

UNITED STATES COPYRIGHT OFFICE

SECTION 512 STUDY

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9:00 a.m.

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Tuesday, May 3, 2016

Thurgood Marshall United States Courthouse

40 Centre Street

New York, New York

U.S. COPYRIGHT OFFICE:

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JACQUELINE C. CHARLESWORTH

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1 P A R T I C I P A N T S:

2 ALLAN ADLER, Association of American Publishers

3 SANDRA AISTARS, Arts & Entertainment Advocacy Clinic

4 at George Mason University School of

5 JONATHAN BAND, Library Copyright Alliance and Amazon

6 MATTHEW BARBLAN, Center for the Protection of

7 Intellectual Property

8 GREGORY BARNES, Digital Media Association

9 JUNE BESEK, Kernochan Center for Law, Media and the

10 Arts

11 ANDREW BRIDGES, Fenwick & West LLP

12 WILLIAM BUCKLEY, FarePlay, Inc.

13 STEPHEN CARLISLE, Nova Southeastern University

14 SOFIA CASTILLO, Association of American Publishers

15 ALISA COLEMAN, ABKCO Music & Records

16 ANDREW DEUTSCH, DLA Piper

17 TROY DOW, Disney

18 TODD DUPLER, The Recording Academy

19 SARAH FEINGOLD, Etsy, Inc.

20 KATHY GARMEZY, Directors Guild of America

21 JOHN GARRY, Pearson Education

22 MELVIN GIBBS, Content Creators Coalition

23 DAVID GREEN, NBC Universal

24 TERRY HART, Copyright Alliance

25 MICHAEL HOUSLEY, Viacom

1 P A R T I C I P A N T S

2 SARAH HOWES, Copyright Alliance

3 WAYNE JOSEL, American Society of Composers, Authors
4 and Publishers

5 BRUCE JOSEPH, Wiley Rein LLP (for Verizon)

6 DAVID KAPLAN, Warner Bros. Entertainment

7 THOMAS KENNEDY, American Society of Media
8 Photographers

9 DAVID KORZENIK, Miller Korzenik Sommers Rayman LLP

10 JOSHUA LAMEL, Re:Create

11 DINA LAPOLT, LaPolt Law, PC

12 MICHAEL MICHAUD, Channel Awesome, Inc.

13 CHRISTOPHER MOHR, Software and Information Industry
14 Association

15 EUGENE MOPSIK, American Photographic Artists

16 MICKEY OSTERREICHER, National Press Photographers
17 Association

18 JENNIFER PARISER, Motion Picture Association of
19 America

20 MICHAEL PETRICONE, Consumer Technology Association

21 JANICE PILCH, Rutgers University Libraries

22 CASEY RAE, Future of Music Coalition

23 MARY RASENBERGER, Authors Guild

24 STEVEN ROSENTHAL, McGraw-Hill Education

25 KEVIN RUPY, USTelecom

1 P A R T I C I P A N T S

2 MARIA SCHNEIDER, Musician

3 BRIANNA SCHOFIELD, UC-Berkeley School of Law

4 MATTHEW SCHRUERS, Computer & Communications Industry
5 Association

6 LISA SHAFTEL, Graphic Artists Guild

7 VICTORIA SHECKLER, Recording Industry Association of
8 America

9 KERRY SHEEHAN, Public Knowledge

10 LUI SIMPSON, Association of American Publishers

11 HOWIE SINGER, Warner Music Group

12 REBECCA TUSHNET, Organization for Transformative Works

13 DARIUS VAN ARMAN, American Association of Independent
14 Music

15 LISA WILLMER, Getty Images

16 NANCY WOLFF, Digital Media Licensing Association

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

2 MS. CHARLESWORTH: Good morning, everyone,
3 and I see a lot of familiar faces. My name is
4 Jacqueline Charlesworth. I'm the General Counsel and
5 the Associate Register at the U.S. Copyright Office.
6 Welcome back to the section 512 roundtables where
7 we're discussing notice-and-takedown -- the process
8 under section 512 of Title 17, often referred to the
9 DMCA takedown process.

10 To my left, I have a colleague, Brad
11 Greenberg, who is Counsel in the Office of Policy and
12 International Affairs at the office. And to my
13 immediate left, Karyn Temple Claggett, who runs that
14 office. On my right is Kim Isbell who is --

15 I'm sorry, Senior Counsel in PIA. I'm
16 surrounded by PIA people here. And down at the end,
17 Rachel Fertig who is a Ringer Fellow at the Office. So
18 we're happy to have you today to continue our
19 discussion.

20 Just before I get into this particular
21 session, I wanted to point out we have sign-up sheets
22 on the podium in the middle of the room.

23 For people who wish to comment at the end of
24 the day, we're going to have what we call an open mic.

25 We particularly are interested in anyone

1 who's been observing who hasn't had a chance to
2 participate in the roundtables. You'll see two lists
3 there. One is for observers; one is for participants.
4 But at the very end of the day, we will be allowing
5 people to make brief remarks for the record on
6 anything they care to address that they feel wasn't
7 fully addressed in the hearing.

8 So by all means, sign up if that's something
9 you're interested in doing.

10 This particular panel, Panel 5 or Session 5,
11 concerns technological strategies and solutions. A lot
12 of this material was sort of touched upon yesterday,
13 but we really didn't get into a lot of detail
14 regarding, you know, what technologies are available
15 or potentially available to help both users of this
16 process and those who are responding to notices. And
17 where are we in the evolution of that technology and
18 how does it relate to the incentives provided under
19 the law.

20 We will be hopefully taking a little bit of
21 a closer look at those issues and are particularly
22 interested in hearing from people who actually have
23 worked with these systems and some of the details of
24 how they work and the costs and so forth.

25 As we did yesterday, we'll be calling on

1 people. If you'd like to speak, tip your card up, and
2 we will hopefully get around to you -- we'll try to.
3 We have a timekeeper down there. We're trying to limit
4 the remarks to two minutes apiece so that we can get
5 everyone in, usually for a couple remarks or a couple
6 comments for the record.

7 We do have a court reporter, who's taking
8 down your words today, so we will be making a public
9 transcript available on our website eventually.

10 It's important that we try not to speak over
11 one another.

12 And let's see, I'm going to - I have already
13 introduced us. I'm going to start off this session by
14 allowing you to introduce yourselves and if you could
15 briefly in your -- very briefly in your introduction,
16 explain what your relationship is to the technologies
17 we'll be talking about. Are you someone who uses them?

18 Have you helped develop them? Are you
19 overseeing them? And also, tell us what your
20 affiliation is if you're representing an organization
21 today.

22 Session 5: Technological Strategies and
23 Solutions

24 So without further ado, I think I'm back to
25 -- I'm going to start on the right and work left since

1 we have a tendency to go in the other direction. So I
2 think that we're going to begin with you, Ms.
3 Castillo. Can you just introduce yourself for the
4 records and just very briefly explain why you're on
5 this panel relating to technology.

6 MS. CASTILLO: Okay. I'm Sofia Castillo. I'm
7 a staff attorney at the Association of American
8 Publishers, and many of our members use technologies
9 to address piracy on a regular basis.

10 MR. BAND: I'm Jonathan Band representing the
11 Library Copyright Alliance and our concern with
12 various technologies is the possibility of over-
13 notice, over take-down and negative implications on
14 fair use and other exceptions.

15 MR. HOUSLEY: I'm Michael Housley. I'm
16 counsel content protection at Viacom. Part of my
17 responsibilities are overseeing our content protection
18 vendors, many technology vendors, as well as our use
19 of YouTube's Content ID, and we're constantly meeting
20 with a bunch of different vendors in the marketplace.

21 MS. HOWES: So my name is Sarah Howes.

22 I'm the director of legal affairs at the
23 Copyright Alliance. I'm not going to pretend I know
24 anything about technology. I'm a theater artist, so --
25 but I'm here today to talk on behalf of artists who

1 also don't know a lot about technology for various
2 reasons.

3 MR. KAPLAN: I'm David Kaplan from Warner
4 Brothers. I'm the head of the content protection group
5 at the studio, and we regularly use technology,
6 fingerprinting, scanning technologies in our
7 enforcement efforts

8 MR. PETRICONE: Hi, I'm Michael Petricone
9 with the Consumer Technology Association. We represent
10 2200 of America's most innovative companies, most of
11 whom are small businesses, and many of whom rely on
12 the protections of the safe harbors as a key part of
13 their business model.

14 MR. MOPSIK: Eugene Mopsik, former commercial
15 photographer representing the interests of American
16 Photographic Artists here whose members routinely use
17 various technological means to discover the
18 unauthorized use of their images.

19 I'm also a founding board member of the PLUS
20 Coalition, which is a consortium created to help
21 identify rights information and connect rightsholders
22 with the marketplace.

23 MR. RAE: My name's Casey Rae. I'm the CEO of
24 Future of Music Coalition. We're a research, education
25 and advocacy organization for musicians based in

1 Washington, D.C. primarily interested in this from the
2 artists' side, want to know more about the
3 accessibility and affordability of detection
4 technologies for the people that we're representing in
5 these conversations. Also looking at the intersection
6 of data, data integrity, database environment with
7 those identification technologies.

8 MR. ROSENTHAL: Hi, I'm Steven Rosenthal from
9 McGraw-Hill Education. I oversee McGraw-Hill's anti-
10 piracy and counterfeiting program, and I regularly
11 engage vendors that use technologies to help identify
12 and combat piracy. And I also engage the use of
13 vendors to explore technologies to further our content
14 protection needs.

15 MS. SCHNEIDER: I'm Maria Schneider. Is this
16 on? Is that on?

17 MS. CHARLESWORTH: I think it's on, yes.

18 MS. SCHNEIDER: Okay. I'm Maria Schneider,
19 and I'm a musician, and I'm here speaking from the
20 perspective of somebody that sees lots of technology
21 all around me that I feel is being used to monetize
22 infringed content and to make things easier -- easy
23 for uploaders that somehow I don't have access to from
24 the perspective of trying to take things down and keep
25 them down.

1 MS. SCHOFIELD: Hi, I'm Brianna Schofield. I
2 am with UC Berkeley School of Law. I am here in part
3 because as part of a recent research study, looked
4 into the use of technology by both notice senders and
5 online service providers.

6 MR. SCHRUEERS: My name's Matt Schruers.
7 I'm with the Computer and Communications
8 Industry Association. CCIA members include both
9 producers and licensed distributors of content,
10 principally online, as well as intermediaries that
11 provide tools and platforms for end users to
12 communicate and distribute content online.

13 MS. SHAFTEL: Lisa Shaftel, National Advocacy
14 Chair of the Graphic Artists Guild. I'm an illustrator
15 and a graphic artist, and I also educate graphic
16 designers and illustrators about business practices,
17 copyright licensing, and how to add identifiers to
18 their work and use the technology to identify their
19 work and to find infringing uses.

20 MS. SHECKLER: Thank you. Vicky Sheckler with
21 Recording Industry Association of America. I regularly
22 work with our anti-piracy and tech departments on day-
23 to-day new piracy matters.

24 MR. SINGER: Howie Singer. I'm the chief
25 technologist for the Strategy Group at Warner Music,

1 and I'm involved in dealing with the evaluation of
2 technologies that can both support and threaten Warner
3 Music's various businesses.

4 MS. WILLMER: Hi, I'm Lisa Willmer with Getty
5 Images. Getty represents over 200,000 photographers,
6 and I'm hoping to talk today about the availability of
7 image recognition software and what mechanisms we
8 don't have in the DMCA to bring some leverage to
9 online service providers to actually use that
10 technology.

11 MS. WOLFF: I'm Nancy Wolff. I'm here today
12 on behalf of the Trade Association of Image Licensers,
13 Digital Media Licensing Association, and I'm also
14 counsel to the PLUS Coalition, and I'm here today to
15 similarly discuss technology used for purposes of
16 licensing and also image recognition technology that's
17 available and what can be done to make it more useful
18 in terms of keeping infringing content offline and
19 encourage licensing.

20 MR. DEUTSCH: I'm Andy Deutsch on behalf of
21 the Internet Commerce Coalition, which is a large
22 group of internet service providers that both transmit
23 and host content and who obviously are very interested
24 in technological changes and its application to
25 section 512 as well as to cooperative efforts with

1 copyright holders to develop best practices for
2 notices and other 512 procedures.

3 MS. CHARLESWORTH: Okay, well, good morning.
4 So I'm going to start with a fairly broad question.
5 For those of you who weren't here yesterday, we heard
6 a lot about the challenges of this system on both
7 sides, both in terms of sending notices, identifying
8 works, and then the volume of notices that are
9 received, some of which are, you know, not properly
10 prepared. So my general question here, having digested
11 some of what we heard yesterday, is technology a big
12 part of the answer here? Can it be a big part of the
13 answer in terms of solving some of the problems that
14 we heard about yesterday from both those copyright
15 owners who wish to identify and takedown works and
16 users who are responding to notices? To what degree
17 can we look to technology as a solution?

18 All right, good, I have responses. This is
19 good. Okay. I think since basically everyone put their
20 placard up with that nice, broad question, I'm going
21 to start again on this side of the room. Ms. Castillo

22 MS. CASTILLO: Well, I -- for AAP, the answer
23 is definitely yes, technology is a big part of the
24 answer to many of the problems we've been discussing.
25 And that is partly because there seems to be very

1 strong opposition to legislative solutions, and
2 voluntary practices -- voluntary agreements and best
3 practices, which will be the subject of future panels,
4 are -- have their limitations. They don't necessarily
5 include everybody.

6 And so many of the problems of infringement
7 are driven by technology, so technology-based
8 solutions are definitely the way to go. We have seen
9 that filtering mechanisms, fingerprinting, and
10 watermarking are available, are possible, and even if
11 they are not perfect, they are a great way to start.
12 And they actually would provide more effectiveness
13 rather than more efficiency to the DMCA notice-and-
14 takedown.

15 One of the examples we have seen that is
16 positive is Scribd's Book ID fingerprinting system.
17 And that is something that is an algorithm that
18 basically incorporates things like word count, word
19 frequency into -- it combines all that into an
20 algorithm that creates a fingerprint.

21 And then whenever matching content is
22 uploaded, then the filter basically prevents it from
23 either being uploaded or actually removes it from the
24 site. And the site actually provides the possibility
25 of challenging content Book ID made removals. And so

1 something like that is a good example of places where
2 we can start building up technology and tweaking
3 filters so that they eventually become more accurate
4 and there are less false-positives.

5 Also the other good thing about technology-
6 based solutions is that one of the criticisms we heard
7 yesterday is that some -- in some situations, notice
8 and stay-down system would conflict with 512(m), and
9 the prohibition of imposing monitoring obligation on
10 ISPs but to the extent that filtering technologies are
11 based on information that comes from DMCA notices or
12 information that is already provided by copyright
13 owners, then it wouldn't conflict with
14 prohibition on] the affirmative duty to monitor
15 because this would be information that ISPs already
16 have.

17 MS. CHARLESWORTH: And can I ask you for
18 Scribd, do you know what motivated them to adopt that
19 technology?

20 MS. CASTILLO: I don't know the history of
21 Book ID, but I do know that they get their information
22 from two different sources. One is references provided
23 by copyright owners or authors, and the other one is
24 information from DMCA notices. So my guess is, you
25 know, this would be a way actually to reduce their

1 intake of notices because once you have a filter, then
2 the reuploading problem should decrease. And then it's
3 actually better for the service provider to not have
4 to process so many notices.

5 MS. CHARLESWORTH: Okay. Thank you.

6 Mr. Band.

7 MR. BAND: So technology obviously is part of
8 the solution. The internet is vast.

9 Rightsholders obviously have no option but
10 to use technology to find infringing material. Of
11 course, one of the technologies they can use is Google
12 because that's an easy way to find where infringing
13 websites are and then go after those websites.

14 The -- at the same time, there's a danger,
15 as I indicated before, of using these technological
16 measures to -- that you get false- positives and we
17 also know there's new research about the problems that
18 come from all of these automated notices. On the
19 service provider side, given the huge volume of
20 notices, it's understandable that they want to use
21 automated take-down, but again there's the problem
22 that they're taking too much stuff down. Certainly for
23 the -- they need to respond expeditiously to a notice,
24 and it's inefficient for them to verify that
25 everything -- all the items of the -- of notice

1 necessarily meet the statutory criteria, but it's
2 understandable that they will try to respond to it.

3 Filtering obviously is part of the solution,
4 but it needs to be a voluntary part of the solution,
5 whether it's done on a contractual basis between
6 rightsholders and service providers or the service
7 provider uses it on its own, but most importantly
8 where technology comes into play is developing new
9 business models, new ways for content to be
10 distributed so that this whole discussion becomes
11 irrelevant. I mean, that's what we really want is to
12 move to a day where no one case about 512 because
13 there are new alternatives out there.

14 MS. CHARLESWORTH: So you -- going back to
15 sort of the earlier part of your statement, I think
16 you acknowledged that given the volume on both sides
17 that technology, I think you said, has to play a role
18 perhaps in the system. And you're concerned about over
19 notices, inaccurate notices, or over -- you know,
20 mistakes in notices and also mistakes perhaps in the
21 takedown end. But what -- on a practical level,
22 thinking of this in the real world, how do you address
23 it, and what is your proposal to address that? In
24 other words, given that it seems that technological
25 tools are necessary to this process, how do you

1 address the issue of over- noticing, if you want to
2 call it that, and over takedown? I mean, is there --
3 a way that might actually work or be scalable?

4 MR. BAND: Unfortunately, I don't think
5 that's possible. I mean, I think it's -- you know, we
6 live in an imperfect world. I mean, the statute says
7 that you need to -- that the rightsholder needs to
8 have a good-faith belief that the content is
9 infringing. Computers cannot have a good-faith belief,
10 right? It's software.

11 MS. CHARLESWORTH: No, but the people --

12 MR. BAND: But I -- so I think we all need to
13 suspend our belief to some extent. You know, this is
14 an imperfect world. This is an imperfect solution. I'm
15 not sure that there's anything from a policy
16 perspective or a legislative perspective that we can
17 do, necessarily, to make it better other than to come
18 up with, again, better technology that filters things
19 or, you know, that is more discriminating, more
20 nuanced, and then again, as I said, sort of better
21 business solutions that will make all this irrelevant.

22 MS. CHARLESWORTH: So you're suggesting that
23 technology may evolve to help address -- could be
24 fine-tuned and further developed maybe to deal with
25 the more marginal cases but that, if I heard you

1 correctly, a certain level of error is sort of
2 inevitable when you're using technological processes?

3 MR. BAND: I think a certain level of error
4 is inevitable, and I think we all need to sort of
5 recognize that that's going to happen, that there's
6 going -- there needs to be some flexibility and under
7 -- and we need to acknowledge that instead of denying
8 it.

9 MS. CHARLESWORTH: Okay.

10 MS. TEMPLE CLAGGETT: Yeah, and I actually
11 had a quick follow-up on just that point right then in
12 terms of whether technology would ever be able, I
13 guess, to develop to the extent that it would itself
14 be able to assist in terms of assessing fair use. So
15 do you think that that is actually possible, that you
16 would be able to use technology to comply with a court
17 saying that you -- that a content owner has to
18 consider fair use before they actually send the
19 notice?

20 For example, if it's a technology that only
21 would capture full-length films or full-length sound
22 recordings and maybe have some other kind of factor
23 that's also included. Do you think that that is
24 something that would be able to allow you to still use
25 a completely automated service but have that

1 subjective, good-faith belief that it's not
2 authorized?

3 MR. BAND: So June brought this up
4 yesterday talking about the Lenz case and then the
5 amended opinion and what is the significance of the
6 court removing that discussion and you know, whether
7 -- what was the thinking and you know, who am I to
8 speculate on why the Ninth Circuit removed that and
9 what is the significance of its removal?

10 I think at the very least, technologies can
11 be developed to include some kind of algorithm that
12 would consider some of these factors. Whether that
13 would necessarily in a given case be sufficient, I
14 don't know, but I think you're not going to have a lot
15 of cases like the Lenz case.

16 So you know, again, and that might be one of
17 those situations where we say, you know, it's -- you
18 know, the rightsholders should build that kind of
19 fair use equivalent screening into their system, and
20 it might result in some errors, and it could be that
21 once in a while, they will be found to -- you know, in
22 the event that they're -- that a take-down is
23 challenged as it was in the Lenz case, it could be
24 that once in a while, they might have to litigate
25 that. And it could be that once in a while, they might

1 have to pay some damages. But that's, you know, part
2 of the cost of doing business in this environment.

3 MS. TEMPLE CLAGGETT: Thanks.

4 MS. CHARLESWORTH: Thank you, Mr. Band.

5 Mr. Housley.

6 MR. HOUSLEY: So I think there are
7 technologies available today that when deployed
8 correctly can be used very well to find especially
9 full-length pieces of content, unedited pieces of
10 content. All of these new technologies need to be
11 assessed and deployed carefully. At Viacom, we give a
12 wide berth to fair use. Our fans are our priority, and
13 the focus of our content protection program is always
14 going to be going after the most damaging content,
15 which is the full-length content. So in that sense,
16 the existing technology has helped us to manage that
17 process.

18 I also think that we'd be selling ourselves
19 short and selling the technology sector short if we
20 didn't think that we could come up with something
21 better than fingerprinting.

22 I think that if you look at what's being
23 done in artificial intelligence and machine learning,
24 the sky's the limit. I think those technologies are
25 well-suited to and are already being used to identify

1 content for other non- competition uses.

2 And it may be that the original intent of
3 the DMCA of having creators and OSPs working together
4 on these issues has been distorted a bit so that the
5 original incentive to continue to fine-tune and
6 evolve these things technologies is no longer there.

