:22 139:13,15 140:21 144:3,7 147:12 162:21 167:15 171:16 172:20,21 185:4 186:1 187:7 188:5 193:4,17 200:10 202:19 209:13 212:19 213:22 215:3 216:2 219:22 226:14 231:15 232:14 239:5 244:16 245:13,14 246:9 252:19 254:20 255:2 260:18 262:13,14 265:6 267:12,22 267:22 272:8 273:4 274:5 276:12 288:15 291:19 297:3,20 298:2,21 299:1,2 305:11 307:21 309:10 311:14 326:13 337:21 346:4 352:10,22 355:9 359:3 363:22 370:9 372:11 373:4 380:10 381:12	weren't 209:22 251:21 269:1

91:9 105:13 121:22 131:9 153:7 170:9 240:11 263:1 296:20 321:1,16 327:6,7,10 330:9 330:10 331:5,9 341:19 367:19 377:1,2,8 380:12 wire 326:11 355:7 wireless 326:11 355:7 wise 64:3 76:15 77:22 wish 52:4 86:11 160:16 Wolff 2:10 4:15 8:15 23:15,15 97:3 107:6,7 223:13,13 226:12 226:13 239:21 243:15,17 302:11 304:7,8 won 234:2 wonder 32:10 170:14 Wonderful 66:21 wondering 352:3 353:7 360:20 362:16 Wood 88:6 word 25:18 26:2 27:3 36:20 65:3 85:6 142:16 172:20 208:16 227:10 248:1 285:17 286:5 287:15 314:18 349:11 373:11 379:10 worded 132:18 wording 148:21 words 25:21 26:10 26:11 38:13 122:17 194:12 211:3 233:15 275:10,20 296:17	296:19 379:18 382:17 work 13:11,19,20 13:21 14:1 25:12 31:4 40:3,6 48:2 71:11 74:5 92:2 94:6 99:16,16 103:22 108:5,12 110:17 122:3 136:19 137:4,12 150:16 151:5 152:19 161:14 162:10 164:19 166:4 167:10 168:11,20,20 170:19 174:22 175:16 178:10 187:15 189:10,22 190:3 191:2 192:15,16,21,22 192:22 193:19,20 193:22 194:2,14 197:22 199:6 211:20 217:17 219:3,16,19 228:10,12 233:11 252:3,15,20 262:21 274:15 275:12,14,20 279:4 284:9 299:19,20 301:14 303:5 306:7 307:7 310:20,20,21 328:10,11 330:4 331:21 340:4,9,12 350:15 355:14,17 363:14 364:2 366:17 367:14,17 371:17,19 372:2,5 worked 95:13 228:14 380:9 working 135:1 151:10 162:22 169:14 233:8 250:7 311:1 319:5 367:1 384:12 workplace 294:14	works 28:6 42:16 42:17 50:10,17 105:16 107:13,22 136:4 137:3 149:22 150:4,8 164:2,3,8,18 165:1 168:6,15 179:14 194:15 195:17 196:10 199:2 200:3 202:1 204:19 208:8,15 216:3 219:5 229:21 244:17 270:19 277:20 278:9 279:1 293:2 303:8 304:18 309:13 311:21,22 326:9,11,13,14 337:17 340:19 344:17 351:5 355:9,10 359:10 359:10 371:1 380:10,19 world 9:3 65:15 78:21 79:1 128:16 128:17 129:4 159:3,7 166:12 193:10,16 195:7 200:1 224:19 260:16 300:9 309:7 316:21 342:8 351:3 352:10 358:7 373:8 378:12 worms 282:5 worried 196:19 259:6 worry 84:20 162:1 237:6 250:2 259:14 309:7 worse 382:2 worth 231:5 worthwhile 100:1 worthy 128:1 wouldn't 47:8 59:19 100:12 113:19 230:3	276:1,2 299:19 348:2 372:10 376:4,17 wound 308:4 woven 99:6 WPPT 12:18 173:8 173:14 323:10 wrap 32:2 wringing 338:9,13 writ 131:8 write 252:21 374:13,19 375:19 writers 373:12 writing 187:13 247:21 292:19 written 19:18 190:17 191:22 217:11 384:3 wrong 76:8 81:8 156:9 183:14 227:10 262:13 265:22 285:17 297:12 315:17 316:11 334:9,10 wrongly 185:5 wrote 37:2 57:7 279:19 WTO 337:14,22	316:20 334:22 344:20 368:18 377:2 yesterday 315:10 York 322:6 young 365:18
<hr/> Z <hr/>				
zerodarkthirty.... 190:2 Zumwalt 22:6 222:18				
<hr/> 0 <hr/>				
<hr/> 1 <hr/>				
1 3:10 4:2 37:5 126:18 328:17 346:9,11 354:6 1:45 220:14 1:46 220:22 221:2 10 108:3 109:6 118:7 120:1 234:2 238:4 243:22 244:14 273:18 323:10 325:15 351:9 10-15 109:20 10,000 219:5,7 10:48 124:4 100 266:6 101 31:7 42:21 111:4 137:18 104 238:15 106 12:22 13:14 52:22 57:20 61:3 71:17 72:1 107:12 131:5 161:10 186:12 225:8,21 228:9 241:2 248:10,16 274:18 274:19 278:10 342:3 106(1) 57:18 216:11 106(3) 24:8 38:6 42:18 44:15 47:2 49:3 51:16 52:9				
<hr/> X <hr/>				
X 174:18 X's 174:20 X.1255 193:13				
<hr/> Y <hr/>				
year 260:9 343:21 years 13:3 14:7 25:12 28:17 130:15 135:2 138:18 151:9 159:1 162:17,19 178:16 237:8 238:4,5,16 252:8 252:8 261:8,10,11 262:18 263:5 265:20 292:6,8 294:21 311:2 315:21 316:5,6,14				