7 MS. CHARLESWORTH: I have a follow-up It
8 sounds like -- are you 17 question for you.

9 familiar with the technologies available in
10 the marketplace, then? Is that part of your role? So
11 we've heard a lot about like yesterday, we heard
12 about Content ID, and we just heard about Scribd sites
13 that have sort of custom filtering technologies, but
14 are there third-party vendors who offer filtering as
15 an outside vendor to websites who might be using
16 technology, or does it -- is it all only in a custom
17 environment at this point?

18 MR. HOUSLEY: There are third parties that
19 will license their fingerprinting technology to
20 websites if they -- if websites wanted to filter.

21 MS. CHARLESWORTH: And do you know whether
22 there are any websites that have adopted - - setting
23 aside YouTube and Content ID and it sounds like
24 Scribd, but whether websites are starting to adopt
25 anything that looks like stay- down technology through

1 the use of either custom software or third-party
2 vendors?

3 MR. HOUSLEY: Of those that are publicly
4 talking about it, I know that there are a number of
5 sites that use Audible Magic. I think in the news
6 recently, Facebook came out that they're -- they've
7 started to develop their own Content ID- like system.
8 There are a couple of other vendors that come to mind.
9 One is the name Vobile, V-O-B-I-L-E. Some websites use
10 them in the same way to filter.

11 MS. CHARLESWORTH: Okay, if we -- go down the
12 row. If anyone has sort of specific knowledge about --
13 I saw some nodding heads -- about the availability of
14 sort of third-party filtering technology and
15 fingerprinting services of interest.

16 MS. TEMPLE CLAGGETT: I had a follow-up - -
17 quick follow-up question to that, as well. In terms of
18 the third-party vendors, how does that work exactly in
19 terms of getting the information that is needed to
20 create the hashes or the fingerprinting? Do they work
21 with rightsholders to get that information? How does
22 that relationship work? Do you have a relationship
23 with those third-party vendors as well?

24 MR. HOUSLEY: Yeah, so on the creator's side,
25 we either -- either they provide their tools so that

1 we can create fingerprints and push into their
2 database, or I believe you can provide your content to
3 them to generate the fingerprints themselves. But
4 creators can get their fingerprints into those
5 databases, and then those companies can contract with
6 the sites to deploy however the sites want to deploy.

7 MS. TEMPLE CLAGGETT: Thank you.

8 MS. CHARLESWORTH: Okay. Ms. Howes.

9 MS. HOWES: Hi. Well, I think that we're in
10 an exciting time right now when it comes to
11 technologies, and I think that individual creators are
12 very excited by what they can do online and the
13 opportunities to be able to control their work more.
14 And it's also an exciting time because we are seeing
15 technologies being developed on OSPs that are helping
16 individual creators, which really falls to the
17 legislative intent of what this Act was trying to do
18 was to bring corroboration.

19 And something that I will say is that as
20 artists, we are very collaborative people. I'm a
21 theater artist, and you know, Hamlet wasn't made by
22 one man. It was made by a team of people who came
23 together to come up with solutions. And technologies
24 are able -- right now, we're -- artists are able to
25 now develop really successful platforms to sell and

1 distribute their work.

2 However, when it comes to piracy of their
3 work being put on other platforms that they don't wish
4 to have on, there needs to be more access.

5 And we did a survey of our individual
6 creators. A lot of these people are still using Google
7 Image searches, reverse image searches, Google Alerts,
8 and they find it to be insanely ineffective at finding
9 their works on other websites, and then on top of
10 that, to go through the process of actually
11 identifying every single individual contribution of
12 their work that's found on a website. As a creator,
13 being able to control your content is not only part of
14 your artistic integrity; it's also part of your
15 ability to make a living and a life.

16 And so the Copyright Alliance is very
17 supportive of technologies and for companies to come
18 together to cooperate and to have collaboration in
19 this process to solve it for the individual creator
20 who is really -- feels very much left alone in this
21 area.

22 MS. CHARLESWORTH: Can I ask, are -- you
23 suggested a lot of individual creators are still using
24 Google Search and Google Image, which are very
25 manually-based tools. Is there anything in the

1 marketplace that individual creators can turn to that
2 enhances their ability to search for content that's
3 affordable to them? I mean, are you familiar with any
4 tools that are out there for individual artists?

5 MS. HOWES: I would like to say yes. I do not
6 know. Again, I mean, there might be more.

7 I know that there are some services that I'm
8 sure Eugene could talk to you for photographers that
9 are more affordable But there's a lot of individual
10 creators out there that don't have - - haven't been
11 ahead of the game as photographers have, and they're
12 kind of still new to this and trying to figure out
13 those technologies. But I will say that there are
14 platforms that are created by artists who are trying
15 to figure out more collaborative ways to involve the
16 creator in the take-down process, which is similar to
17 Content ID, right, which I think is the most
18 successful part of Content ID is that you're asking
19 the creator what would they like to do with the
20 infringement.

21 MS. CHARLESWORTH: Okay. Thank you.

22 Mr. Kaplan.

23 MR. KAPLAN: So obviously technology is part
24 of the solution. It already is in terms of locating
25 content, rescinding, filtering. I'd just like to start

1 by saying there really are no silver bullets here. So
2 it's not like you're going to be able to have one
3 technology, even a combination of technologies, that
4 are going to fully solve your problem. But that
5 shouldn't be a reason that we should, you know,
6 discount the use of technology in helping to address
7 the problem.

8 I think one thing we can definitely count on
9 is is that the technology's going to evolve over time
10 such that it's increasingly accurate, and it's also
11 probably increasingly less expensive over time. So
12 things that may not have seemed reasonable, you know,
13 five years ago now seem like they're routine.

14 I would say that it's not so much about
15 software developing -- the right -- what was the
16 comment? Having a good-faith belief. As I think I said
17 yesterday, almost in every instance that the use of
18 technology is missed with, you know, human review or
19 human setting up the use of the technology in the
20 first place. So it's not that, you know, you're going
21 to have knowledgy (sic) and suddenly all these errors
22 are going to happen and you're going to -- it's going
23 to run amuck. I mean, I actually think that it's the
24 reverse, that in situations that I'd seen when you're
25 doing notice-sending or scanning of scale, often times

1 humans results in -- you know, human review results in
2 the errors. But the technologies themselves can help
3 you identify and reduce the error rate, I would say.

4 And in terms of technology giving you the
5 opportunity to facilitate, you know, fair use kinds
6 reviews, you know, definitely. It's evolved to the
7 point where you have matches that can be identified
8 even on, you know, by duration, whether it's an audio
9 match, whether it's a video match, the length of the
10 match relative to the overall length of the work.
11 These are, you know, things that YouTube, for example,
12 developed in with its Content ID.

13 When we first started talking to YouTube,
14 you know, seven years ago about Content ID, we did an
15 analysis using their technology as a test. And we said
16 well, this works, to its limited extent, not as well
17 as some other technologies that were out there at the
18 time, but the problem was you don't have a rule set
19 associated with the content such that it's either a
20 leave it up or take it down. And we can't use your
21 technology at this point because you are essentially
22 over- blocking a lot of things that we would choose to
23 leave up that you're only giving us the option of
24 taking down.

25 So it was about a nine-month process where

1 they began to develop the tools and the rule sets
2 around matches to been able to, you know, make us feel
3 comfortable that we were giving fair use enough of a
4 berth on the platform.

5 MS. CHARLESWORTH: So just to make sure I
6 understood, so there's a human -- it sounds like
7 there's a human component sort of in terms of setting
8 the parameters for the software in terms of what's
9 flagged or what's potentially flagged for potential
10 takedown. Is that correct? Can you talk a little bit
11 more about that? And also, it sounds like you, if I
12 understood you correctly, maybe have a human review
13 process at the other end where you're perhaps
14 reviewing things that have been flagged. And can you
15 talk about how all that integrates and relates to the
16 technological tools?

17 MR. KAPLAN: Sure, I mean, there's actually a
18 lot of different examples. So it depends on kind of
19 what specific piece of online piracy we're talking
20 about addressing. Some of them I can just go through a
21 couple of different examples.

22 MS. CHARLESWORTH: Yeah, if you could give us
23 a sense, a flavor of how it sort of works behind the
24 curtain.

25 MR. KAPLAN: Sure. So for purposes of

1 scanning, for example, when you're finding content, as
2 I think I said yesterday, there's a universe of pirate
3 sites out there. It's not the entire internet. So
4 essentially, you're using, you know, human review to
5 decide where to be scanning in the first place. And
6 there's often a human review in terms of how you're
7 identifying the content itself, by word matches or
8 word excludes, and it makes sure that you're not, you
9 know, pulling in things that you shouldn't be pulling
10 in with your matches.

11 In the context of like Google notice
12 sending, for example, what the vendor that we use does
13 is they essentially run searches, automated searches,
14 pulling up, you know, a list of results, and then it's
15 a human review looking at each one to see whether or
16 not you think it meets the standard of standing it in
17 for purposes of linking to a pirate piece of content.

18 In terms of filtering technology, you have
19 humans setting up, you know, how -- what kind of
20 content you're going to be looking for in the first
21 place, how -- what's the duration of the match that
22 you're going to require in order for an action to be
23 taken. Sometimes, the action is, and it is often the
24 case in a lot of situations that we deal with, that
25 action is route for human review. So you decide that,

1 you know, content didn't fall in -- the match didn't
2 fall in -- within certain parameters, and so you're
3 going to have a human take a look at it, and that can
4 be based on, you know, the length of the match,
5 whether it's an audio match or a video match, whether
6 it's both. You also have the ability, of course, to do
7 a -- rule sets around territorial restrictions. So --
8 and I know we told YouTube before, we don't own the
9 content everywhere in the world necessarily, so you
10 have to have a system that's flexible enough for us to
11 be able to differentiate.

12 MS. CHARLESWORTH: And are the humans who're
13 looking at the stuff that's been flagged, are they in
14 any way trained in fair use principles, or what kind
15 of instruction, if you can -- to the extent you can
16 share, are they given that?

17 MR. KAPLAN: Yes, so in our case, yes.

18 The work that we do that is less than, let's
19 say, full feature, full episodic, right. That is often
20 times done by vendors who are assisting us. But work
21 that's done kind of in the space where it's something
22 less than that is handled in house.

23 MS. CHARLESWORTH: Oh, okay. Thank you.

24 MS. TEMPLE CLAGGETT: I had one quick follow-
25 up. I'm sure we'll hear from Ms. Schofield a little

1 bit later, but I wanted to know if you had the
2 opportunity to review her study, which seemed to
3 caution a little bit against the increasing use of
4 automated technology, identified a number of issues in
5 terms of potential misidentification. Do you share
6 that -- those concerns in terms of the risk of
7 improper notice from increasing use of technology and
8 automated systems? And do you think that there are
9 ways to reduce any of the concerns that were raised in
10 that study?

11 MR. KAPLAN: Well, I think there's always the
12 potential, right, for increased errors, depending on
13 how the technology is used. But I would argue that a
14 lot of the times, what's happened there is that the
15 human element of how that technology is going to be
16 deployed has -- that's where the breakdown was. So I
17 definitely think that technology can be used to reduce
18 errors. Like I said before, in situations that we've
19 had, when you get to the root of it, often times it's
20 been the human element in the mix that has resulted in
21 the error.

22 MS. TEMPLE CLAGGETT: Thank you.

23 MS. CHARLESWORTH: Thank you. Mr. Petricone.

24 MR. PETRICONE: Sure. Technology is a very
25 exciting and promising part of the solution.

1 You mentioned YouTube's Content ID, which,
2 as Mr. Kaplan mentioned, was developed in close
3 cooperation with the record labels. Content ID is very
4 significant in two ways. First, it alleviates the
5 burden on rightsholder by automating rights
6 management. Ninety-nine point five percent of music
7 claims on YouTube are now made with Content ID, which
8 YouTube handles with ninety-nine point seven percent
9 accuracy.

10 Second, it's created an entirely new revenue
11 stream for the music industry by allowing
12 rightsholders, if they wish, to leave fan videos up
13 and earn revenue from them. Just this month, a fan
14 made a funny video of a Ben Affleck interview with the
15 soundtrack of Simon and Garfunkle's The Sound of
16 Silence, which then went viral. And that propelled the
17 song into the top ten sales chart 50 years after it
18 was released. There were 20- somethings in my office
19 who were asking me, I really like this. Who's Simon
20 and Garfunkle? Like all -- true story -- all because
21 of that video.

22 And today, because of Content ID, fan-
23 uploaded content accounts for roughly 50 percent of
24 music industry's revenue from YouTube. So it is not a
25 one size fits all solution. It costs YouTube tens of

1 millions of dollars and takes hundred of lawyers,
2 which is obviously out of reach for a small start-up.
3 But it is an excellent example of the new technologies
4 and as Mr. Kaplan mentioned, there are more to come
5 and the price will fall.

6 MS. CHARLESWORTH: So on you -- on Content
7 ID, I think we heard yesterday that not everyone is
8 able to -- not every artist is able to take advantage
9 of that. Do you -- I mean, you're not speaking on
10 behalf of YouTube specifically, are you? So do you
11 know anything about what the rules are in terms of who
12 gets to sign up for Content ID, or is that something I
13 should be asking someone else?

14 MR. PETRICONE: We can certainly get back to
15 you with specifics.

16 MS. CHARLESWORTH: Okay. Mr. Mopsik.

17 MR. MOPSIK: Specifically related to
18 technologies involving motion picture, I know company
19 called Excipio is one of the companies that does a
20 fingerprinting product that also extends, I believe,
21 to the identification of unlicensed useful articles.
22 Beyond that, there are a number of service providers
23 in the image space who will primarily use their own
24 fingerprinting algorithm to identify the occurrence of
25 images which then had the -- the list has to be

1 evaluated by the rightsholder to determine what's an
2 actual license and what's not.

3 The missing link in the image space on
4 technology is the ability to identify what is a --
5 identify through machine action what is an actual
6 licensed use and not, and that's something that the
7 PLUS Coalition has been working on for a number of
8 years, and it's predicated, though, on the ability to
9 establish a persistent machine actionable identifier.
10 And without, I guess, greater penalties or some
11 penalty for the removal of identifiers or meta data
12 from images, that link will never happen. You'll never
13 be able to -- the way PLUS works is you have an
14 identifier with the image and then all of the
15 information about the licensing history and other
16 metadata related to that image is held in a database
17 that can be updated on a dynamic basis so that as the
18 image moves through the image space and is used, the
19 licensing information can be updated.

20 So if you had -- if you're able to make that
21 link and you identify an image, then again, through
22 machine action, you could determine whether or not
23 something was an actual authorized use. And then one
24 other quick thing and related to fair use,
25 photographers are not particularly knowledgeable

1 regarding fair use, and images are rarely used in
2 snippets. They're used in their entirety, and that use
3 can have significant impact on the value of that image
4 over time.

5 MS. CHARLESWORTH: So Mr. Mopsik, I -- that's
6 a very helpful overview. I'm wondering if individual
7 photographers have access to a service that would, for
8 example -- is that -- maybe that was implicit in what
9 you were saying. Is it affordable?

10 MR. MOPSIK: Yes.

11 MS. CHARLESWORTH: How much would that cost
12 to sign up for a service like that?

13 MR. MOPSIK: Frequently, I mean, there are --
14 the fees are not significant. The service takes
15 potentially 50 percent or more of any recovery. But
16 they will -- once you've identified an image as an
17 infringement, they will -- many of these services have
18 a legal services component, and they will then peruse
19 the infringer.

20 MS. CHARLESWORTH: Will they serve it --

21 I'm sorry. Will they serve a takedown
22 notice?

23 MR. MOPSIK: I think they will put a take-
24 down notice in place. And if there's no -- again,
25 frequently when -- in the image space, the problem

1 with take-down procedure is you're chasing phantoms.
2 And so people will -- if they'll say okay, we'll take
3 the image down. They may've been using it for six
4 months, or a year, or two years, or whatever, until
5 you locate the infringement.

6 And again, frequently there's a lot of
7 attitude involved when you try to explain to them that
8 there should be some compensation for that use they've
9 already made.

10 MS. CHARLESWORTH: Okay. Thank you.

11 Mr. Rae.

12 MR. RAE: Yes, so I'm going to be talking
13 about primarily playable media, but I do think that
14 some of the things that Eugene said are relevant to
15 the music space, as well. When I look at the history
16 of this, you know, and I always go back to the
17 statute, and I think that primarily if we're talking
18 about identification technologies, it would be within
19 512(i). And in the earlier parts of these, you know,
20 various debates and even litigation, I think you know,
21 indeed, it wasn't practical on the service side to
22 expect that, you know, you could implement
23 technologies to do what we're talking about today.

24 But I also think that on the content side, I
25 mean, there's always the desire to achieve new legal

1 precedent, favorable precedent, and perhaps damages.

2 We're in a different place now.

3 When I look at 512(i), I see that we have -
4 - it encourages community standards It's specifically
5 sets conditions of eligibility for safe harbors where
6 services have to accommodate tools that copyright
7 owners would use to identify and you know, potentially
8 prevent infringement.

9 But the method of actually deploying that is
10 a collaborative effort. I think we actually have to
11 get our processes kind of dialed into that. I'd like
12 to see vendors. I'd like to see smaller rightsholders,
13 in particular. I'd like to see, you know, services,
14 obviously, maybe in a sort of body that can provide
15 recommendations, not just one time but on a going
16 forward basis because we're opening up into new
17 technological environments; virtual reality, augmented
18 reality. There's going to be a user-generated or a
19 user-uploaded aspect of all of that.

20 The fair use issue is interesting. I mean,
21 my preference personally would be let's focus on the
22 entirety of the work. If you can algorithmically set
23 your tools to, you know, only be looking at the
24 entirety of a work, then we can have the fair use
25 conversation, and debate, and potential litigation if

1 necessary. But we can probably solve many of our
2 problems through a process of kind of what we're doing
3 here but maybe a little bit more focused on the actual
4 practical implementation.

5 MS. CHARLESWORTH: Mr. Rae, did you -- I
6 don't know -- happen to participate in the Department
7 of Commerce process --

8 MR. RAE: I did, yes.

9 MS. CHARLESWORTH: -- on the multi-
10 stakeholder process. And from that, I mean, are
11 you -- where do you think things stand?

12 We heard a lot of, perhaps in the written
13 comments, as well, but also here yesterday heard, I'd
14 say, a lot of pessimism about the ability of the
15 various actors to get together and come up with
16 standard technical measures. And I'm -- you sound a
17 little more optimistic, so I'm wondering --

18 MR. RAE: I am. I actually am. First of
19 all, I share those opinions about the USPTO process.
20 It was a little bit too much of a cattle call. It
21 wasn't particularly designed to elicit, I think,
22 useful information, and there were just simply too
23 many cooks in that kitchen and you know, which just
24 leads to a lot of showboating.

25 I've also seen processes like, you know, the

1 ones that have been sort of brokered by IPEC, for
2 example, having a completely different result, much
3 more targeted, much more focused on the community of
4 actors who actually are seeking relief and can serve
5 as market leaders towards a solution. Copyright
6 Alert System is also another example of folks who
7 can come together who are representative of those
8 stakeholders in a multilateral sense. They're all
9 together -- and they have to talk to each other.

10 MS. CHARLESWORTH: Okay. Thank you very much.
11 Mr. Rosenthal?

12 MR. ROSENTHAL: Hi. There's a lot of talk
13 about the burdens of developing technologies.

14 I'd like to state that a lot of the same
15 technologies that are used to identify infringement
16 like hash values and check sums, are -- can be used to
17 filter in the same way that we use to locate the
18 materials. They can be used to filter the materials by
19 size and prevent the whack-a-mole problem. I mean, so
20 it's not that a lot of new technologies need to be
21 developed. A lot of these long-standing technologies
22 that are in place can be used in these ways.

23 Also, the -- I noticed there's been an
24 intentional avoidance of - to use technologies, for
25 example, by ISPs extensively to avoid claims of

1 willful blindness in terms of their not logging IP
2 addresses so that when we send a DMCA notice, it's
3 effectively rendered impotent. There are -- you know,
4 there're a lot of frustrations that we come across
5 when we're trying to enforce our rights. And you know,
6 we look at these technologies that we're using, and we
7 say why can't you use the same ones. You know, we use
8 a lot of technology to identify infringements, whether
9 it's the IP address, whether it's the hash value, the
10 filters, and it -- you don't have to reinvent the
11 wheel.

12 You asked about technologies specific -- you
13 know, technologies that are out there. Prior to
14 McGraw-Hill, I worked for a technology vendor that
15 specialized in anti-piracy for live streaming
16 companies. And we developed live streaming filters
17 that fingerprint and filter live streaming television
18 programs and pay-per-view events in real time. Some
19 of these technologies were adopted by websites; other
20 streaming sites, like Justin.tv, created their own
21 technology to do this. So it's not an impossibility.
22 It's just leading to the willingness.

23 MS. CHARLESWORTH: Thank you, Mr. Rosenthal.

24 MS. TEMPLE CLAGGETT: I have a quick follow-
25 up to that. You kind of intimated that there was

1 somewhat of an unwillingness on the part of I guess
2 maybe some ISPs to voluntarily use this technology. Do
3 you think that there is a disincentive in the 512
4 regime that results in that, or what do you think is
5 causing any of the, I guess, perceived unwillingness
6 to adopt what you believe are reasonable technological
7 solutions?

8 MR. ROSENTHAL: In terms of logging of IP
9 addresses, certainly the recent Cox BMG case would,
10 you know, because for somebody to say well, I'm just
11 going to not log any IP addresses. This way, I can't
12 be accused of willful blindness. In terms of the
13 online service providers that are not using these
14 technologies to affirmatively filter the known pirated
15 materials, well, many of these sites are run primarily
16 by the hosting and distribution of content that is
17 known to be infringing. And if we, you know, cleaned
18 up their site, they'd lose the majority of their
19 content and their appeal.

20 MS. TEMPLE CLAGGETT: Thanks.

21 MS. CHARLESWORTH: Ms. Schneider.

22 MS. SCHNEIDER: First of all, you know, I
23 think that obviously, you know, in automation, there's
24 going to be some error, but I am of the thought, too,
25 a machine can learn and, you know, a translation

1 wasn't that great on the internet, either, a year ago
2 or two years ago, but it's -- it learned so fast. And
3 so I think we have to accept that there's going to be
4 some errors.

5 Certainly if you compare it to the billions
6 of, you know, errors in people uploading [illegal]
7 things that Google is facing, you know, every day or
8 every year or whatever it is, it doesn't compare.

9 The other thing I'd like to say is that I
10 think that technology should be used in conjunction
11 with education because if there's all this automation
12 but there's not educational steps along with it. So
13 for instance, Content ID. You know, I said yesterday
14 I'm not accepted in the Content ID. Okay. So you know,
15 I don't think that's right. I think that should be
16 changed. I think, you know, if you're a safe harbor,
17 these things should be available to everybody.

18 But beside the point from that is the fact
19 that Content ID is now being used for people to upload
20 a lot of content. And they think that they're doing
21 something good. I interviewed kids at different
22 universities, and they're like "Yeah, but they're
23 attaching ads to it, so I feel like I'm doing
24 something good." The problem is that they're also
25 catching in the net my music, my music which is not

1 being monetized, which is hurting me, and they don't
2 really realize that.

3 And nothing is coming up from Content ID
4 saying, "Hey, this isn't in our Content ID. Do you own
5 this work? This is a full track. If you do not own
6 this work, this is infringement. It does not fall
7 under fair use."

8 So you know, I think that whatever we do in
9 the world of technology should have the component of
10 education along with it. I mean, everybody's
11 complaining about, you know, erroneous take-downs,
12 erroneous, you know, counter-notices and things. I
13 mean, education is where it's at to fix those things

14 MS. CHARLESWORTH: And I know you've
15 mentioned this a couple times, but do you know
16 specifically why you can't avail yourself of Content
17 ID? Is there --

18 MS. SCHNEIDER: No, I got an automated
19 response that said -- you know, I don't want to quote
20 it exactly, but I got the impression I'm not big
21 enough. You know, I mean, I want to use it to -- it's
22 kind of obvious, but they don't say exactly why. They
23 don't say why. It's their own terms that they're kind
24 of allowed to keep secret.

25 And then if you want to have some kind of an

1 account, they'll send somebody to talk to you, but
2 then you've got the Zoe Keating case where she said
3 when she talked to this person, she was basically
4 bullied into giving her whole catalog for Content ID
5 or else she was out. You know, it was all or nothing.

6 So you know, I don't think that companies
7 that are a safe harbor should be allowed to use these
8 tools for their own gain. You know, okay, use it for
9 your own gain, but use it equally for the person that
10 doesn't want their music on their site.

11 MS. CHARLESWORTH: Okay. Thank you, Ms.
12 Schneider.

13 MS. TEMPLE CLAGGETT: And one quick follow-
14 up. I think yesterday, it was mentioned that there
15 are, on the notice side, the pop-ups that appear
16 sometimes, for example, if somebody's about to do a
17 notice in there, and it's an image, and the question
18 is did you take the picture and, if not, a somewhat
19 caution that you might not be the copyright holder. On
20 the upload side, for your work, for example, what
21 types of pop-ups or notices are used when you upload?
22 Do they caution that it might be a copyrighted work,
23 do you own the work?

24 MS. SCHNEIDER: This is the biggest
25 educational thing, and I wish -- you know, hopefully

1 this falls under technology. To me, the thing that
2 could solve everything is if there were requirements,
3 standardized requirements and questions on the upload
4 side because right now on YouTube and most of these
5 sites, they don't ask you anything, nothing. On the
6 download side, you get asked a ton. You know, and you
7 get served with all sorts of warnings about attorneys'
8 fees.

9 You have to sign [under] penalty of perjury.
10 I mean, how about on the upload side? You know, okay,
11 do you own this music? Will you sign, under penalty of
12 perjury, that you got permission to upload this? By
13 the way, you could possibly have to pay attorney's
14 fees. You know, if you have all these different
15 things, it's educational. You know, and then real --
16 and then have real information about fair use. What is
17 not fair use?

18 What is fair use? And if you're not sure,
19 here's where you can go.

20 And what I would love to see is that the
21 Copyright Office would set the standard and it would
22 be required that the companies would have an
23 educational video, not the copyright basic Muppet
24 video that YouTube has but your copyright video, your
25 fair use video, your questions on the upload, and your

1 standardized language on the take-down, because that's
2 the other thing.

3 Okay, so now it's more automated. It's more
4 technological. I used to have to scan in a signed
5 perjury statement to everybody. You know, I saved them
6 all online. Okay, now it's standardized, and now that
7 it's standardized, you got to go through the 46 steps
8 of -- Google decided everybody has to drink the purple
9 Kool-Aid of their terms and conditions, and the same
10 thing on YouTube.

11 I mean, to me, if you're in a safe harbor,
12 especially if your safe harbor is the entire ocean,
13 you should have to -- that should be a privilege, not
14 a right. You should have to, you know, adhere to
15 standardized rules that I would love if you guys would
16 be able to set.

17 MS. TEMPLE CLAGGETT: Thank you.

18 MS. CHARLESWORTH: Miss, is it Schonfield or
19 Schofield? Schofield

20 MS. SCHOFIELD: All right, so in our
21 research, we definitely spoke to and heard
22 rightsholders' frustration with dealing with the
23 proliferation of infringing content online. And when,
24 you know, I absolutely think that automated tools are
25 one way of dealing with this, automated tools used by

1 rightsholders to detect infringement and send notices.

2 We do identify a number of best practices
3 that could be used to refine those systems to help to
4 minimize the numbers of mistakes that were made that
5 we saw in our quantitative study. And we also
6 definitely heard from rightsholders who are already
7 employing those types of best practices. We've heard
8 from a couple of people on the panel today, Mr.
9 Housley and Mr. Kaplan, about how their companies are
10 working with their systems and implementing human
11 cross-checks on the notices that are being sent.

12 They might be flagged or we heard from
13 people who are, you know, doing an initial human check
14 of the sites that were being targeted by these
15 notices.

16 We think that these are all good things that
17 could be helpful to minimize mistakes on the notice
18 sending side.

19 When we're talking about technological
20 strategies on the OSP sides, again, you can see some
21 OSPs that are voluntarily implementing these systems.
22 We see very good reasons for these systems to remain
23 voluntary, not least of which because a large part of
24 the ecosystem doesn't have the amount of infringing
25 content on their platforms that would necessitate

1 implementing these sorts of filters that are costly
2 for all service providers to implement.

3 MS. CHARLESWORTH: What about -- I mean, I
4 heard your last point where you have smaller providers
5 and maybe providers that don't have a lot of
6 infringement. But for providers that are using
7 filtering, say, to place ads or for their own economic
8 purposes, do you think that tool should be available
9 to rightsholders if it's already being used by the
10 site for its own purposes?

11 Ms. SCHOFIELD: Sorry, could you elaborate a
12 little bit more? I'm not sure I understand.

13 MS. CHARLESWORTH: We have sophisticated,
14 larger websites use filtering technology or
15 fingerprinting technology sometimes for their own
16 purposes, like to identify content to place ads on it
17 and so forth. So if it's already in use and it's been
18 adopted by a website, should it be made available -- I
19 mean, I guess an example would be Ms. Schneider here.
20 Should she be able to use Content ID if it's already
21 used by the website for its own purposes and it's
22 actually -- in the case of Content ID is obviously
23 available to other rightsholders.

24 MS. SCHOFIELD: Yeah, I can't comment on
25 specific case about the Content ID nor other types of

1 tools that are being used for ad placement or other
2 things, whether they would also be appropriate for --

3 MS. CHARLESWORTH: You did a study on this
4 and, as a matter of principle, if a website is using
5 filtering or fingerprinting technology for its own
6 economic purposes because it thinks it's - - that
7 technology is beneficial, should it also be deployed
8 to help deal with infringement?

9 MS. SCHOFIELD: If the tool has been
10 developed to deal with infringement, then it seems
11 reasonable that it should be available to everybody.
12 One of the things that we do recommend is development
13 of tools that are available to smaller senders like
14 Ms. Schneider. One of our recommendations is that
15 there's exploration into the possibility that these
16 automated systems that are available to larger
17 rightsholders to search for infringement also
18 available to smaller senders with the caveat that
19 they're also subject to the same best practices and
20 implementation responsibilities

21 MS. CHARLESWORTH: Thank you.

22 MS. TEMPLE CLAGGETT: I had a quick follow-up
23 question to that. I think I want to try to see if I
24 can drill down in terms of the main point or the main
25 conclusion of your study because initially there's

1 been a lot of focus on the numbers and people
2 mentioning that 30 percent of your sample size said
3 that there were improper notices in there and then the
4 conclusion that these automated systems really do
5 result in a lot of mistakes or misidentifications.

6 But what you just said just now seemed to
7 support the use of automated systems.

8 So I just wanted to get a sense of: were you
9 cautioning against the increased use of automated
10 systems, or do you think that they play a very
11 important role and should continue to play that role
12 but that there are -- you just think that there are
13 things that could be done to improve them? What is
14 kind of the main point?

15 MS. SCHOFIELD: Yeah, I think automated
16 detection and notice sending, so the use of automation
17 on the sender's side I think is an important part of
18 managing infringements online, though I do think that
19 the systems need to be refined in ways that are not
20 out of reach.

21 MS. TEMPLE CLAGGETT: Okay. Thanks.

22 MS. CHARLESWORTH: Thank you. Mr. Schruers,
23 you're up.

24 MR. SCHRUERS: So I'd like to bookmark the
25 previous question about compelled access to DMCA

1 processes, DMCA-Plus processes since that just came
2 up, and I also want to sort of first answer the
3 original question on the application of technology. As
4 I was listening to the comments of the panelists
5 before I was even reminded that the internet sector is
6 occasionally criticized for technological solutionism
7 where we hear, you know, you may be smart people, but
8 don't assume your technology can solve everybody's
9 problems.

10 When it comes to the DMCA I hear, you're
11 smart people. Your solutions -- your technologies can
12 be the solutions to everybody's problems. And I
13 appreciate that enthusiasm, but I've also learned to
14 moderate expectations, and I think it's reasonable to
15 acknowledge what the challenges are in technology
16 here.

17 First is DMCA-Plus is expensive. We've heard
18 a lot of discussions about that. Secondly, for reasons
19 we've already heard today, DMCA-Plus doesn't make
20 everyone happy. And in addition to that, there's -- we
21 have to acknowledge that DMCA-

22 Plus is a tool of limited applicability. For
23 all practical purposes, it's only meaningfully going
24 to apply in cases of 512(b) and 512(c). And so half
25 our DMCA actors are really not at - in the scope of

1 the conversation when we're talking about DMCA-Plus
2 because 512(a) broadband access providers generally
3 aren't taking custody into content. And unless they're
4 going to do something like a great firewall-style in-
5 transit content suppression, they're not going to be
6 able to do filtering, nor do I think we want them to.

7 And similarly, 512(d) information tools
8 aren't taking custody into content and therefore don't
9 have a library to filter against. And that, of course,
10 all assumes that we have a reference set of content to
11 filter against, which has been populated by the
12 authorized rightsholders along with the contextual
13 rule set that says what to do when you find it. So
14 populating that database and populating the metadata
15 attached to that database is a serious challenge.

16 Let me finish by just saying, you know, it
17 became clear in the USPTO multi-stakeholder process
18 that on both sides of the system, there are the
19 sending and receiving side. There are large
20 rightsholders and large ISPs, and small S&E
21 rightsholders ISPs. And at least from my perspective
22 looking at the small ISPs, there is a real challenge
23 to scaling up automation, and it's actually hard-coded
24 into DMCA. You know, there are -- there is all kinds
25 of contact information on the Copyright Office website

1 that ISPs are required to provide. And they have to be
2 able to take notices by fax and by email. So
3 automating that is a serious challenge.

4 If we're going to say ah, well, you only can
5 submit DMCA take-downs through this web form, there's
6 probably some ease to -- it would be easier to
7 automate that, but I don't see that happening any time
8 soon. As long as you're going to have people
9 submitting notices through multiple modes, that poses
10 a serious challenge to automation of the ingest
11 process.

12 MS. CHARLESWORTH: One question -- I think
13 this is just a very general question -- is might there
14 not be different solutions for larger and smaller
15 websites?

16 Couldn't you imagine a regime where a small
17 website that has few notices of infringement could
18 handle it manually but where a large, sophisticated
19 website with millions of instances of infringement
20 might have a different protocol?

21 MR. SCHRUERS: Yeah, I think indeed, that's
22 what we see happening today. And that means that
23 you're always going to have some smaller ISPs doing
24 manual take-downs, which are, in many cases, you know,
25 bundled with complaints about all sorts of other

1 things, like defamation, and trademark, and you know,
2 other unrelated issues. Large ISPs, large service
3 providers are also doing that. That's obviously a
4 smaller percent of their system because they have
5 systems where the architecture assumes sophisticated,
6 larger users are going to form the bulk of their
7 takedowns.

8 I think that whole conversation points to
9 the fact that you have to moderate your expectations
10 about what standard measures can be when you have such
11 heterogeneous population on both sides of the sending
12 and receiving equation.

13 MS. CHARLESWORTH: Right. But you might set
14 different standards for different classes of
15 providers.

16 MR. SCHRUERS: Well, if you think the classes
17 A through D have aged well, then yeah, I guess we
18 could try and set different standards on both sides
19 there. I mean, when the PTO process attempted to do
20 that, it took a very long time.

21 Obviously, I notice some are not, you know,
22 enthusiastic about the output. My sense was that was a
23 difficult -- a long process that produced an effective
24 product out of it, but the challenges there became
25 evident, that you've got this heterogeneity on both

1 sides of the equation. And so it's difficult to tailor
2 reasonably. I mean, I point to the eight (inaudible) A
3 through D because I think similarly, it's not clear
4 that in 1998, you could tailor the different classes
5 to the kinds of actors that evolved over time.

6 MS. CHARLESWORTH: Thank you.

7 MR. SCHRUERS: Quick follow-up?

8 MS. TEMPLE CLAGGETT: I had one, too.

9 Do you think that there's anything that can
10 be done, I suppose, I don't know, maybe absent or with
11 legislation that would encourage the voluntary use of
12 these types of technologies by ISPs? Again, some
13 people say that there's a disincentive in some sense
14 by the way that the balance is being struck for ISPs
15 to use certain types of technologies and not others.
16 But do you think that there's anything that can be
17 done to encourage the voluntary use of these types of
18 technologies?

19 MR. SCHRUERS: I -- not to be glib, but the
20 short answer to the question is if it's legislation,
21 it's not voluntary. But I think we have seen a lot of
22 voluntary processes emerging over time that are
23 tailored to the constituents at the table. Large
24 actors can implement different systems and for
25 different constituents, large send -- large notice

1 senders can take advantage of more automated systems.

2 Let me just take a second to answer -- to go
3 back to the question about access to DMCA-

4 Plus systems. You know, in that case, if
5 you're going to give somebody privileged back- end
6 access to a platform and say you have the rights to
7 either take all this content down or lay claim to
8 revenues that are coming in from advertisers. I think
9 you're going to want to have the users of that system
10 do sort of reasonable things like agree to indemnify
11 me if you misclaim revenues or if you represent you
12 own something that you don't or if you take down a lot
13 of other people's content.

14 And so those tools might only be made to
15 stakeholders who have a sort of a demonstrated course
16 of legitimate use of the tools. And if that isn't
17 there, then you fall back on the standard DMCA tool
18 set.

19 MS. TEMPLE CLAGGETT: And just to clarify
20 what you're saying, in terms of legislation, not
21 mandating the actual use of the voluntary measure or
22 rather use of the technology but for example, I don't
23 know, having a reduction in your exposure to statutory
24 damages if you employ some type of system. So not
25 something that actually mandates that you must have

1 this technology but some, I don't know, encouragement
2 somewhere else in the system or the regime that says
3 if you do this, you get some benefit out of it legally
4 by having it, but you're not required to actually have
5 it. So that was kind of what I was saying whether
6 there was any legislation that would be able to
7 encourage the use without mandating the use.

8 MR. SCHRUEERS: When I talk to ISPs, one of
9 the biggest complaints that I hear is how much time is
10 spent on responding to messy hand-written or typed
11 notices that pile on a bunch of different issues and
12 disentangling those, you know, particularly for small
13 ISPs. I don't -- you know, I already think there's a
14 lot of incentive to reduce that burden and that's one
15 of the reasons why ISPs are constantly looking for new
16 ways to deploy new tools and participating in
17 processes like the PTOs, you know, year-plus long
18 process.

19 MR. GREENBERG: So as your comment notes,
20 industry efforts and voluntary measures have not led
21 to standard technical measures. At the same time, a
22 lot of the ISPs' comments were concerned with locking
23 in place, through regulation or through statute, any
24 technology now -- let's say Content ID could scale --
25 by statute or regulation, locking that in place.

1 Neither of those are going to work.

2 What is the solution to encourage the use
3 technological measures by the ISPs?

4 MR. SCHRUERS: As I said, I think the cost of
5 responding to notices, particularly when there's
6 always going to be some component of them that has to
7 be coded manually by the recipients and not the -- at
8 the DMCA at email address or the fax machine. That is
9 a very compelling motivation right there. I think
10 obviously the -- allowing technology to evolve over
11 time because there is an interest in deploying and
12 attempting to find ways to find revenue streams for
13 this content, that is the marketplace impetus.

14 And I think we should acknowledge that the
15 broader marketplace impetus is there isn't going to be
16 that much content showing up in unlicensed venues if
17 it is available in licensed venues, and that goes back
18 to my comment yesterday about, you know, sort of
19 aggressive windowing and other licenses practices
20 inherently produces this. And so finding ways to avoid
21 that and make content move broadly available to more
22 users is another solution that we need to keep in the
23 solution set.

24 MS. CHARLESWORTH: So I -- what I hear is the
25 Copyright Office should maintain the fax number

1 requirement and that will incentivize Content ID
2 programs.

3 MR. SCHRUERS: You know, I --

4 MS. CHARLESWORTH: I was actually -- it was a
5 rhetorical thing. It's okay. You need not respond. Ms.
6 -- are we done over here?

7 MS. TEMPLE CLAGGETT: Yeah.

8 MS. CHARLESWORTH: Okay. Ms. Shaftel.

9 MS. SHAFTEL: Excuse me. I'd like to add to
10 some of the comments that -- excuse me -- that Gene
11 Mopsik made. Any effects (sic) section 512 should make
12 it a violation for a host or an ISP to strip metadata
13 final joint upload. The PLUS licensing system for
14 images is useless if the metadata is stripped. Most of
15 the infringing use is a licensing failure. Pinterest,
16 Google, Facebook should negotiate with ISPs to create
17 voluntary licensing because they are facilitating
18 infringing secondary use. Users are not compensating
19 creators for secondary use of images, and I'm not
20 suggesting compulsory licensing here but collective
21 licensing for secondary use. The PLUS licensing system
22 can help facilitate this.

23 Adobe could create creator identifiers for
24 software users. The same creator identifier or ID
25 number the Copyright Office could also use as part of

1 their registration if the creators establish an
2 account with the Copyright Office.

3 And the ISPs could use this creator ID to
4 facilitate electronic payment transactions of
5 voluntary licenses for use on Google and social media
6 to pay visual creators. The technology is possible,
7 and visual creators are more likely to use this if
8 they know they're going to derive income. That's going
9 to get the compliance.

10 We would need to define what commercial use
11 is -- excuse me -- in the context of licensing as
12 opposed to fair use. Getty has -- excuse me.

13 Getty has some guidelines in their embed
14 feature, and our definition would have to be approved,
15 of course, by the museums and the libraries because
16 they are the users that we are mostly concerned about
17 allowing them -- the fair use that they need for
18 images. And if users pay for commercial use, they will
19 have safe harbor from the DMC take-down.

20 MS. CHARLESWORTH: Okay. Thank you, Ms.
21 Shaftel. Ms. Sheckler.

22 MS. SHECKLER: First, to answer your original
23 question, technologies do exist today that are
24 commercially reasonable and reasonably priced to
25 address several of the problem that we've talked about

1 today. For example, in Audible Magic's filing, they
2 mention that their solution is available at -- it cost
3 about \$1000 a month for certain implementations.

4 The key in thinking about these type of
5 filtering solution is the thoughtful implementation of
6 those filtering solutions, which is not just how you
7 set the parameters in the technology but also what
8 procedures, what straight-up rules are put on top of
9 those. That applied to Audible Magic. That also
10 applies in our view to Content ID. Content ID is a
11 helpful tool. It is not a silver bullet, and there are
12 a variety of problems with Content ID that could be
13 addressed, in our view.

14 Second, in terms of the false-positive
15 issue, again, thoughtful implementation would address
16 that. We would also suggest that the take- down
17 project study is an inappropriate guideline for
18 thinking about what is the right statistic of fair
19 use. We'd encourage you to look at some of the other
20 data that's out there.