57:7,22 82:17 107:3 201:12 216:13,20 217:5 218:4,7 271:10 283:6 287:4 106(6) 257:1 108 316:10 109 271:8 283:6,10 109(a) 217:17 218:1,9 11 3:2,6 123:22 11:02 124:5 110 4:19 110(1) 320:6 111 273:21 115 39:12 41:1 42:13 46:19,21 53:6 12:30 220:13 12:34 220:21 124 5:2 1350 378:20 14 323:10 15 13:3 14:6 28:17 50:17 200:14 295:7 351:9 15-minute 123:22 15-plus 130:15 16 262:18 17 3:11 5:3 20:11 24:5 29:22 60:18 80:14 124:11 220:18 221:7 237:8 173 44:13 1909 25:16 33:18 34:3,7 89:11 100:21 129:11 143:20 288:17 1950s 257:13 1960s 25:14 98:1 100:17 144:8 259:8 1961 26:1 1971 307:18 1976 24:15 26:15 34:9 62:4 83:1	127:2 129:6,9,16 130:4 133:16 258:18 280:1 288:17 308:5,9 310:15 1983 316:9 1992 30:13 1995 299:22 1996 240:12 1998-1999 65:9 1999 260:1 <hr/> 2 2 5:2 6:2 2,000 50:18 20 28:22 238:5 252:8 261:9 299:3 317:5 20-odd 263:5 2001 326:17 2002 81:2 365:15 2003 72:22 2008 44:6 2014 1:6 177:2 257:14 202 217:22 21 3:9,10 215 6:18 221 7:2 2226 1:8 24 42:8 77:5 25 316:6 25-year-old 316:13 28 57:15 285 36:22 37:7 295 8:20 <hr/> 3 3 7:2 8:2 37:5 220:15 326:17 3:22 321:4 3:26 321:5 30 135:2 30-year-old 316:14 30,000 88:3 300 219:17 321 9:2 365 10:20	<hr/> 4 4 9:2 10:10 320:21 4:08 365:1 4:28 384:14 <hr/> 5 5 1:6 5,000 383:10 50 25:12 261:8 500 277:16 506 113:11 241:16 241:21 257:5 314:9 506(a)(1)(c) 110:15 512 187:2 229:21 318:19 512(d) 119:3,4 120:3 349:12,14 349:16,19 <hr/> 6 6 105:14,21 107:2,4 153:8 172:5,14 173:16 175:11 <hr/> 7 70 382:1 <hr/> 8 8 106:18 107:2 173:1 323:10 327:2,11 353:5 8.11(d)(4)(a)(I) 45:16 <hr/> 9		
---	---	---	--	--

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Roundtable on the
Right of Making Available

Before: US Library of Congress

Date: 05-05-14

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701