21 Some of the problems that we see with the
22 take-down project are first, by its own admission, it
23 only applies to search delisting notices. Second, by
24 its own admission, it is for a snapshot of data from
25 2013. Third, by its own admission, it is a targeted,

1 randomized sample.

2 I'm not sure exactly -- or a customized,
3 randomized sample -- I'm not sure what that means.

4 MS. CHARLESWORTH: Okay. You mentioned
5 thoughtful implementation -- a couple of times -- to
6 address issues of faulty notices or fair use. Can you
7 elaborate on that?

8 Like, what kinds of measures should
9 copyright owners be taking to thoughtfully implement
10 automated processes as a general matter?

11 MS. SHECKLER: Are you thinking in terms of
12 filtering or in terms of automated take-down requests?

13 MS. CHARLESWORTH: Well, to me, they're
14 interrelated because really it's the -- it's
15 identifying infringements is really the broad
16 category. But you can address either.

17 MS. SHECKLER: Oh. From our perspective, when
18 we send notices to scale, we are looking for full-
19 length copies of the work. So we set up our systems to
20 look for full-length copies of the works. We do
21 similar things the way Mr.

22 Kaplan and Mr. Housley said in terms of
23 doing a manual review of the site first, making sure
24 the site is fit for scaled notices. We use a variety
25 of tools in our automation to ensure that we don't

1 catch things that we think are inappropriate for full-
2 scale notices; red flags, for example. We're not going
3 to search for a .pdf for music, you know, things of
4 that nature.

5 And then there's also the questions of if
6 you're using a solution like Audible Magic, what are
7 the right parameters in terms of how much you want to
8 catch, what -- how do you decide what is (inaudible)
9 full-length work or what's infringement? What's not
10 infringement?

11 MS. CHARLESWORTH: Okay. Thank you.

12 Mr. Singer.

13 MR. SINGER: Thanks. I'd like to amplify this
14 thought that it's not always about technology but the
15 business processes that go along with it. And I'd like
16 to use an example of something that got discussed
17 yesterday with stacked URLs being prevalent and take-
18 down never working. This is not a bug in the current
19 process. This is a feature of the sites that have
20 designed themselves to be robust to individualized
21 take-down notices that always have to specify an
22 individual URL. Sites get a valuable piece of content
23 -- a prereleased song from one of our artists. They
24 put it on a location and never publish the URL for
25 that actual location. They create a thousand

1 references to that location and publish them a hundred
2 a day. Each day, we issue take-downs. The next day,
3 the next hundred references to that file goes up.

4 So content is never removed. So a system
5 that is designed to notice-and-takedown for individual
6 URLs actually can never be effective when the site is
7 working actively to defeat the system. This was
8 evidence that were presented in the Groove Shark case.
9 The judge described it as a Pez dispenser for valuable
10 content, and we see this all over. So we have to
11 recognize that the technologies and the business
12 processes have to address this.

13 It sort of gets to the point that we were
14 talking about earlier. Are there different standards
15 for different parties? That could be based on size; it
16 could also be based on how responsibly these sites
17 deal with this. If a company like Warner Music or
18 Viacom issues good notices at a good percentage,
19 perhaps they should be treated differently than those
20 who abuse the system and send bad notices. So whether
21 it's the receiving site or the sending site, we ought
22 to look at who our good actors versus bad actors, and
23 it shouldn't be the case that for a site like 4share,
24 the vast majority of our notices are repeat notices
25 for the exact same content we issued again, and again,

1 and again, and have to keep playing this whack-a-mole
2 game. We can distinguish -- I verified my account on
3 Twitter.

4 We ought to be able to do it for take-
5 downs.

6 Thank you.

7 MS. CHARLESWORTH: Thank you. So on the
8 technological Pez dispensers, I think, is the way the
9 court described them, but the stacked URLs, how
10 prevalent is that? I mean, that's sort of a very open
11 question, I realize, but I mean, how commonly do you
12 run across those sites in your experience?

13 MR. SINGER: The only reason we know that is
14 because of the information that we gathered in the
15 court case. We have found it to be true in other cases
16 where URLs, on Day 2, look a lot like the URL on Day
17 1, so it's unlikely a user upload was the source of
18 the same song on the second day. It just makes sense
19 if you're a site that is trying to evade the take-down
20 notices that you would engineer your service to be
21 robust to those notices. So I think it's incumbent
22 upon the Copyright Office to recognize that.

23 MS. CHARLESWORTH: And is there -- did I
24 understand you correctly that there is not currently a
25 technological solution that addresses that, because

1 the ultimate URL is not published, or can you just
2 elaborate on that? I'm trying to - -

3 MR. SINGER: Well, if there were a system
4 that for people who treat this responsibility, there's
5 notice and stay-down and you had a hash value for that
6 file that said that, you know, this particular Ed
7 Sheeran song on this site by the hundredth notice,
8 it's pretty clear they're not licensed to offer it.
9 There should not be a next day where that file is
10 available again.

11 MS. CHARLESWORTH: So if there's no stay-
12 down system, do you think there's an effective way to
13 address that situation in the current environment?

14 MR. SINGER: Not for those who are trying to
15 undermine the effectiveness of the process.

16 MS. CHARLESWORTH: Okay. Ms. Willmer.

17 MS. WILLMER: I wanted to start by saying
18 that as much as we've heard about the value of Content
19 ID, there is not Content ID for images, and that's
20 not because the technology doesn't exist; because
21 Google has chosen not to implement it.

22 So it's clear that leaving it to voluntary
23 action is not enough. Congress mandated, as part of
24 the DMCA, use of standard technical measures.

25 And that was key to striking the balance

1 between ensuring that content would not proliferate on
2 sites.

3 And unfortunately, the definition of
4 standard technical measures is too narrow. To my
5 knowledge, there's no technology that meets that
6 definition and therefore, it's virtually meaningless.
7 The focus should not be on how the technology was
8 developed but what it does and whether it's available
9 on reasonable commercial terms. So as I mentioned,
10 there is image recognition software that would allow
11 companies to check content upon upload to see if it's
12 registered or protected by copyright.

13 To Ms. Schneider's point earlier, platforms
14 take a lot of interest in educating users about the
15 perils of filing take-down notices, what happens under
16 penalty of perjury.

17 Are you sure you want to send the take- down
18 notice? Are you really sure? Under penalty of perjury,
19 even if it means providing your personal information
20 and a copy of that to the Chilling Effects website.
21 Imagine if they had the same interest in educating
22 users on copyright in general and the rights of
23 copyright owners. What that could look like is
24 messaging that says, when you try to upload an image,
25 this image is protected by copyright. Please confirm

1 that you have a license to use this image or a good-
2 faith belief that the use is fair under copyright law,
3 and then they could go on to provide education about
4 what fair use is.

5 That's the world that would strike the
6 better balance. What we're left with now is content
7 that's uploaded with very little friction only to then
8 put all the burden on copyright owners to identify the
9 content and submit take-down notices. To my last
10 point on that identification piece, there are some
11 platforms that block crawlers and make it difficult to
12 identify infringing content. And I'd submit that those
13 platforms should not be entitled to immunity.

14 MS. CHARLESWORTH: Thank you. Ms. Willmer, do
15 you know if there've been any discussions on behalf
16 of, say, the photographers' community with Google
17 about -- and --

18 MS. WILLMER: Yes, there have.

19 MS. CHARLESWORTH: Is there anything you can
20 share about the state of those discussions or outcome?

21 MS. WILLMER: Only that it's been a very
22 frustrating process and what's clear to me is that the
23 photography industry doesn't have the clout and the
24 leverage in order to get Google to provide even what
25 they've provided to other industries.

1 MS. CHARLESWORTH: Okay.

2 MS. TEMPLE CLAGGETT: And do you -- I guess
3 maybe you just answered the question I'm going to ask,
4 but in terms of on the educational side like with the
5 kind of pop-ups or information, this -- it might be
6 obvious -- but what do you think is the cause that you
7 have again to go through these series of steps when
8 you're filing a takedown notice -- in terms of do you
9 own the work, do you have a good-faith belief -- but
10 not having anything in terms of on the uploading side
11 of the image?

12 MS. WILLMER: In my view, it's pretty clear
13 where the commercial interests lie, and I think having
14 the content on the site is to the benefit of the site
15 because they're able to draw users and thus attain
16 advertising revenue or however else they choose to
17 monetize it. So it's clear to me that the incentives
18 are there for the content to be on the sites, not the
19 right incentives for the content to stay off of the
20 site if it's not licensed.

21 MS. TEMPLE CLAGGETT: And then just one final
22 question. You mentioned that I guess in the 18 years
23 that we've -- since we've had the DMCA, to your
24 knowledge, there have been no technologies that have
25 met this standard of standard technical measures? Is

1 that just with respect to images -- or across the
2 board, no such technologies have met in 18 years that
3 particular standard?

4 MS. WILLMER: Perhaps somebody else here is
5 aware of any, but I'm aware of none across any
6 industries.

7 MS. CHARLESWORTH: Just a quick follow-up on
8 your follow-up. I mean, I did see some references that
9 metadata -- like, that there were some commenters who
10 view the use of metadata as a standard technical
11 measure. Have you heard that?

12 Or do you have an opinion on that?

13 MS. WILLMER: I don't think that it meets the
14 definition under section 512. I mean, certainly we
15 would say that metadata is a key identifier as far as
16 copyright ownership. And again, part of the problem
17 that was mentioned earlier is that that metadata is
18 often stripped when content is uploaded, especially to
19 large platforms because they take the position that it
20 increases the size of the file, and so in order to
21 have uploads move more quickly and take up less
22 storage space, it's convenient for them to strip the
23 metadata out.

24 MS. CHARLESWORTH: And to your knowledge, has
25 there been any litigation over that issue, the

1 stripping of metadata or legal claims made about that?

2 MS. WILLMER: Certainly we've raised some
3 issues about it, but there's no litigation to my
4 knowledge.

5 MS. TEMPLE CLAGGETT: And just really
6 quickly, I guess since we asked this question but you
7 weren't able to kind of conclusively answer it for
8 everyone, is anyone aware of a standard technical
9 measure that actually meets the section 512 definition
10 out there in the 18 years since we've adopted the
11 DMCA.

12 MS. SHECKLER: I think there's one case, the
13 CafePress case where the court did dismiss whether
14 metadata was a standard technical measure or not. I
15 think that case got settled.

16 MS. TEMPLE CLAGGETT: So essentially no,
17 then.

18 MS. SHECKLER: Well, they didn't say it
19 wasn't.

20 MS. CHARLESWORTH: Okay. Ms. Wolff.

21 MS. WOLFF: Well, being at the end of the
22 alphabet, there's been a lot of talk already from
23 others in the image space. The Digital Media Licensing
24 Association is, of course, about encouraging image
25 licensing. I mean, no one wants to go online and see

1 websites full of text.

2 Unfortunately, many websites have been
3 developed particularly with 512 in mind to encourage
4 the uploading and use of images but not necessarily
5 the licensing.

6 And to go back to a question you asked of
7 Ms. Willmer, as counsel to the -- was formally called
8 PACA, I remember having very early discussions with
9 Google about their then-Google image search, which was
10 at least thumbnails. And we talked about, you know,
11 wouldn't it be helpful if there was something that
12 said images, you know, may be subject to copyright or
13 something. And they carefully listened for an hour,
14 and the end result was well, we like the user
15 experience the way it is now. So it - - you know,
16 everything is about the user experience and not enough
17 about encouraging a healthy licensing environment.

18 There is a lot of image recognition
19 technology developed for that space, but that's just
20 the beginning of the equation because the amount of
21 images that are online and the amount that are
22 infringing -- the way you have to send a notice, time
23 and time again per image, and many of the sites
24 require you to fill out spaces for each one that it's
25 really very, very inefficient and very burdensome. So

1 I think if you were, you know, looking and grading the
2 DMCA over time, that I think it's really -- hasn't
3 aged well for the users -- for the content owners, and
4 it really has become very burdensome and imbalanced.
5 And there really is no incentive because there are so
6 many individual image creators to, you know, enter
7 into discussions with the larger OSPs such as the
8 recording industry can do, and the motion picture
9 industry, and others. And so I think there does need
10 to be incentives.

11 MS. CHARLESWORTH: Okay. Thank you.

12 Last but not least, Mr. Deutsch, out of
13 alphabetical order, too.

14 MR. DEUTSCH: Yes, well, I'm pinch hitting
15 for Jim Halpert, so I understand.

16 Obviously as the last speaker, you've heard
17 all your good ideas said at least by one, if not more,
18 of the speakers. But I do want to present the
19 perspective of ISPs on this, which is that they're not
20 adverse to technology. They are very much in favor of
21 discussions between ISPs and copyright owners to
22 provide for best practices, some of which has already
23 been done. But that the problem with any sort of
24 mandated technical measures that don't start from a
25 negotiated process is the enormous variety of ISPs

1 that are out there.

2 Obviously we've heard people talk about
3 dealing with Google, but there are thousands and
4 thousands of designated agents, parties who may want
5 to claim the benefit of the safe harbor, and many of
6 them are simply not in a position either because of
7 technological sophistication, resources, or both, to
8 implement some of the fancier and perhaps more
9 promising technologies that have been discussed.

10 It remain -- I would say from the
11 perspective of the service providers, they believe
12 that the bargain that was struck in 1998 where
13 copyright owners identify content that they believe is
14 fringing -- infringing and the ISPs then had to take
15 it down remains the appropriate model and that other
16 means of trying to do this, in particular filtering,
17 is not really workable, is not possible in most cases,
18 for ISPs to know, for example, whether a use is a
19 licensed use or not. Bits don't say I'm licensed very
20 frequently.

21 Very frequently, data that's passing through
22 it atomized and you can't even tell what it belongs
23 to.

24 And of course, there is -- we heard from
25 some of the speakers today, at least large content

1 users often encourage fans to post copyrighted
2 materials, and it's impossible without invading
3 privacy contrary to the -- that dictates and 512 and
4 for ISPs to say this is a use that the studios or the
5 music producers tolerate. So I think the underline is
6 nobody is averse to the application of technology.
7 There clearly is no magic bullet at this point. But
8 everything has to be done, I think, in cooperation
9 between stakeholders as the DMCA itself was.

10 MS. CHARLESWORTH: So on the one hand, I hear
11 you saying people should work cooperatively.

12 On the other hand, I hear you saying
13 filtering can't work. But filtering -- I mean, YouTube
14 uses a version of filtering. Then we have other sites
15 we're hearing about where it's just they're clearly
16 basically all unlicensed content. So the suggestion is
17 if a content -- or a copyright owner's sending a
18 notice to a site which is completely unlicensed for a
19 full-length use, that by definition, there's -- you
20 know, it's known that it's not licensed.

21 MR. DEUTSCH: Yeah.

22 MS. CHARLESWORTH: And so in that sort of --
23 let's talk about that case. Site with no license,
24 full-length uses, maybe, I don't know, stacked URLs or
25 not. Why is filtering an impossibility in that

1 environment?

2 MR. DEUTSCH: I don't think that's really the
3 job of 512. That's the job of direct copyright action
4 by copyright owners against the website. We have
5 Hotfile, Grooveshark, Napster, Globster, Aimster, Ska
6 (ph) Alert. Whenever the copyright holders have really
7 believed they're in -- facing a rogue site, which is
8 essentially what you're describing, the effective way
9 to deal with it is not by undoing the DMCA processes
10 that work for 98 or 99 percent of the sites, but a
11 direct copyright action where if, in fact, they're
12 doing exactly what you're saying, they don't have any
13 claim to it of safe harbor and the courts have
14 repeatedly said they don't.

15 MS. CHARLESWORTH: But the DMCA did envision
16 that the service providers and copyright owners would
17 get together in a collaborative way. And we've heard
18 that that hasn't happened as much as some would like.

19 But what you're saying is we should have
20 litigation?

21 MR. DEUTSCH: No, I'm saying that there's a
22 -- Grooveshark was in

23 MS. CHARLESWORTH:
24 -- years of litigation.

25 Litigation's very expensive for both sides.

1 Is there no path forward in any of this area
2 where you could imagine through a collaborative
3 process that you would have at least some access to
4 filtering technology to solve some of these problems.

5 MR. DEUTSCH: I think it's going to be
6 difficult to do. Consistent with the other values
7 that 512 has embodied, including user privacy and
8 avoiding undue burden on ISPs. I can't say it's
9 impossible. I don't think anybody has spoken yet to a
10 technology that is effective for this purpose or that
11 would scale from the largest ISPs down to I think
12 talking -- continuing to the smallest.

13 talk about it and continuing to let
14 technology develop is the right path.

15 And where -- Okay.

16 MS. CHARLESWORTH:

17 MS. TEMPLE CLAGGETT: One quick follow-up
18 question

19 MR. DEUTSCH: Sure.

20 MS. TEMPLE CLAGGETT: Do you believe that
21 there is -- kind of the same question I asked Mr.
22 Schruers -- anything that could be done short of
23 mandating by law the adoption of certain technology,
24 something that could be done either legislatively that
25 doesn't mandate it but encourages this dialog or

1 communication among ISPs that would be able to
2 implement some of this? So some type of benefit that
3 could be done either legislatively or some type of
4 measure that would encourage the dialog that you at
5 least think might be helpful in some sense?

6 MR. DEUTSCH: Well, if by benefit you mean
7 someone is going to be shielded from penalties that
8 already exist in the law, I think that's just a way of
9 phrasing the fact that people who don't cooperate will
10 be punished in some manner. I don't think that a
11 legislatively mandated solution in this very complex
12 economy -- excuse me, ecology is the correct path
13 forward.

14 MS. CHARLESWORTH: Okay. I see four placards
15 up where I'm going to let each of you who has -- three
16 now. Oh, you cheated, Mr. Mopsik, but we'll count you
17 as number four. So each of you can have a 30-second
18 response, and then we're going to close down this
19 panel so we can hopefully keep closer to our schedule
20 today.

21 We'll go this way again. Mr. Mopsik.

22 MR. MOPSIK: Thank you. I just wanted to add,
23 in regard to the metadata issue that the IPTC has a
24 great study. If you search for something called the
25 IPTC Metadata Study, you come back with a fabulous

1 chart that actually tells you which metadata is
2 maintained and what's stripped upon upload to most of
3 the popular social media sites, and it's a very useful
4 tool for that.

5 And that's the only thing I wanted -- and I
6 think the other thing, the image source -- I mean,
7 Image Rights is one of the companies that does that
8 service providing for photographers, Image Rights.

9 MS. CHARLESWORTH: Thank you very much.

10 Ms. Schneider.

11 MS. SCHNEIDER: In 2008, the HEOA was passed,
12 and it was for universities perceiving that, you know,
13 these university students were the ones that were, you
14 know, responsible for so much infringement. And so
15 universities had to start employing different things,
16 and I think NYU -- you asked people who use Audible
17 Magic. I believe NYU is using Audible Magic. They have
18 to do educational steps and every year report their
19 steps. And from what I hear at people at universities,
20 it's working relatively well. It is not placing an
21 inordinate, you know, burden.

22 And one more thing, to Mr. Singer, I want to
23 say about -- because you mentioned a rating system.
24 I'm a big fan of this idea of a rating system for
25 people who do take-downs because it creates -- we have

1 ratings. Amazon, you know, Amazon, people that --
2 companies that are represented here. Rating creates
3 accountability, and it encourages education. And what
4 we're talking about and everybody is complaining about
5 here is largely a purposeful lack of education.

6 So I think the best step we can do is use
7 the technology and steps for education.

8 MS. CHARLESWORTH: Thank you very much.

9 Mr. Schruers.

10 MR. SCHRUERS: Just two quick comments.

11 Yeah, yesterday and today on several
12 occasions, a pragmatic example of something that is
13 ostensibly infringing is full-length, but if I recall
14 correctly, it was this very court in Bloomberg versus
15 Swatch that found a full-length use of content was in
16 fact fair use. So I'm not sure that's our best
17 example, and I don't think we should allow that to be
18 our example

19 MS. CHARLESWORTH: Well, then what example
20 would we use?

21 MR. SCHRUERS: Well, something that's
22 actually not been found to be fair use by a federal
23 court of appeals. I --

24 MS. CHARLESWORTH: Well, but for an automated
25 process, I mean, if you're trying to serve notices and

1 draw a line somewhere, that's about as far as the line
2 can be drawn, right?

3 MR. SCHRUERS: Which raises the question of
4 how to go about drawing that line. Yeah, I think that
5 illustrates the problem of placing, you know, taking a
6 sort of solutionist view of technology. It can provide
7 value, but it is not a panacea and I think we have to
8 --

9 MS. CHARLESWORTH: So is your view that every
10 single full-length use that's identified in the
11 millions of notices that -- or every use, if it's
12 full-length, needs to be reviewed by a human person? I
13 mean, how is that a plausible solution?

14 MR. SCHRUERS: It's not a solution; it's just
15 an observation that when we have a court of appeals
16 saying that a full-length use is not infringing, that
17 we can't assume that a full-length use is infringing.

18 MS. CHARLESWORTH: Well, in one instance,
19 it's obviously -- that's -- it's a theoretical and in
20 that case an actual possibility. But when you're
21 trying to solve a sea of infringement, I mean, how can
22 that -- I just don't understand. We're looking for
23 solutions here, and I guess what I'm hearing you say
24 is even if copyright owners say, okay, we're only
25 going to look for full-length uses that we know are

1 on unlicensed sites, that that is not a reasonable way
2 to interpret the takedown process. Is that your
3 position?

4 Mr. SCHRUERS: No, my position is that when
5 we're talking about what's infringing, we can't
6 necessarily assume that that which is a full-length
7 use is inherently an infringing use of the work.

8 MS. CHARLESWORTH: But they have to assume it
9 to run an automated process.

10 MR. SCHRUERS: Well, I --

11 MS. CHARLESWORTH:

12 We've heard that from others, that there may
13 be a remote possibility of an error but if you're
14 going to automate things, that's just inherent in a
15 process like that.

16 MR. SCHRUERS: Which I think comes to my
17 broader complaint or observation, rather, that
18 there are built-in limitations to what we can
19 reasonably automate. And that is why we see
20 automation used to different degrees for DMCA
21 compliance and the DMCA-Plus systems that we're
22 talking about, which was the other just short point
23 that I wanted to make, which is just because we
24 haven't seen standardized DMCA-Plus systems arriving
25 across the entire diverse ecosystem of the internet

1 doesn't mean that we should assume that there hasn't
2 been rightsholder intermediary cooperation. There's
3 been extensive cooperation.

4 I mean, not only did we just complete the
5 lengthy PTO process, but we see a lot of these DMCA-
6 Plus systems evolving different spaces, but they're
7 tailored to the particular ecosystem and platforms
8 upon which they're being implemented.

9 MS. TEMPLE CLAGGETT: Well, just a quick
10 follow-up question on that point. Do you see -- I
11 mean, it has been difficult, as has been acknowledged,
12 to develop the standard technical measures that have
13 basically qualified under the DMCA in the last 18
14 years. Do you see any path forward to actually have
15 that robust collaboration that would develop those
16 type of STMs that would satisfy the standards of
17 section 512?

18 MR. SCHRUEERS: I think the question is sort
19 of predicated on the mistaken premise that STMs are
20 the only path forward.

21 MS. TEMPLE CLAGGETT: No, I think it's one
22 path because clearly, the DMCA said that this is
23 something that should be a possibility because it
24 encourages that. And so I'd like to avoid that
25 particular provision just becoming a nullity. Is there

1 something that could be done to actually make that
2 vision a reality is really my question.

3 MR. SCHRUERS: I think we are on the path
4 forward, and we're just seeing different types of
5 technical measures evolving in different parts of the
6 ecosystem based on the needs of the platforms. And
7 just because the DMCA may've misassessed the
8 probability of homogeneity across the ecosystem going
9 forward and assuming everything would be standardized
10 doesn't mean that we should discount the variety and
11 very robust development that we're seeing in different
12 spaces for particular DMCA- Plus systems that are
13 optimized for the platforms upon which they're
14 implemented.

15 MS. TEMPLE CLAGGETT: Thanks.

16 MS. CHARLESWORTH: Ms. Sheckler.

17 MS. SHECKLER: Thank you. I think you've
18 heard from Mr. Deutsch and Mr. Schruers's comments
19 that we have no will. There's most definitely a way.
20 We've heard a lot about different technologies that
21 exist today that are reasonably priced, that are
22 available, that work to identify content that could be
23 used at the service provider end to stop full-length
24 infringing works from being distributed through those
25 services, and that that would significantly reduce the

1 burdens both on sending copyright notices and on
2 counter- notices and abuses from that perspective.
3 Don't seem like we have the will. I think that's where
4 you hear the questions about the differences on those.

5 With respect to the PTO process that's been
6 mentioned quite a bit, I was heavily involved in that
7 process. And while it had some helpful outcomes, it
8 did not address efficacy, which is what we were hoping
9 that it would achieve and what we tried to discuss. We
10 got the, oh, it's -- you can't implement one- size-
11 fits-all. The DMCA standard technical measures doesn't
12 say it's one- size-fits-all. It doesn't say that there
13 can't be flexibility. It does say people need to come
14 together in a multi-stakeholder process to come up
15 with those. And they're not coming to the table.

16 MS. TEMPLE CLAGGETT: Is there anything that
17 could be done to encourage them to -- I mean, I guess
18 I'll ask the same question I asked the others. Is
19 there anything that could be done to encourage them to
20 come to the table to either develop these STMs or
21 otherwise voluntarily employ some of this technology
22 that we discussed today?

23 MS. SHECKLER: You know, I'll tell you the
24 same thing we told you yesterday. We stand ready to
25 work with you, with Congress, and with the service

1 providers to make that happen.

2 MS. TEMPLE CLAGGETT: Thanks.

3 MS. CHARLESWORTH: Should we let Ms. Willmer
4 in? Okay, this is it.

5 MS. WILLMER: I just wanted to answer that
6 last question. I think the best leverage that Congress
7 would have to get the parties to the table is to
8 condition immunity on coming to the table and actually
9 being willing to implement available technologies to
10 achieve what Congress really wanted to achieve, which
11 is to keep the copyrighted works off of the platforms
12 in the beginning so that we're not left with having to
13 address it after they're already up with the take-
14 down measures.

15 MS. CHARLESWORTH: Okay. Well, this concludes
16 Session 5. Thank you very much for your participation.
17 When do we want people back, Karyn?

18 MS. TEMPLE CLAGGETT: Let's just give them a
19 quick

20 MS. CHARLESWORTH: We'll give you --

21 MR. GREENBERG: 11:00?

22 MS. CHARLESWORTH: Yeah, so please come back
23 at 11:00 for Session 6, which is voluntary measures.

24 (Break taken from 10:46 a.m. to 11:00 a.m.)

25

1 Session 6: Voluntary Measures and Industry Agreements

2 MS. ISBELL: Welcome to Session 6 on
3 voluntary measures. As -- I want to echo something
4 that Jacqueline said on the last panel.

5 Part of the point of this exercise is to try
6 to look for solutions and ways that we can fulfill the
7 purposes of the DMCA, protecting the innovative
8 technology sector, but also protecting the rights of
9 content creators and their ability to make a living
10 from their creations.

11 And in looking through the various comments
12 that were submitted in advance of this particular
13 roundtable, it seems like voluntary measures might
14 potentially be a bright spot. And I'd like to focus on
15 that to begin with.

16 Certainly, there were some discussions about
17 voluntary measures that fall short. A few people even
18 said that they are completely useless.

19 But there seems to be some hope at least
20 among certain commenters that there were voluntary
21 measures that could begin to address some of the
22 concerns that we've been hearing about for the past
23 two days.

24 And so I want to start with sort of the
25 upside and talk about what voluntary measures are

1 working and are helpful and then get into sort of the
2 negative opposite Tale of Two Cities side and talk
3 about what doesn't work.

4 So for my first question for the panelists,
5 I would like you to identify if there are any
6 voluntary measures that you are aware of that are
7 helpful. And if so, what are the characteristics, or
8 elements, of those voluntary measures that could
9 perhaps be replicated for other voluntary measures to
10 try to begin to address some of these concerns?

11 So it -- once again, if you'd like to speak,
12 turn your placard up. Two minutes for initial
13 comments; one minute for responses.

14 I will go ahead and start over here with Mr.
15 Band.

16 MR. BAND: It's Jonathan Band for the Library
17 Copyright Alliance --

18 MS. ISBELL: Oh, I'm sorry. Let's go ahead
19 and go around the room since we haven't done that and
20 introduce yourselves for the court reporter. And then
21 we'll cut back to you. So start with --

22 MR. BAND: Okay.

23 MS. ISBELL: -- your introduction.

24 MR. BAND: I'm still Jonathan Band from the
25 Library Copyright Alliance.

1 MR. BARNES: Greg Barnes, Digital Media
2 Association.

3 MR. DOW: Troy Dow with the Walt Disney
4 Company.

5 MR. GARRY: John Garry, Pearson Education.

6 MR. GIBBS: Melvin Gibbs, Content Creators
7 Coalition.

8 MR. HART: Terry Hart. I'm with the Copyright
9 Alliance.

10 MR. PETRICONE: Michael Petricone with the
11 Consumer Technology Association.

12 MR. JOSEL: Wayne Josel from ASCAP.

13 MR. RAE: Casey Rae, Future of Music
14 Coalition.

15 MR. KENNEDY: Tom Kennedy, American Society
16 of Media Photographers.

17 MS. SCHNEIDER: Maria Schneider, musician
18 representing the women's side of the room.

19 UNIDENTIFIED SPEAKER: Wow. That --
20 (Laughter)

21 UNIDENTIFIED SPEAKER: We've got to get a
22 picture of this.

23 MS. ISBELL: Yeah.

24 (Crosstalk)

25 MS. PARISER: Jenny Pariser, MPAA.

1 MS. PILCH: Janice Pilch, Rutgers University
2 Libraries.

3 MS. RASENBERGER: Mary Rasenberger, Authors
4 Guild.

5 MS. SHECKLER: Vicky Sheckler, RIAA.

6 MS. SHEEHAN: Kerry Sheehan, Public
7 Knowledge.

8 MS. SIMPSON: Lui Simpson, Association of
9 American Publishers.

10 MS. TUSHNET: Rebecca Tushnet, the
11 Organization for Transformative Works.

12 MS. WOLFF: Nancy Wolff on behalf of the
13 Digital Media Licensing Association.

14 MS. ISBELL: Okay. Now, Mr. Band, you can
15 talk.

16 MR. BAND: So I'll actually -- even though
17 I'm here for the Library Copyright Alliance, I'll talk
18 briefly about voluntary measures taken by another one
19 of my clients by a payment processor.

20 And so the payment processors have had
21 voluntary measures in place for a long time. A lot of
22 them did it independently. Then Victoria Espinel --
23 she was the Intellectual Property Enforcement
24 Coordinator -- asked them to sort of get together,
25 come up with best practices, which in essence sort of

1 codified what they were already doing. And it came up
2 with some standardization, and they -- a lot of them
3 worked cooperatively with the International
4 AntiCounterfeiting Coalition.

5 My understanding is, overall, this is
6 working very well. And I would say the most
7 significant feature about why it's working well is it
8 was developed by the payment processors. I mean, they,
9 to some extent, were developing these systems on their
10 own. And then they came together with the best
11 practices, which would be more, you know, to degree --
12 industrywide. But the key was they did it on their
13 own. And they were that -- that way, it was responsive
14 to -- it worked. It was responsive to what they
15 needed. But they were also able to reach a degree of
16 consensus because they were within their industry
17 instead of trying to work across industries.

18 MS. ISBELL: And just to follow up on that,
19 how important was the involvement of IACC?

20 Do you think that government's involvement
21 in sort of shepherding these voluntary agreements is
22 necessary? Or could it come up out of the industry
23 associations without government involvement?

24 MR. BAND: I think, in truth, the payment
25 processors were all doing this already.

1 Now, it is a very highly concentrated
2 industry.

3 There's only four or five payment
4 processors. So there is also competitive pressure. If
5 one person is doing it, then other people are
6 interested in doing it and so forth.

7 But you know, it was certainly helpful to
8 have IACC's involvement. But a lot of it was because
9 they were already doing it. So it was a helpful final
10 step, but this was already in process.

11 MS. ISBELL: Okay. Mr. Dow?

12 MR. DOW: Thank you.

13 I share the perspective that I think you
14 indicated that the voluntary measures are a bright
15 spot and a potential solution. And in fact, I think
16 the DMCA is very clearly intended to promote voluntary
17 cooperations and to address these problems, not merely
18 to the operation of statute, but through cooperative
19 efforts.

20 And so there's a whole number of these that
21 we could talk about and the comments that we thought
22 that the Motion Picture Association delve into them. I
23 won't go over them all, but I did want to take just a
24 minute to talk about one that we were particularly
25 involved with, which is the principles for user-

1 generated content. And that is one where I think that
2 that has worked to set standards and best practices in
3 the field of user-generated content.

4 And your question was what do these things
5 share. What are the principles and the basic
6 fundamentals that help those things to be successes?
7 And I think what we found there is what allowed us to
8 get to success in the user-generated content
9 principles was that we had a collaborative discussion.
10 This was not a unilateral discussion. This was a
11 multilateral discussion between content creators as
12 well as platform providers.

13 We started that discussion by putting aside
14 difficult legal questions, perspectives on what the
15 law required of different parties and simply said can
16 we agree on a simple goal. Can we agree on the goal
17 that if we could write the script we would favor an
18 outcome in which we had a user-generated content
19 environment that both promoted legitimate creation and
20 distribution of user-generated content, but also
21 prevent it -- infringement in that environment? And
22 once we got to the point where we shared that goal
23 together, we were able to then sort of tackle some of
24 the more difficult problems that what are the
25 mechanisms that we can use to work together to get

1 there.

2 And at the end of the day, we did just come
3 up with a set of principles that included
4 implementation of technological solutions that
5 included an understanding of the way copyright owners
6 would operate in this environment and their role,
7 included an understanding of the way that platform
8 providers would work and included an agreement that
9 this was not just a one-time set of principles that
10 would be published and then we would be done. But this
11 would be an ongoing relationship to try and help
12 update those things and make sure that they would
13 remain effective over time.

14 MS. ISBELL: And what were the circumstances
15 that encouraged the players to get together and come
16 up with those principles?

17 MR. DOW: Yeah, that's a great question.

18 And I really think that the circumstances
19 that led to that was the underlying sort of framework
20 of the DMCA, you know, an environment in which
21 everyone -- everyone wasn't quite sure what the law
22 was going to say about this. Litigation was a route
23 that had started. Legislation was a potential route
24 that everyone sort of felt like -- no one was quite
25 sure what the outcome was, and there was a prospect of

1 liability. There was a prospect of losing a lawsuit on
2 both sides. And at the end of the day, that -- a lot
3 of people had come together and said, look, if we
4 could write our own script, we could create the world
5 in which we live here. Then that would be a better
6 outcome.

7 So I think that the legal framework to
8 encourage people to work together, to have some
9 backstop as to, you know, an outcome that might be
10 less favorable was important.

11 MS. TEMPLE CLAGGETT: And just a follow- up
12 in terms of the current state that we're in right now,
13 do you think that the legal framework remains
14 sufficient to continue to encourage the development of
15 voluntary agreements?

16 Or is there something that could be done to
17 -- for the future, encourage more of these types of
18 agreements?

19 MR. DOW: I think that's also a very good
20 question. I think a lot of the issues discussed in
21 yesterday's panels have a lot to do with the answer to
22 that question. To the extent the courts construe the
23 statute in narrow ways that sort of shift the balance
24 away from one of shared responsibility to one of sort
25 of all of the burden being shifted to rightsholders,

1 that does push away from an environment in which you
2 could have these constructive relationships.

3 I think that the balance that was struck in
4 the DMCA of trying to encourage protection for good
5 actors while withholding it from bad actors is one
6 that encourages people to work together to come to an
7 agreement on how that looks.

8 MS. ISBELL: Okay. Mr. Petricone?

9 MR. PETRICONE: Sure. One voluntary approach
10 which has proven to be the most effective way to fight
11 piracy is to offer legitimate services with the right
12 combination of price, convenience and inventory --
13 basically, to make it simple and easy for users to do
14 the right thing.

15 Today, users have a growing selection of
16 excellent services from Spotify, Netflix, Pandora,
17 iTunes and many more. And as expected, piracy is
18 dropping. Just this week, the British Photographic
19 Industry, the head, Jeff Taylor, said that, quote,
20 "Overall usage of infringing sites has fallen by 42
21 percent since 2013."

22 In January, the UK's government Office of
23 Communications report said a similar thing.

24 They said, "Over the next three years,
25 online copyright infringement is predicted to fall for

1 all content types apart from e-books."

2 A Spotify study showed a major drop in
3 piracy in the Netherlands and Norway that came as soon
4 as Spotify entered those markets.

5 The NPD Group, which is an analyst often
6 used by the RIAA, reported in 2011 that piracy rates
7 were falling drastically. The same in 2012 - - they
8 marked 2005 as the high-water mark for piracy.

9 The Carnegie Mellon study showed that piracy
10 of ABC shows, thankfully, dropped dramatically after
11 ABC joined Hulu.

12 So as we've heard today, the piracy problem
13 still exists and requires our collective focus and
14 collective attention. But the overall trends are
15 favorable as users increasingly turn to legitimate
16 services. So that's a -- that is a bright spot.

17 MS. ISBELL: Okay. So one follow-up to that -
18 - we've heard this refrain several times over the past
19 couple days, and yet the content owners are still
20 telling us that piracy is a problem.

21 So I see sort of three possibilities there.
22 One is, well, that means there aren't enough
23 legitimate services. One means -- one option is
24 legitimate services aren't the answer.

25 And another option is, well, you're just

1 going to have to live with some base level of piracy,
2 and we're never going to eradicate it.

3 Which one of those is your view? Or do you
4 have a different view?

5 MR. PETRICONE: No. I think that, as hard as
6 we try, completely eradicating piracy online is
7 practically impossible, right? So there is always
8 going to be some base level. And the key is to reduce
9 that as far as you can. But I think you do it with
10 voluntary measures like we have done today, and I
11 think you do it by presenting users with a wide, wide
12 variety of legitimate and appropriately priced
13 services.

14 And again, there are all kinds of views, but
15 there are also numbers. And the numbers appear to show
16 that both in terms of the amount of content being
17 generated, as we discussed yesterday, and the amount
18 of piracy online, which is going down, things are
19 moving in the right direction.

20 MS. TEMPLE CLAGGETT: And just to follow up
21 on that in terms of the current status today, in terms
22 of the accessibility of legitimate content, in your
23 view, do you think that on the content side that
24 content owners are focusing their approach on
25 developing legitimate content to take advantage of the

1 uses of the Internet today? Or do you think that
2 that's still something -- I mean, certainly, in 1998,
3 the legitimate content wasn't being distributed online
4 as much as people would have liked. But do you think
5 that there is now a trend where creators are kind of
6 martialing the use of the Internet to be able to
7 provide legitimate content?

8 MR. PETRICONE: Yes. I think, going back to
9 1998, there was a period of transition, right, which
10 is expected whenever you see a new technology appear.
11 But I think what you see now are the content
12 industries increasingly embracing the Internet as a
13 platform to monetize and promote and access new
14 consumer groups. And that's -- I think that will
15 increase, and that's a -- that is a positive thing.

16 MS. TEMPLE CLAGGETT: Thank you.

17 MS. ISBELL: Okay. Mr. Rae?

18 MR. RAE: So I mentioned this in the previous
19 panel, but I think it bears repeating.

20 When we're looking at collaborative
21 processes, volunteer -- voluntary sort of agreements
22 and best practices, 512(i) actually creates the
23 conditions for this to happen. It falls short, in my
24 view, of a mandate, but it does encourage as a point
25 of eligibility, I might add, for the Safe Harbors.

1 MS. TEMPLE CLAGGETT: Why hasn't it been
2 effective?

3 MR. RAE: Well, you know, I don't think it
4 actually was tried. If we go back in our time machine,
5 what we'll see is, you know, clearly, when there is a
6 new use environment and we haven't really figured out
7 how this law works in practical terms, an expectation
8 is that the rightsholders are going to pursue their
9 rights as they previously have in other environments.
10 And coming out of, you know, a new precedent from
11 Grokster, for example, it may have been that record
12 labels, in particular, were interested in achieving a
13 legal precedent that would be favorable to their
14 interests, or what they saw as favorable at that time.

15 Conversely, on the other side, you have
16 perhaps a legitimate, you know, difficulty in the
17 deployment of identification technology because it
18 just -- we just weren't there yet as a marketplace.
19 You know, again, these conditions changed.

20 I would like to go back to what Troy said I
21 think is very important -- the ongoing relationship. I
22 can name three instances.

23 Obviously, two of them have already been
24 brought up, or one of them -- the credit card payment
25 best practices. There was the ad exchange best

1 practices. There was the separate Copyright Alert
2 System. Now, they all came out of different kind of
3 situations, I guess. But I believe that the government
4 does have a role, at least, to create the environment
5 where that can happen.

6 Now, personally, I don't think you need to
7 actually legislate anything here because, you know,
8 going back to 512(i), we see that if it's voluntary
9 and that data and information is actually being
10 presented from the rightsholders to the services, it
11 doesn't run afoul with 512(m).

12 So we're good.

13 But what we really need to know is what the
14 availability, accessibility and affordability is of
15 the technology. We need to know -- we need to take
16 this down to a level that is comprehensible to small
17 and medium enterprise in the content and developer
18 community. And we need, actually, hopefully, a body
19 that can -- I think Troy mentioned this, too -- not
20 just one and done, that can continue to evaluate and
21 make recommendations based on the development of
22 technology.

23 MS. ISBELL: Ms. Schneider?

24 MS. SCHNEIDER: Once again, I just --

25 Mr. Petricone's positive report about

1 streaming, I have to balance that with a reality
2 check. A young musician I know named Spree Wilson, he
3 has 45 million plays on Spotify. He has never gotten
4 a check for more than \$60. Now, some people will say,
5 oh, it's the record companies taking it.

6 Multiply that times 10, 100, even 1,000. 45
7 million plays, streams, should be bringing this guy an
8 amazing apartment, a boat. I don't care how he spends
9 it, you know. So it is not working.

10 And to Mr. Troy's solutions, I mean, okay,
11 Disney found a way to come to the table.

12 But for individual musicians like myself,
13 there are no solutions. The ones that seem promising
14 like Content ID I've said now five times, it's not
15 available to me.

16 MS. ISBELL: And I want to discuss that a
17 little bit more in the next question. So if you can
18 participate in the next question as well.

19 Ms. Pariser?

20 MS. PARISER: So I completely endorse, you
21 know, Troy's optimism that voluntary solutions are a
22 partial solution to the problem. But I guess I
23 emphasize partial. All of the voluntary solutions
24 that we have engaged in are partially effective in
25 dealing with the piracy problem. But all of them are

1 flawed in that they only deal -- they only have some
2 players involved in them, and they can only be
3 somewhat effective in their approach to piracy.

4 The more successful one, as you've heard,
5 are the ones where the players have an incentive to
6 come to the table where, to put it more bluntly, they
7 face liability if they don't.

8 So the copyright alert system is a system in
9 which the ISPs enjoy immunity if they corroborate with
10 us in effecting a piracy solution, whereas other
11 solutions we look at -- for example, the domain name
12 registrars and registries -- have been a lot more
13 difficult to work with because they do not face
14 liability. So that is -- that's where the tension
15 lies.

16 MS. ISBELL: So just to follow up on that,
17 we've heard, especially yesterday, that the trend in
18 the courts is to sort of interpret 512 more and more
19 narrowly and provide much broader, safer harbors --

20 MS. PARISER: Right.

21 MS. ISBELL: -- for ISPs. And so have you
22 seen an effect on the prevalence or the frequency of
23 voluntary initiatives as a result of those changes in
24 the courts? Or is it at the same level that it was
25 previously?

1 MS. PARISER: Yeah. I mean, it's hard to say
2 there's a one-to-one correlation. But for sure, when
3 great cases come out, there's a lot more enthusiasm
4 among service providers and others in the ecosystem to
5 participate in voluntary initiatives. Hopefully, the
6 recently decided Cox decision will have a positive
7 impact on the outcome of the Copyright Alert System,
8 whereas -- the cases are somewhat older now -- but the
9 cases that found limited liability for payment
10 processors was, you know, pulled in the other
11 direction.

12 Now, they have their own reasons. A lot of
13 this has to do with entities having their own reasons
14 to do things -- the ad networks, for example. Part of
15 the reason we get cooperation from ad networks is they
16 don't want their clients associated with do -- these
17 sites that have, you know, all kinds of garbage going
18 on on them and are associated with piracy and spam and
19 stuff like that.

20 So but yeah, any time a court decision comes
21 out and finds that as an operator has no liability,
22 that's a bad day for voluntary initiatives.

23 MS. TEMPLE CLAGGETT: So under the Copyright
24 Alert System, the participants in that program, the
25 service providers, you said, enjoy immunity. Can you

1 elaborate on that?

2 MS. PARISER: We won't sue them if they
3 participate in the program.

4 MS. TEMPLE CLAGGETT: Okay. And I take it
5 then that Cox was not in that program from what -- the
6 other remark you made?

7 MS. PARISER: Correct.

8 MS. ISBELL: And two quick follow-ups on
9 that. One, it's a follow-up on what some -- what - -
10 something that Karyn actually asked a little bit
11 earlier. Is there a role -- or what role do you see in
12 terms of government encouraging these type of
13 voluntary initiatives and, also, whether you have any
14 response to what Mr., I think, Petricone said in terms
15 of the -- that the focus should be on content owners
16 providing more legitimate content?

17 MS. PARISER: Okay. So to that in reverse
18 order, the content industry has done more and more and
19 more to make content available. In the motion picture
20 industry, windows are closing.

21 In the recording industry, enormous amounts
22 of content is available on all kinds of sites,
23 whatever type of music you want and whatever kind of
24 way you want to get it, whether you want to pay a
25 subscription fee or, you know, streaming, or whatever.

1 It's -- and the amount of content that's available
2 legally and at an affordable price is enormous. And
3 yet piracy is huge because, no matter how cheaply you
4 make something, people want to get it for nothing.
5 That's just the fact.

6 And therefore, we need to deal with piracy
7 in ways other than, or in addition to, licensing.

8 In terms of what the government can do,
9 obviously, there's -- we need to bring the government
10 up a little bit because what we would want the courts
11 to do is somewhat different from what we might look to
12 the Copyright Office to do.

13 But specifically the Copyright Office, one
14 idea is that the Copyright Office could designate
15 specific things as standard technical measures. That
16 doesn't happen now currently. And part of our problem
17 getting sites to adopt STMs is that there's no regime
18 to designate something as an STM. And the definition
19 of STM requires the -- inter-industry cooperation.

20 So it's obviously the sound of one hand
21 clapping as we stand here and say, oh, Audible Magic's
22 agreed. It's a great solution. But if, you know, the
23 rest of the industry doesn't cooperate with that, it
24 goes nowhere. So the Copyright Office could hold a
25 multi-stakeholder proceeding to try to drill down on

1 some of those issues.

2 MS. CHARLESWORTH: Can I -- parsing the
3 definition of standard technical measure --

4 MS. PARISER: Yeah.

5 MS. CHARLESWORTH: -- a little bit.

6 What do you think is meant by the use of the
7 term open -- open, fair and voluntary multi- industry
8 standards process? What is meant by open?

9 MS. PARISER: I think it means something not
10 like YouTube's Content ID, something that is available
11 to the public perhaps at a price. But that can be
12 availed -- is that a word -- by anybody.

13 MS. CHARLESWORTH: So in other words, it's --
14 in your view, that means it's a licensable technology?
15 Is that --

16 MS. PARISER: Yeah.

17 MS. CHARLESWORTH: -- what you're saying?

18 MS. PARISER: Yeah, you don't -- you can't
19 get bumped out because you're too small or too big or
20 not the right kind of -- obviously, you have to have
21 the right kind of content in order to work with that
22 specific technology. But it can't be something where
23 you would otherwise fit that you can't use them. Defer
24 to Troy on legislative history here.

25 MS. CHARLESWORTH: Yeah, I'd be interested in

1 other people's views on sort of parsing the definition
2 a little bit more closely in terms of STMs.

3 MS. PARISER: Yeah.

4 MS. ISBELL: Ms. Rasenberger?

5 MS. RASENBERGER: Thank you.

6 Voluntary measures are good in theory if
7 they work. And the Authors Guild would support
8 voluntary measures if they actually apply to
9 individuals and to authors. The problem with the
10 voluntary measures that we've seen to date is that
11 they do not work for individual creators. And along
12 the lines of what Maria was saying, there's just -- as
13 an individual, you really have no opportunity to take
14 advantage of them.

15 And part of the problem is that creators,
16 individual creators, have been left out of the
17 development of all voluntary measures to date - - best
18 practices and industry agreements.

19 Authors don't have the ability to negotiate
20 with service providers. They don't have the ability to
21 negotiate filtering solutions.

22 So authors have been left with notice-and-
23 takedown and all individual creators. And as we saw
24 yesterday, the shortcomings of notice-and-takedown are
25 felt acutely by authors.

1 Contrary to what somebody over here said,
2 there is actually growing book piracy. The complaint
3 that we receive have gone up 600 percent in the last
4 five years. And there's also no affordable service for
5 authors to use.

6 Let me just give a few examples of authors'
7 experience with some of the voluntary programs.
8 Google's Content Verification Program is not available
9 to individuals. You have to become a trusted notice
10 sender, which is impossible for an individual. The
11 Copyright Alert System -- we haven't seen that it
12 works. Six strikes seems to be too far, too much.
13 Voluntary efforts of advertisers -- we're not seeing
14 any luck there either.

15 Our authors -- a lot of them have Google
16 Alert set up, and they get at least 12 -- you know, a
17 dozen alerts a day about piracy. They go to those
18 sites, click on them. And there will come up an ad for
19 a site that they just visited earlier that day.

20 Payment processors -- as an individual, if
21 you try to complain to payment processors, somehow
22 your notice will get lost, never heard of.

23 It's -- again, the payment processors would
24 prefer to deal with trusted notice senders as opposed
25 to individuals.

1 So I just want to conclude by saying that we
2 would greatly support voluntary measures if somehow
3 the individuals, creators, could be brought to the
4 table, could be part of the negotiating, and the
5 measures would apply to them.

6 And I won't take up more time now, but I do
7 want to talk about the development of standard
8 technical measures because the technology exists.

9 And if authors were part of -- and I should
10 say all creators -- part of that negotiation of them,
11 I think there could be potential for some great relief
12 there.

13 MS. CHARLESWORTH: Just a quick question. We
14 heard a little bit about the Scribd technology --

15 MS. RASENBERGER: Mm-hmm.

16 MS. CHARLESWORTH: -- earlier. Do you have
17 any comments on that and the accessibility of that to
18 authors?

19 MS. RASENBERGER: Well, I think the
20 technology works. It's good. But no, it is not readily
21 available to authors.

22 MS. CHARLESWORTH: And --

23 MS. RASENBERGER: So we'd like the -- to see
24 the industry adopt the -- adopt something like BookID
25 on a wide basis, including the service providers and,

1 you know, in a way that authors could readily avail
2 themselves of it. And as we heard yesterday, most
3 creators simply do not have the resources to spend on
4 additional technology or even for the -- to hire
5 services to assist them.

6 MS. CHARLESWORTH: And can you just explain a
7 little bit more about why it's not available, why
8 individual authors can't take advantage of BookID?

9 MS. RASENBERGER: Well, they would have to be
10 part of a service, which they're not. So I'm not
11 exactly sure what you're getting at. It's just they
12 don't have the technology, the resources.

13 MS. TEMPLE CLAGGETT: Are you saying, for
14 example, the fingerprints or whatever technology
15 that's used to create the actual fingerprint or
16 watermark, whatever, that actually would filter is not
17 something that individual authors have participated
18 in? For example, services don't typically go out to
19 individual authors and ask for their information so
20 that those would be able to be included in any type of
21 filtering program?

22 MS. RASENBERGER: Well, that's correct.

23 And then you have a difficult time trying to
24 get the service provider to actually filter for your
25 content because you're an individual and they don't --

1 you know, they'll take down in response to a notice,
2 but they will not work out arrangements with you for
3 filtering in advance.

4 MS. TEMPLE CLAGGETT: Thanks.

5 MS. ISBELL: Ms. Sheckler?

6 MS. SHECKLER: Thank you.

7 To echo Troy and Jenny's points, voluntary
8 initiatives can be helpful in deterring piracy when
9 everybody has to get in the game to make those
10 voluntary initiatives work.

11 In terms of voluntary initiatives that exist
12 today, we have seen varying degrees of success with
13 them, whether it's the Copyright Alert System, whether
14 it's UGC principles, ad network practices, the payment
15 processors. They all have some type of impact at one
16 point or another. We are starting to see some
17 emergence, some voluntary initiatives and the new gTLD
18 space.

19 We hope that continues. But any voluntary
20 initiatives have to be within a backdrop of the legal
21 framework that promotes those initiatives.

22 And our legal framework, as it's been
23 interpreted today, I'm not sure gets us there.

24 To Mr. Petricone's point about BPI and what
25 we're seeing in the production of piracy in the UK, we

1 have to remember there's a different legal regime in
2 the UK, and it's been used in a very different manner
3 than here. And that has been significant reason for
4 the reduction of piracy in addition to, you know, the
5 fact that our music has been licensed to over 400
6 services worldwide.

7 MS. TEMPLE CLAGGETT: So just to follow up on
8 that and just because -- wearing my international hat
9 for a second, which we will maybe get to in the last
10 panel, but in terms of the difference, in terms of
11 just the reduction of piracy overseas just like in the
12 UK, are you talking about some of the more recent UK
13 initiatives in terms of restricting your access to
14 pirated Web sites that you think are the result or
15 have caused, I guess, the reduction in piracy? Is that
16 what you're suggesting?

17 MS. SHECKLER: Yeah, there are some academic
18 studies out there, I believe. I think they may have
19 been cited in our report -- if not, I'll get them to
20 you -- that suggest that those court orders have
21 significant impact on the reduction of piracy in that
22 country.

23 MS. TEMPLE CLAGGETT: Thank you.

24 MS. ISBELL: And I just want to go back to
25 your point that some voluntary initiatives have been

1 more successful than others. Are there particular
2 characteristics that you've seen that are shared by
3 the successful initiatives that maybe aren't shared by
4 the less successful ones? Or what accounts for the
5 difference in success?

6 MS. SHECKLER: I think it's building trust
7 having skin in the game, having a regular line of
8 communication are the main points.

9 MS. ISBELL: Okay. Ms. Simpson?

10 MS. SIMPSON: Good morning. Or is it good
11 afternoon?

12 I think -- I just want to reiterate some of
13 the points that have already been made. For the
14 voluntary initiatives that have been successful,
15 frankly, they're successful for a limited number of
16 participants, those participants that have, one, been
17 part of the process of creating those measures and,
18 two, could actually afford to become a part of those
19 measures. As some of the smaller rightsholders and
20 creators have already said, many of these measures
21 are, frankly, too expensive. They're with -- or
22 they're not within the reach of a smaller rightsholder
23 to participate in those programs.

24 And two, on the question of government
25 involvement, we definitely think that there should be

1 some push from government to make these measures far
2 more effective and, certainly, to push the parties to
3 become engaged in the process.

4 As many have already said, they become
5 successful because there interest in engagement. Where
6 there's a lack of process, frankly, one of the parties
7 is simply uninterested in coming to the table to
8 discuss any kind of framework.

9 And so if there is a government process that
10 pushes parties together, that keeps them together in
11 that room to come to a conclusion as to what might
12 work, I think that is definitely needed in an
13 environment like this.

14 And to, again, Mr. Petricone's point, it
15 seems again to be the onus of the rightsholder to
16 solve a problem that they didn't create. And so we've
17 tried many attempts -- or actually, there are many
18 attempts and many services out there that already
19 provide legal materials. And yet as many have already
20 also said, piracy still remains rampant.

21 MS. ISBELL: Okay. Ms. Tushnet?

22 MS. TUSHNET: So I think voluntary measures
23 can work for some people. I am interested in the
24 statement that we just heard that everyone has to get
25 in the game. I want to ask. You know, who does that

1 mean? A big Web site doesn't mean big infringement.
2 The distinction we're making between big and small is
3 actually much more complicated than that.

4 We receive 100,000,000 visits a week, and we
5 get fewer notices than there are people from the
6 Copyright Office up there per year. You know,
7 Wikipedia has orders of magnitude bigger than us and
8 reports similar numbers, and most of those notices are
9 flawed.

10 So you know, who is the everyone needs to
11 come to the table? And the reason I ask that is we've
12 heard a lot about sites that ignore DMCA notices or,
13 you know, structure themselves like a pen -- a Pez
14 dispenser, overseas sites. Making those sites double
15 plus illegal because they didn't come to the table is
16 not costless. It's going to hurt the rest of us trying
17 to do the right thing.

18 And in that regard, I would say we do have
19 experience with a government mandate to use filtering
20 technology. Sabam versus Scarlet in Belgium -- the
21 injunction was ultimately overturned because Audible
22 Magic didn't do the thing it promised to do. And I
23 think that's a cautionary tale for government pushing
24 on this.

25 Thank you.

1 MS. ISBELL: Okay. I think that's Ms. Wolff.

2 I can't see. You're --

3 MS. WOLFF: Yes.

4 MS. ISBELL: Okay.

5 MS. WOLFF: All right. As a follow-up to what
6 others had said, in the visual space, there is very
7 inexpensive technology. And there's multiple parties
8 who have done reverse image technology -- the
9 thumbnails. I mean, you can go to tineye.com and, for
10 free, do a reverse image search.

11 So the problem isn't the technology, as, I
12 think, in this area there hasn't been any voluntary
13 measures because the incentives that maybe Troy's seen
14 in -- with motions pictures doesn't exist. There's no
15 risk of massive litigation because when you look at
16 image licensing, they're relatively small licensees.
17 And litigation is just not an affordable option. I
18 mean, and comparing it to the recording industry,
19 there is multiple opportunities and multiple options
20 within the Digital Licensing Association (sic) members
21 to legitimately license images at any type of cost.

22 It's just that it's very easy to infringe.
23 There definitely needs to be incentives, maybe a
24 copyright small claims court will help.

25 But right now, there isn't any, I would say,

1 in this area voluntary measures that are there because
2 there's no reason to get anyone to talk to this
3 industry.

4 MS. ISBELL: Mr. Barnes?

5 MR. BARNES: Yeah. Yeah, I want to make, I
6 guess, two topline point. One, I share the optimism
7 that's been articulated up until now.

8 I think the ability to do voluntary
9 measures, industry agreements allows different
10 stakeholders to come to the table to talk about very
11 specific problems. And it avoids this kind of one-
12 size- fits-all approach that I think will doom us as
13 we try to make progress.

14 Another point -- the question's been asked
15 about the government's role. I think the government
16 does play an important role in bringing people to the
17 table as a objective facilitator.

18 But I think it's really important that the
19 government doesn't put its thumb on the scale in terms
20 of trying to achieve a certain outcome.

21 Then I guess I want to just push back.

22 One of the things that I've heard discussed
23 already focuses on licensing. And I definitely think
24 Michael Petricone's point about the ability to have
25 licensed content out there and reduced piracy, I

1 think, it's hard to deny that. I mean, there's so many
2 different studies that have demonstrated that the more
3 that you make licensed content available, the more you
4 reduce online piracy. It's hard to dispute that.

5 And the notion that all of those problems
6 have been solved it's just false. I mean, anyone who
7 knows about how musical compositions are licensed for
8 purposes of public performance through PROs knows that
9 that system is in disarray. Anyone knows -- who knows
10 about mechanical license under Section 115 knows that
11 that system has been broken for decades, and the
12 Copyright Office itself has produced reports
13 indicating that that system is broken. The SEC has
14 looked at how online video services, how their ability
15 to stream video content has been hindered based upon
16 the relationship between studios and MVPDs. So there
17 are a lot of -- there's a lot of work we do in
18 licensing.

19 But I think the good thing about this is the
20 industry agreements allow us to sit down and talk
21 about some of those things so that we just don't
22 approach this as supply is our problem, but we can
23 also talk about it in terms of demand and reducing
24 demand for infringement.

25 MS. ISBELL: Mr. Garry?

1 MR. GARRY: Hi. I don't know if we've turned
2 to the opposite side of the question yet by getting
3 back to this table. But I wanted to speak briefly --

4 MS. ISBELL: I was hoping to put it off for a
5 little bit, but let's go ahead.

6 MR. GARRY: Okay. I don't want to be the only
7 negative voice at the table. But I did want to speak
8 briefly about my experience in negotiating. So
9 thinking about technology as people have discussed,
10 particularly technology for Web sites that can screen
11 in advance content that's being loaded up, none of the
12 voluntary aspects of what we're talking about deal
13 with outlaw sites at all. And outlaw site are a
14 tremendous problem for us, and they are completely
15 disincentivized to do any voluntary measures
16 whatsoever.

17 I'll just mention that I've had, I think,
18 two experiences having dealt with lots of Web sites
19 out there that have lot of infringing content on them
20 where it was indicated a willingness to me to
21 implement technological measures that, ultimately
22 were, from my perspective, very easy to implement and
23 very effective. One was a Web site that came to the
24 AAP early on and really wanted to talk about having
25 that to be as part of their business model, and I

1 think arrangements were made. But the only reason they
2 were there is because they wanted to enter into
3 business arrangements with various people who were at
4 the table.

5 The other experience I've had very recently
6 -- thanks -- we're negotiating with a Web site that
7 has previously been very, very, you know, troublesome
8 for us but completely protected by the DMCA until
9 we've had to chink it so much so -- a very large Web
10 site making lots of money. We have lots of publishers
11 looking at them. But we didn't even want to approach
12 them. We found a chink in their armor, and approached
13 them that, gee, you have all sorts of infringing
14 content up here. We've all sent you hundreds of
15 notices.

16 And they were very -- they were willing
17 suddenly to have a conversation about technology. And
18 the conversations have gone very well. There's a lot
19 they can do for very little money. But it turns out
20 they're on the edges of the cusp going from an outlaw
21 business to a legitimate business, which reminds of
22 the old saying, "Every great fortune is founded on a
23 great crime."

24 So the only people I've had help volunteer
25 to help me are people I've already made millions of

1 dollar from my content and now they want to go legit.
2 So they're happy to talk to me about what can we do so
3 you're not going to sue us for all our bad conduct and
4 we can have a nice relationship going forward.

5 So that all adds up to voluntary's great
6 when you can get it, but it doesn't bring any of the
7 outlaws to the table. And from my perspective, the
8 outlaws are my number one problem.

9 Thank you.

10 MS. ISBELL: Mr. Gibbs?

11 MR. GIBBS: I wanted to build a bit on what
12 Mr. Garry and Mr. Barnes said. With earlier -- the
13 phrase a period of transition back in 1998, for us as
14 musicians and music creators, that period of
15 transition has become a permanent state.

16 I think -- C3 has devoted a significant
17 amount of its resources to exploring solutions to the
18 issue of voluntary compliance. We put together a tech
19 committee, which included individuals involved and
20 responsible for building various global -- including
21 rights databases as well as individuals who are
22 involved in building projects that were credible
23 solutions that could gain traction.

24 We found that the problem I not that there
25 isn't a database. It's that there are too many. And

1 each one is siloed, and the different parties do not
2 speak to each other.

3 In addition, service providers have been lax
4 in codifying methods for accepting data.

5 People on both sides have yet to rise up
6 above the start-up mentality to address what is a
7 system- wide problem. And the system-wide problem has
8 caused a true market failure that existed in 1998 and
9 still exists today.

10 As far as what we see solutions would be,
11 for us, there are a few principles. We think that as
12 far as the data -- solving the data problem in itself,
13 the parties should be neutral.

14 There should be no malevolent and desperate.
15 It has to be a collaborative structure.

16 As -- we would prefer to see government
17 involved in this to facilitate this. But as a group,
18 we have begun to reach out to relevant and interested
19 parties, and we continue to do so.

20 MS. ISBELL: Okay. I'm going to let the
21 people who haven't yet spoken go. And then I'm going
22 to ask my next question and then take comments again.

23 So Mr. Kennedy?

24 MR. KENNEDY: Thank you.

25 I just would say that I'm echoing some of

1 the comments that you've heard from other members,
2 particularly Ms. Simpson, Ms. Wolff, among others. My
3 concern is basically that there are organizations that
4 absolutely need to be talking with individual creator
5 groups in order to facilitate solutions and yet those
6 conversations are not happening, primarily, because I
7 don't think the -- there are either sufficient
8 incentives or a willingness to really engage in the
9 conversations. And until and unless that's
10 acknowledged and addressed, I'm not sure that
11 voluntary measures can really totally satisfy the
12 needs of the different creator communities.

13 MS. ISBELL: Okay. Ms. Sheehan?

14 MS. SHEEHAN: So done right, voluntary
15 measures can account for user concerns and the public
16 interest and making sure that they don't inhibit
17 people's ability to speak and innovate online and
18 don't impair competition or inhibit market entry for
19 small entrants and impair the diversity in the market
20 for Internet services.

21 In order to make sure that they do that,
22 it's important that we stop talking about this as if
23 it's two cities -- Internet service providers and
24 rightsholders. It's two cities in the world full of
25 Internet users where those cities are located.

1 And we need to ensure that, in order to make
2 sure Internet users are protected and the public
3 interest is protected, that these agreements are
4 actually voluntary. They're voluntary measures. We
5 need to make sure that they're not the result of
6 market coercion, of threats of litigation, of threats
7 of new legislation or legislative action or new
8 government enforcement measures. And they need to
9 result from a truly open and multi- stakeholder
10 process that includes the voices of all affected
11 entities and not just large online service providers
12 and large rightsholders. But you need to make sure the
13 public interest voices are heard in that process.

14 I think, historically, we haven't seen
15 significant public interest participation in these
16 agreements. And as a result, they've been subject to
17 criticism for being unfair to Internet users and
18 unfair to smaller providers. I think it's especially
19 important that we consider these interests when we're
20 talking about proposing Internet filtering as a
21 standard technical measure, which I find disturbing.
22 But I think it's pretty clear on the language that
23 Congress included in the statute that the standard
24 technical measures need to be developed pursuant to a
25 broad consensus in an open, fair, voluntary and multi-

1 industry standards process, that a far more suitable
2 body than the Copyright Office, for example, for
3 determining what that standard technical measure
4 should be would be a more traditional open standards
5 body, something more in line with the W3C.

6 MS. ISBELL: Okay.

7 MS. TEMPLE CLAGGETT: Just a follow-up
8 question on that. In terms of the role of the public
9 or considering the public interest, or users, how do
10 you feel that that could be incorporated into these
11 conversations?

12 MS. SHEEHAN: I think, you know, we've - -
13 when we've run into this in the past, there's been a
14 real lack of transparency around the negotiations for
15 these agreements. And there's been a lack of inclusion
16 of groups who actively work to speak on behalf of the
17 public interest.

18 MS. TEMPLE CLAGGETT: Thank you.

19 MS. SHEEHAN: Thank you.

20 MS. ISBELL: Okay. So we've already sort of
21 previewed what was going to be my second question,
22 which are: what are some of the problems with
23 voluntary agreements? And obviously, we've heard one
24 of the big ones is lack of availability or the
25 availability for smaller content owners to come to the

1 table. I'm sure as soon as I open it up there are
2 going to be many other issues. So I'd like to hear
3 what are some of the concerns with existing voluntary
4 measures.

5 And the second part -- do you see a way to
6 fix, or at least improve, those shortcomings? And what
7 would that look like to have a truly successful
8 process?

9 So I will start here again.

10 Mr. Band?

11 MR. BAND: So I'm generally a big fan of
12 voluntary measures. I think that they are definitely
13 preferable to coerced measures. And there's been some
14 discussion in -- before about the Higher Education
15 Opportunity Act, and that was one such coerced measure
16 where higher education institutions have obligations
17 that no other service providers have. And those
18 obligations were imposed on the basis of a MPAA, I
19 believe, study that turned out to be completely wrong.

20 They -- when it was -- when they were going
21 around the Hill, they had a PowerPoint presentation.

22 They never provided anyone with any data.
23 But Congress, nonetheless, just sort of accepted this
24 PowerPoint presentation as fact that the rates of
25 infringement on campuses were higher than they were

1 elsewhere, and it turned out not to be true.

2 And so it's all sort of ironic that policy
3 gets made and laws get passed on the basis of these
4 fictitious studies when, you know, here we have --
5 we've had, you know, a legitimate study that really
6 tries to understand what's going on in the notice-and-
7 takedown system. And people are criticizing it because
8 it's based on a sample.

9 But all studies are based on samples.

10 MS. CHARLESWORTH: Mr. Band, I had a follow-
11 up on that. So I understand your process concern about
12 the HEOA. But I mean, is it a bad law? That's the
13 question.

14 And do you see it as, substantively, a bad
15 thing?

16 What does it require -- education about
17 copyright and a plan -- for each university?

18 It's actually fairly open-ended. Each
19 university has to adopt some plan and file it to
20 address it. So it's not particularly buttoned down in
21 terms of the actual substance of what they're doing.
22 Is that a bad thing, a bad outcome?

23 MR. BAND: I think mandating education is a
24 bad thing. And I think, also -- you know, because that
25 -- the -- you know, mandating education is, you know -

1 - it's not the way we do things in this country. You
2 know, education should -- other than, I guess, you
3 know, mandating that children, you know, attend public
4 schools.

5 Even there, you could have a homeschooling
6 option.

7 But it's also the fact that it's
8 discriminatory, meaning that it's an obligation that's
9 put on universities that other service providers don't
10 have. So if it was going to be applied in a
11 nondiscriminatory manner, then maybe that would be
12 worth talking about. But it also has other
13 requirements in terms of technologies that need to be
14 acquired and reporting requirements and all these
15 other things that -- again, that are, I think,
16 inappropriate, especially when you single out one
17 sector at the - - to the detriment of all -- you know,
18 without imposing it uniformly.

19 MS. TEMPLE CLAGGETT: Do you think it should
20 be -- well, I think you've already answered this
21 question. But do you think it should be imposed
22 uniformly so that you don't have those, in your view,
23 discriminatory outcomes in terms of service providers
24 if the problem that it tried to address actually is a
25 problem that does exist more widely than it's -- than

1 at the universities. Is it an appropriate model?

2 MR. BAND: Right. Well, so we're -- there's a
3 hypothetical in hypothetical that there was a problem
4 that then -- you know, and that, of course, gets to
5 the other issue that's sort of underlying this, is,
6 you know, there's no question that there's a lot of
7 infringement out there. To what extent does that
8 infringement translate into loss and sales? You know,
9 no one's ever been able to demonstrate that
10 conclusively to -- with any scientific degree, even
11 though a lot of people are trying. Yes, infringement
12 does lead to some lost sales. But the substitution
13 rate is subject to enormous amounts of debate.

14 But again, I am not -- I'm not convinced
15 that requiring people to watch an online video --

16 I mean, if you sort of said, well, every
17 subscriber to, you know, Verizon and Comcast, or
18 whatever, has to first watch a video -- I mean, I
19 don't think that that's really going to change
20 behavior.

21 I think, rather, what is changing behavior
22 already is the fact -- and others have talked about
23 this -- that, you know, the old world where you had
24 creators, distributors, users, that -- those
25 distinction have become meaningless, as Rebecca's

1 users show. I mean, every user is a creator. And I
2 think it's exactly that environment where every user
3 became -- now that every user is a creator, I think
4 they have become more sensitive to the complexity of
5 copyright and the fact that -- and what the boundaries
6 are. That is much more -- when you're making your own
7 videos as part of school assignments, then you
8 understand more of what is it that you are creating
9 and what is it that you are using for others because,
10 again, remember, all the creators here have used a lot
11 of other work -- people's works that went before,
12 right? I mean, whether it was the ideas or whether
13 they're actually -- you know, every work is a remix at
14 some level, right? But it's only if you're actually
15 doing that creation do you recognize that, oh, yeah,
16 you know, and you become more sensitive to those
17 things.

18 So I think sort of trying to create -- using
19 -- working on this whole paradigm of, well, we need to
20 educate users about, you know, the rights of others,
21 well, no, it's educating users, really, about their
22 own rights. And I think that that -- that's going to -
23 - that's coming naturally.

24 MS. ISBELL: Okay. Mr. Hart?

25 MR. HART: Thank you.

1 So this isn't necessarily a concern about
2 any specific voluntary measure, but I did want to note
3 that it's always good to have more data about how
4 effective these voluntary measures are, how they're
5 working. So for example, the Center for Copyright
6 Information released a report after the first year of
7 the Copyright Alert System that gave a good overview
8 of how many notices went out, how many people received
9 second notices, third notices, et cetera. And I think
10 that was very helpful for a lot of people.

11 More recently, we had the good, bad and
12 situational practices for sending and receiving the
13 notices that came out of the multi- stakeholder
14 process that was facilitated by the Department of
15 Commerce. A number of the written comments kind of
16 indicated this was really a good solution, it's been
17 really effective. I think there's been enough time
18 that it'll be worth looking at how effective it has
19 been -- how has it been -- how have these practices
20 been implemented by different service providers, have
21 there been any measurable effects, that kind of thing.

22 MS. ISBELL: Mr. Rae?

23 MR. RAE: Okay.

24 So first of all, I would be delighted if you
25 asked me a follow-up question so I don't feel like Ben

1 Carson at a Republican presidential debate over here.
2 You don't actually have to do that. I just wanted to
3 tell the joke. I've been waiting for this moment.
4 Thank you very much.

5 First things first, inclusivity -- I mean,
6 you know, our organization feels that, tremendously,
7 it's actually the rationale for our existence to
8 develop artist-side expertise and complex policy in
9 marketplace matters to translate and to create a
10 pipeline for broader inclusion.

11 We're just one organization. We all need to
12 come together on the artist side. It's going to take
13 some discipline. The fact that there are artists here
14 in the room today is, you know, a great, you know,
15 step, and I think we're going to get there.

16 Inclusion with regard to voluntary measures
17 -- you know, we hear about, you know, the public
18 interest being represented. I do recall that Gigi Sohn
19 during her tenure at Public Knowledge was a primary in
20 the Center for Copyright Information and the CAS
21 process. So I mean, I think if you want to be
22 involved, then you can be involved, right?

23 And lastly, I would say, you know, we could
24 step out of the DMCA safe harbors, and we'll get
25 earlier voluntary agreements that happened that were

1 later codified. One in particular would have been the
2 mechanical royalties for streaming interactive
3 services that was, you know, kind of adopted as a CRB
4 rule-making process. Of course, we could have an
5 entire other panel about, you know, failures within
6 that system. But the point is that's stood since 2000.
7 And it certainly is inclusive of everybody that --
8 theoretically, that would be eligible to receive
9 royalties from mechanical uses in that environment.

10 So you know, let's just assume for the sake
11 of argument that we have some credible processes that
12 we can refer to. And let's try to make this one extra
13 credible, you know. It's not above the wit of humanity
14 to get some people together so that when we open up
15 into new use environments -- virtual reality,
16 augmented reality, chips in my head, whatever it is --
17 we'll have a process for people being data partners
18 early. We'll have a process for them to have the
19 potential of actually coming up with novel licensing
20 structures that work in mutually agreeable fashion.

21 MS. ISBELL: So I want to follow up a little
22 bit on --

23 MR. RAE: You did. You followed up.

24 MS. ISBELL: I did. I'm going to give you a
25 chance.

1 On specifically the multi-stakeholder
2 process, we heard on an earlier panel someone
3 basically saying that it was less than beneficial.

4 And I think the quote was there were too
5 many cooks in the kitchen.

6 MR. RAE: Yeah, I said that. Oops.

7 MS. ISBELL: And so my question for you is:
8 is there a way to balance inclusion in bringing
9 everyone to the table without getting so big that it
10 becomes unwieldy and you can't reach consensus?

11 MR. RAE: So I think, you know, the best way
12 to do that is to look at this in a targeted way, you
13 know, identify what problems you're actually trying to
14 solve. If we're looking at the repopulation of
15 infringing links, then we could possibly look at user-
16 generated content environments. That doesn't include
17 search, although search would be responsible to, you
18 know, those signals, for example. So I think you might
19 actually end up solving some of those problems, you
20 know, just by virtue of focusing on the one.

21 You know, in my mind, I can imagine an array
22 of tech vendors so we can actually start to understand
23 who these people are, what their technologies do, how
24 accessible they are, what environments do they work,
25 where do they not work, what's on the horizon.

1 Then of course, you know, from my
2 perspective, having small artists, rightsholders and
3 folks included in that discussion is absolutely
4 important. And I, you know -- honestly, I'd extend
5 that to the developer community, too, because these
6 are the people who, theoretically, would be making
7 useful platforms that our community could use so long
8 as they're not built on the backs of our creative
9 labor.

10 MS. ISBELL: Ms. Schneider?

11 MS. SCHNEIDER: I want to talk about what we
12 don't do in this country because that's what Mr.
13 Band's quote was. We don't allow people to make money
14 through illegal activity largely through intimidation.
15 That is called racketeering. It's supposed to be
16 protected under RICO. Yet for me, that's exactly what
17 YouTube does. That's what I experience.

18 With these data lords the size of YouTube,
19 unimaginable size, YouTube and Google here represented
20 by attorneys and lobbyists that collectively are
21 siphoning my assets, siphoning the assets of
22 collaborators, musicians in New York, trickling down
23 to the fact that all the large studios in New York
24 have closed. You can't even record a large film score
25 in New York anymore.

1 Now I want to contrast that with the fact
2 that I go all over the world. I have experienced
3 working in the Czech Republic, sitting with old men in
4 tears telling me how, under communism, they listened
5 to the voice of America and listened to jazz. It gave
6 them hope. A guy in my band was in Japan. An old man
7 said -- he took him into his basement and showed him
8 the Victrola that he listened to Louis Armstrong on
9 his basement as bombs fell from America because he
10 loved [music] that so much.

11 Don't we all agree this is a culture, a
12 culture of photography, of literature, of art, of
13 music that we want? We have to collaborate to protect
14 that. This is not about a -- you protecting a large
15 business that needs to make money no matter what,
16 lobbying for this -- this is a matter of all of our
17 future. Do we want a culture that is owned by one
18 company, a world that is owned by one company? I do
19 not.

20 You know, so I see voluntary measures that
21 people could take if they were motivated to do that,
22 best practices that would make a major difference in
23 my life and every musician I know -- fingerprinting
24 technology required by every company; standardized
25 takedown; terms and conditions that don't have the

1 hanky panky of having to sign on to their terms and
2 conditions of the large companies; checkpoints,
3 educational checkpoints on upload that everybody for
4 photography, for music, that are put forth by people
5 like you that know what you're doing that understand
6 copyright like nobody does; videos on sites -- yes,
7 videos that people have to listen to so that they
8 don't have to watch the stupid video that YouTube puts
9 up called Copyright Basics.

10 Watch it. It's Muppets. Watch their pirate
11 video that they make all the users have to watch that
12 are Muppets. And when they get to the fair use, you
13 can't read it because it's jiggling around.

14 And then the man says, sped up, "Fair use is
15 (makes fast sound). Bing." Fair use -- on to the next
16 subject. I mean, this is ridiculous.

17 Yes, and a rating system -- a rating system
18 for everybody that does a takedown, that does a
19 counter-notice, a rating system that is -- that forces
20 people to have to have accountability when they do
21 takedowns and when they do counter-notices that gives
22 them incentive for education because they don't want
23 to do it wrong.

24 These are the things we need. Everybody
25 should agree to it. You know what? It's common sense.

1 There's no argument against these things.

2 It's common sense to anybody who doesn't
3 have a hidden agenda.

4 MS. ISBELL: Okay. Since Ms. Pilch hasn't
5 spoken yet, I want her to go next. And then we'll go
6 back to Ms. Pariser.

7 MS. PILCH: My ideas actually pick up on what
8 Jonathan Band said, what Maria Schneider also said.
9 And I was going to start out by saying -- talking
10 about the issue -- the Higher Education Opportunity
11 Act Plan, that regardless of how the idea was pushed,
12 it is perceived to have improved the situation for
13 peer-to-peer file-sharing in universities. What we're
14 talking about is the 2008 amendment to the 1965 HEOA
15 that was developed to address peer-to-peer file-
16 sharing at universities. And it makes the Title IV
17 financial aid federal programs contingent on
18 university compliance to combat peer-to-peer file-
19 sharing, with several requirements, including an
20 annual disclosure to students about the illegal
21 distribution of copyrighted materials and how they may
22 be subject to criminal and civil penalties and its --
23 that it's necessary to describe the steps that
24 institutions will take to detect and punish illegal
25 distribution of copyrighted materials.

1 That may seem onerous. It may seem rigid.
2 But it appears to have had an effect. So why is that
3 bad? How could that be bad?

4 I want to follow up on the idea of education
5 because I do think it's important as a viable approach
6 to changing behaviors for Internet use. It's been
7 suggested a number of times over these two days,
8 including today from Ms.

9 Schneider. Using the university as a
10 microcosm.

11 I can say that there's tremendous confusion
12 today on the extent to which infringing behavior
13 should be considered right or wrong, ethical or
14 unethical, in the context of viral social media
15 messaging -- I'll talk faster -- that is anti-
16 publisher, anti-rightsholder, anti-musician, anti-
17 copyright, anti-human, emotions that develop from
18 this kind of messaging that is pushed by the very
19 industries who benefit mostly from infringement. It
20 translates directly into cash for them, for the
21 entities promoting this.

22 Users do benefit from infringement. And
23 those who do so, who are able to use works at the
24 expense of creators and copyright owners have various
25 motives.

1 Can I go for 30 more seconds?

2 They are sometimes innocent actors.

3 When they are innocent, it's because they
4 don't know about copyright law or because they're
5 confused because of the social messaging. Because
6 there's no national standard for copyright education
7 and it's not generally taught in schools, people never
8 learn about it. It's not uncommon to ask an
9 undergraduate class if they have ever heard of
10 copyright, even of fair use, and to get no for an
11 answer across the board. This is not in people's
12 consciousness.

13 The Internet is the source of knowledge for
14 digital natives. And often, students are under the
15 influence of industry-driven social messaging that
16 tells them that infringement is a good thing. There's
17 a lot of confusion amongst young people about this.
18 There's a kind of indoctrination going on that is
19 contrary to basic social instincts to respect other
20 people's rights.

21 This is contrary to basic social norms.

22 In my opinion, this is more than a legal
23 issue. It's a real social problem, and education could
24 contribute to the solution. Copyright education does
25 exist at universities, but it could be stronger. For

1 the public, practically speaking, it doesn't exist
2 except in the forms -- well, it exists in various
3 forms, including the forms that Ms. Schneider has
4 cited. It needs to exist in better forms.

5 And so I do hold out education as a very
6 positive solution to this problem. I think that
7 standard technical measures are ultimately the key
8 because, as long as it's possible to profit from other
9 people's labor and to create massive profit- making
10 schemes from infringement, people will engage in this
11 activity. But we need to try harder to eliminate the
12 business model that is based on active, willful,
13 invited infringement.

14 Thank you.

15 MS. TEMPLE CLAGGETT: I had a follow-up in
16 terms of just your experience with HEOA. Are there
17 studies or specific statistics focused on the success
18 or just calculating the success in terms of the
19 education piece and how it's affected user behavior in
20 the university environment?

21 And also, I was interested in your point
22 about social messaging. You just kind of generally
23 said social messaging that is anti- copyright. I don't
24 know what you were referring to specifically. So ...

25 MS. PILCH: In answer to the first question,

1 one of the requirements of the HEOA is to identify --
2 universities must do this -- to identify procedures
3 for periodical reviewing the effectiveness of the
4 plans to combat the unauthorized distribution of
5 copyrighted materials. And I know that universities do
6 report on this. I personally have not heard of these
7 reports, but they exist. And so that is -- they could
8 be compiled, I suppose.

9 On the social media, I can say, on the basis
10 of my personal experience, I see this reading blogs. I
11 see it reading listservs.

12 People take off on ideas. And you know,
13 we've heard a lot about the bullying of people who
14 object to their works being used, bullying of people
15 who agree with them. That gets viral.

16 That's the kind of thing I'm talking about,
17 where you get a string of communication that is
18 beating someone up for the fact that they want their
19 work taken down or they have positive ideas about
20 copyright. It's almost everywhere. I mean, it's -- I
21 can't cite specific places. But when you read blogs
22 and you read messages, you just get links to these
23 things.

24 MS. TEMPLE CLAGGETT: Thank you.

25 MS. ISBELL: Ms. Pariser?

1 MS. PARISER: Your original question was
2 what's wrong with voluntary agreements. And I think
3 the main thing that jumps out at me is that there
4 aren't enough of them. There aren't enough players in
5 them. They don't go far enough. And you know, I think
6 the continued pressure that the government can place
7 on, as Vicky put it, having skin in the game, having
8 some incentive to come to the table, is important.

9 On a completely unrelated note, on the
10 educational piece, there's -- over the course of these
11 two days, I think you're hearing two different streams
12 of ideas around education. One is we need lots of it.
13 And the -- on the other hand, whatever is out there
14 right now sucks because it's Muppets. So this is
15 something maybe the Copyright Office could assist in,
16 is the creation of more engaging content around
17 educational pieces for consumers.

18 And here, I do have to disagree with the
19 idea that the fact that individuals become creators
20 themselves is its own education. Perhaps.

21 Although in my experience, when you tell a
22 middle school student that that selfie they took is
23 actually a piece of copyrighted content and now don't
24 you understand the plight of, you know, the content
25 industry, they don't get it at all because they want

1 to give that away for nothing. So it's teaching the --
2 you know, it's not really conveying the message we
3 want to convey. And I think stronger educational
4 messages are absolutely essential for consumers.

5 MS. ISBELL: Ms. Rasenberger?

6 MS. RASENBERGER: Thank you. First, I want to
7 echo something that Mr. Garry mentioned, which is that
8 voluntary measures cannot be the sole solution in
9 large part because they don't address those who are
10 not interested in voluntary solutions, namely,
11 criminal pirate sites. And a great deal of piracy
12 right now occurs on criminal pirate sites that move
13 around the Web and are mostly situated abroad.

14 As far as mandating technological measures
15 through 512(i), which we've talked a little bit about,
16 it would be important for the process to be mandated.
17 Right now, given the way that 512 has been interpreted
18 by the courts and the fact that the burden is put on
19 right holders, there is very little incentive, as
20 others said, for service providers to come to the
21 table. So we see it that the government would have a
22 role in convening these kinds of standards -- creation
23 in a multi-standards -- multi-industry standards
24 process in an open, fair and voluntary manner.

25 And I think we should be -- if we could do

1 this -- and I don't know if it would be the Copyright
2 Office or, as was mentioned, a standards-creating
3 organization who have expertise in it -- I think that
4 there would be potential for some help with this. It -
5 - for instance, you mentioned BookID earlier. That
6 works with script -- only with script. A mandated
7 process could force other service providers to also
8 adopt it.

9 Last, just real quick on education,
10 education would help with some users. For instance, we
11 have authors who tell us, particularly in the genre
12 field -- romance or mystery -- they have fans who will
13 very happily tell them I only read your books for free
14 because I can't afford them. I love you, but I just
15 can't afford your books. And they have no shame. I
16 think education would help with users like that
17 because they -- these free books are so readily
18 available they don't really see that there's a
19 problem.

20 But there also has to be some key education.
21 If you tell people -- if you put up a speed limit sign
22 for 25 miles an hour and you keep telling people the
23 speed limit's 25 miles an hour but everybody's going
24 50, people are still going to go 50. You have to pull
25 them over occasionally. You have to give them tickets.

1 And the same thing, I think, has to happen with
2 education on using pirated works online.

3 MS. ISBELL: Ms. Sheckler?

4 MS. SHECKLER: Thank you.

5 I'd like to agree with Jenny's comment and
6 Ms. Pilch's comments on some of the issues that we're
7 seeing with the voluntary initiatives.

8 In terms of two points earlier raised I
9 want to comment on, with respect to the user
10 interests, in all the voluntary initiatives that I've
11 been involved in, it has been first and foremost, in
12 our minds, that user is -- wants to interact with our
13 content. We want to teach them the right way to
14 interact with our content. So we very much care about
15 what that user's thinking, how they're thinking about
16 it, what are their rights in this area.

17 As was mentioned previously, both Public
18 Knowledge and CDT were invited and requested to come
19 in and work with us on the CCI program. CDT now, as
20 well as others, on the fair use side work with us
21 regularly through CCI and the eye keepsake (phonetic)
22 on an education program for K through 12.

23 So clearly, we are thinking about that.

24 And then in terms of Mr. Band's comments, I
25 find it surprising to say it is coercion to follow the

1 law or petition the government for change in the law.

2 Thank you.

3 MS. ISBELL: Ms. Simpson?

4 MS. SIMPSON: And so again, back to the
5 original question of what are our concerns with the
6 existing voluntary measures. I think one is the
7 question of participation. As already been mentioned,
8 it has to be brought, and it has to be inclusive. And
9 I do recall when the IACC office was in discussions
10 about the payment processor method. It was surprising
11 that the rightsholders invited to that discussion were
12 rather limited.

13 It was not broadened. It was not inclusive.

14 And I do take your point that, in becoming
15 broad and inclusive, we do face the problem of it
16 being far too inclusive. It includes everyone that may
17 not necessarily have the expertise to come to that
18 discussion. So it does need to be a balance between
19 those who have the expertise, such as -- and when
20 you're talking about technological solutions or
21 structural solutions that do need to be addressed.

22 So I suppose if there is a pre- consultative
23 method or measure before the actual discussion that as
24 -- then allow those who have an interest to give their
25 voice to their concerns, that might be more helpful in

1 making that broad and inclusive process far more
2 effective.

3 But I do think that the role of government
4 is important, and it has to be there to bring the
5 interested parties to the table invoking those who are
6 not interested in coming to the table to be compelled
7 to come to that table.

8 MS. ISBELL: Ms. Tushnet?

9 MS. TUSHNET: So also back to the question,
10 what are the problems with existing systems. Content
11 ID, of course, has well-known problems with over-
12 blocking fair uses and falsely claiming revenues owed
13 to other people. And these are recited extensively in
14 the comments and routinely reported to us by our
15 users, including the internationally recognized artist
16 I talked about yesterday.

17 I want to talk, actually, about BookID,
18 since we've mentioned that, too. So Scribd's own Web
19 site clearly explains its two big problems -- over-
20 blocking. It blocks quotes from public domain
21 materials. If someone then later on tries to upload
22 the whole public domain book then that will be blocked
23 because of the match with the earlier quote. Or fair
24 use quotes of another book -- that will block the book
25 to be uploaded by the author in the future. And then

1 the other problem is the under-blocking.

2 So Scribd admits all you need to do is scan
3 using OCR, and the results will be different enough
4 that it won't match the thing they've set up. And I've
5 talked to our tech people. They say the same thing,
6 that a change could be something invisible to the
7 naked eye, like putting a non- breakable space in
8 where a space currently is. If you want to start
9 blocking stuff that -- if you want to catch that,
10 we're now talking about plagiarism protection
11 software. Plagiarism protection software is really
12 expensive and hard to make. And we -- our volunteer
13 team certainly couldn't do it.

14 So how to fix this? There's no easy fix. I
15 think things like easy appeals from voluntary measures
16 that are non-threatening about piracy that walk people
17 through could be a problem -- could be a solution.
18 Wikipedia has fair use and public domain guidelines
19 for its use of images. That would be a good place to
20 start.

21 They're useful for people who are highly
22 motivated and willing to invest a fair amount of time
23 in learning the rules.

24 But I will say that the education stuff, in
25 general, first of all, it's something that the

1 proponents clearly imagine being imposed on the
2 unwashed others, not on themselves every time they
3 seek to upload a photo to Facebook or send a -- you
4 know. It's also, you know, people just check the box.
5 You know, you've accepted a zillion terms and services
6 in the past two weeks where you just check the box.
7 And you know, we can't look at that as a solution. It
8 -- what is imagined to be doing the work there is
9 really the filtering.

10 MS. ISBELL: And Ms. Wolff?

11 MS. WOLFF: Okay. Well, I can't speak to
12 voluntary measures that don't work in this area
13 because, so far, there aren't any. So I'll try to talk
14 about what might help reduce what is the only
15 solution, which is really not working, which is the
16 takedown notice for every time an image is on the site
17 that's not authorized.

18 We have suggested -- the Visual Arts
19 Association's entire group of them did do comments
20 together. We did a survey. And to some person's point,
21 there has been a lot of harassment when people do the
22 notice-and-takedowns.

23 But in speaking of a positive aspect, we do
24 think that if the Copyright Office would perhaps have
25 guidance on what would qualify as standard technical

1 measures -- and that -- and there would be incentives
2 for the OSPs to actually work with them -- and if they
3 use those measures, they won't, for example, maybe be
4 considered to have too much control in order to lose
5 their safe harbor, that if they did cooperate, that
6 there would be incentives to stay within the safe
7 harbor.

8 So I think there are ways people can work
9 together. But right now, there's not enough incentives
10 in areas where there is multiple, multiple creators to
11 work within that community.

12 And I think we need to look at ways to
13 encourage that so that certain creators aren't
14 burdened more than others.

15 MS. ISBELL: Okay. We're starting to eat into
16 lunch. Mr. Josel has not spoken yet.

17 So I'm going to give you the full two
18 minutes.

19 And then Mr. Dow and Mr. Gibbs and Ms.
20 Sheehan can have one minute.

21 MR. JOSEL: Thank you.

22 MS. ISBELL: And then we break and go eat.

23 MR. JOSEL: Thank you.

24 And I may not need the whole two because I
25 know I can hear stomachs rumbling.

1 I wanted to go back to the education piece a
2 bit because I think that's very important.

3 And actually, we on a daily basis spend a
4 considerable amount of time educating our licensee
5 base about what the law is. And it's very important,
6 and we've learned through experience it's a lot easier
7 to get somebody -- to have somebody recognize they --
8 the -- their obligations under the law to take a
9 license before they start engaging in bad behavior
10 than it is to correct the bad behavior once it starts.

11 When our representatives speak to somebody
12 who's about to open his restaurant and explain the
13 obligations regarding public performance rights and
14 licenses, we have a much more receptive audience than
15 somebody who's been playing -- you know, playing music
16 in that restaurant for, you know, three or four years
17 and ignoring all -- you know, all efforts to get
18 there. So you know, I -- we can't stress that piece
19 enough.

20 And I think one concern -- and I think it
21 was sort of raised by the comment that Mr. Band had
22 said that users are -- use -- when users become
23 creators, they become more sensitized to rights. But
24 while I don't have any empirical evidence to this, I -
25 - I'm thinking that probably the opposite take place

1 because I think that the ease with which people can
2 create new content now, I think, overcomes their
3 sensitivity to others' rights. And I think what ends
4 up happening is that user experience and user
5 interfaces become paramount as opposed to teaching
6 somebody what their obligations are.

7 And the perfect example is you've -- when
8 was the last time anybody saw the terms of use on a
9 service that has that representation that says
10 anything I upload I own. And when was the last time
11 somebody voluntarily clicked on the video that YouTube
12 has about what copyright laws are all about? And the
13 reason why you don't see them is it that services --
14 I'm not necessarily picking on YouTube here -- but
15 services don't want to put friction in front of their
16 users. They want to make it a frictionless experience.
17 And so that has, I think, in some degree, overridden
18 this concept of education in many ways. And that's of
19 a concern.

20 And I think the last point to think about
21 here is the subject that we're educating folks on here
22 is the law. I mean, this is not an elective education
23 class. It shouldn't be. It should be required reading
24 and required learning.

25 And I -- you know, we can't -- I can't

1 emphasize that piece enough.

2 And I know there are a lot of issues about
3 the interplay between coercion and education, and
4 those are all balancing acts. But I think all of us
5 need to be sensitized to the important role that the
6 education piece comes into play. And really, you know,
7 to some degree, unfortunately, we may have lost an
8 opportunity in a lot of areas. But I think going
9 forward, we really need to, you know, consider its
10 value.

11 Thanks.

12 MS. ISBELL: Okay. Mr. Dow, one minute.

13 MR. DOW: So as I have looked through the
14 list of voluntary issues that we outlined in our
15 comments -- and I looked at the ones that are
16 working, and I looked at the ones where there's still
17 a need for improvement that there's a distinction
18 easily made between them. And the ones that seem to
19 be working better are the ones in which there are
20 collaborative efforts between rightsholders and the
21 people implementing the voluntary initiatives.

22 Those who that stand in need of improvement
23 are the ones that have made sort of unilateral
24 statements in terms of here's what we're doing
25 without any collaboration with rightsholders, with

1 an eye towards making sure that these processes are
2 effective at achieving their aim.

3 And so I think that when you talk about
4 what's wrong with voluntary initiatives I think that
5 the problem that we see is where people don't work
6 together and they don't work collaboratively.

7 They just simply don't work as well. I think
8 you combine that with things that have been
9 highlighted here about the lack of accountability, and
10 you run into where you see problems with voluntary
11 initiatives. I think, as a society, we expect
12 commercial actors at large to take commercially
13 reasonable steps where they can be effective to deal
14 with known harms. And to the extent that the law in
15 this area doesn't require that same level of
16 accountability, you have no real incentive for that
17 collaborative effort, and you end up with sort of
18 unilateral statements that are marginally, or
19 minimally, effective, certainly not as effective as
20 they could or ought to be.

21 MS. ISBELL: Mr. Gibbs, one minute.

22 MR. GIBBS: I think it's in the public
23 interest to see themselves as creators, and I think
24 that should be accentuated more. I think the metaphor
25 of circulation that things just float and users just

1 take from other users is not the proper metaphor. It's
2 a building metaphor.

3 Creation is built on other creations, and
4 that is why copyright exists in Constitution.

5 People should be educated about the fact
6 that they do have the right to create and the creator
7 does have the right to be protected. And I think that
8 that needs to be balanced. There needs to be some
9 balance, not just speaking about copyright in terms of
10 fair use - - speaking of copyright in terms of, okay,
11 you made this. So now that you've made it, it's worth
12 something.

13 It's making money for people. And I think
14 that that's a place where we can actually start to get
15 some collaboration.

16 MS. ISBELL: Mr. Kennedy, one minute.

17 MR. KENNEDY: Just real briefly, to Mr.

18 Dow's point, I think that the mechanism of
19 voluntary cooperation works if the conversations are
20 ongoing. And I think that's the role that I see the
21 Copyright Office being able to play, which is that you
22 nurture the conversations. You monitor the
23 conversations, and you feed back to the participants
24 and to the people that might be not directly involved
25 but have an interest in it what's going on as these

1 conversations unfold so that we're actually actively
2 working towards solutions rather than just talking
3 past each other continuously.

4 MS. ISBELL: Okay. Ms. Sheehan, last word.

5 MS. SHEEHAN: So I just want to respond
6 really quickly to both Mr. Rae and Ms. Sheckler.

7 I can't speak to Gigi's experience [on] the
8 Copyright Alert System. That pre- dates my time at
9 Public Knowledge. But I think, going forward, we
10 should query whether we're providing really meaningful
11 opportunities for public interest engagement and also
12 whether we're providing sufficient transparency in
13 those negotiations for general public input and
14 response.

15 MS. TEMPLE CLAGGETT: Okay. I have just one
16 quick follow-up to Ms. Sheehan.

17 We've heard a lot about education. And I
18 guess the question is -- from some people, it has
19 been, you know, what's wrong with education. Do you
20 see any concerns from your perspective in terms of
21 educating users about copyright law and respect for
22 copyright law? Is that in any way burdensome or of a
23 concern on your end?

24 MS. SHEEHAN: I think that -- I mean, I think
25 if you're talking about mandating education from

1 Internet service providers, you need to consider the
2 differences between different kinds of Internet
3 service providers, the different resources the service
4 providers have, their different user communities.

5 Creating a one-size-fits-all solution isn't -- is
6 never going to work for both sides. It's -- you know,
7 like many things, it's going to be under-inclusive and
8 over-inclusive and cause unexpected consequences.

9 But I also think that when we're talking
10 about the content of those education programs, you
11 need to ensure that they're balanced, they do
12 represent the balance that is inherent in our
13 copyright system and that has respect for a user's
14 rights to reuse content in fair and legal ways.

15 MS. TEMPLE CLAGGETT: Thank you.

16 MS. ISBELL: Okay. So with that, we're going
17 to break for lunch, come back at 1- --

18 MS. TEMPLE CLAGGETT: 30.

19 MS. ISBELL: -- 40 -- 1:30.

20 MS. TEMPLE CLAGGETT: Yeah, 1:30.

21 MS. ISBELL: 1:30. Okay. We'll see everyone -
22 -

23 MS. TEMPLE CLAGGETT: 1:30. You get an hour -
24 - so 1:30.

25 (Break taken from [Time] to

1 [Time]) [BG2] (Break)

2 (Crosstalk)

3 MS. TEMPLE CLAGGETT: I think I'm going to go
4 ahead and start.

5 (Crosstalk)

6 MS. TEMPLE CLAGGETT: Before we get started,
7 just a quick logistical note -- if you are interested
8 in participating in the final session of today,
9 basically, the open-mic session, please sign up in
10 advance. What we'll do again is have those who have
11 been observers and haven't had a chance to actually
12 provide comments during our roundtable will be the
13 first that will be selected to speak. And then any
14 additional participants who would like to either
15 further detail some of their comments or discuss new
16 comments would also be able to speak.

17 So if you could sign the signup sheet.

18 It's basically on that podium in the middle
19 aisle.

20 If you're interested in participating,
21 please sign up.

22 Each comment, at least initially, will be
23 restricted to two minutes. And then if we have time,
24 follow-up comments from those who have spoken will be
25 restricted to one minute.

1 Session 7: Future of Section 512

2 So a final session, Session 7, is on the
3 future of section 512. I tried to rack my brain to see
4 if I could get a quote that was as good as
5 Jacqueline's opening, and I didn't find one.

6 Every one -- every quote that I came up with
7 was so depressing that I actually didn't want to
8 provide it. And after hearing, I'm hoping that we can,
9 have a conversation that does not just end in
10 depressing statements as to the future of section 512.

11 So I'm putting that out there as basically,
12 hopefully, a foundation to see if there are some
13 positive things we can say about the future. But
14 hopefully, my initial question won't start us off on a
15 depressing and dark road, but I'll go high-level
16 first, and then we'll drill down into some of the
17 specifics if we have an opportunity later on in the
18 session.

19 So my first question, just as a general,
20 very, very broad one, that absent either a legislative
21 change or some radical new way that the courts
22 interpret section 512, if the current status quo in
23 terms of section 512 continues, what do you see that
24 future being in terms of section 512? Do you just see
25 it being an ever-increasing round of DMCA notices, an

1 increase in volume? Are we going to be here in 20
2 years talking about some ISP receiving its trillionth
3 DMCA takedown notice?

4 Absent some change in either, as I said, the
5 actual provisions themselves or the interpretation of
6 those provisions, how do you see the future of section
7 512 operating?

8 Okay, great. I'm going to start on this
9 side. I'm going to go first and ask everyone to, as we
10 said, as we've done before, just identify themselves
11 and their affiliation for the court reporter. And then
12 I'll come back around and ask you to provide your
13 comments.

14 MR. BAND: So Jonathan Band. And on this
15 panel, I'm here for Amazon.

16 MS. TEMPLE CLAGGETT: Thanks.

17 MR. BARBLAN: Matthew Barblan with the Center
18 for the Protection of Intellectual Property at George
19 Mason University.

20 MS. BESEK: June Besek, Kernochan Center for
21 Law, Media and the Arts at Columbia Law School.

22 MR. BUCKLEY: William Buckley, Executive
23 Director of FarePlay.

24 MR. CARLISLE: Stephen Carlisle, Nova
25 Southeastern University where I am the copyright

1 officer.

2 MS. COLEMAN: Alisa Coleman, COO of ABKCO
3 Music & Records, Inc.

4 MR. DEUTSCH: Andy Deutsch for Internet
5 Commerce Coalition.

6 MS. FEINGOLD: Sarah Feingold for Etsy.

7 MS. GARMEZY: Kathy Garmezy for Directors
8 Guild of America.

9 MR. JOSEPH: Bruce Joseph. That mic is not
10 going on. So let me slide over here.

11 MS. TEMPLE CLAGGETT: Yeah. Actually, I think
12 that one's on.

13 UNIDENTIFIED SPEAKER: I think it's --

14 MS. TEMPLE CLAGGETT: I think it works.

15 I can hear you.

16 MR. JOSEPH: You can hear me from here?

17 MS. TEMPLE CLAGGETT: Mm-hmm.

18 MR. JOSEPH: Bruce Joseph, Wiley Rein, here
19 for Verizon.

20 MR. KENNEDY: John Kennedy, American Society
21 of Media Photographers.

22 MR. KORZENIK: David Korzenik, Miller
23 Korzenik Sommers Rayman, largely representing news
24 organizations.

25 MS. LAPOLT: Dina LaPolt, LaPolt Law.

1 MR. MICHAUD: Michael Michaud, Channel

2 Awesome.

3 MR. MOHR: Chris Mohr, SIAA.

4 MR. OSTERREICHER: Mickey Osterreicher,
5 General Counsel for the National Press Photographers
6 Association.

7 MS. PILCH: Janice Pilch, Rutgers University
8 Libraries.

9 I need to add that the comments I'm making
10 today are my own opinions, and they're not based on
11 the views or official positions of Rutgers University
12 or of any library association.

13 MR. RUPY: Kevin Rupy with the United States
14 Telecom Association, USTelecom.

15 MS. TEMPLE CLAGGETT: Great. Thanks.

16 And so in terms of comments to my first
17 question, or responses to my first question, I'll
18 start with Mr. Band.

19 MR. BAND: So Amazon's view is that the DMCA
20 is a workable compromise, that section 512 balances
21 the interests of the rightsholders and the service
22 providers and users, that it's working as intended and
23 no amendments are necessary. And so barring any
24 unforeseen activities, you know, conceivably, it will
25 continue to work as it has worked. Hopefully, we will

1 not be having another stakeholders roundtable of this
2 sort in 20 years.

3 But we see it basically working.

4 MS. TEMPLE CLAGGETT: Thank you.

5 Mr. Buckley? Oh, I'm sorry.

6 Mr. Barblan?

7 MR. BARBLAN: So we've got a system that is
8 currently working really well for service providers
9 and really horribly for the creative community. And I
10 think if this continues, it's actually going to end up
11 not working really well for anyone because, you know,
12 we've seen over the last 20 years the kind of
13 disruption that the system has had on creative
14 industries.

15 And what service providers should keep in
16 mind is that, you know, the reason why their Websites
17 are so popular and the reason why the Internet is so
18 popular, or at least part of the reason, is that it's
19 a great tool for disseminating all sorts of amazing
20 content, that that content is developed in the same
21 creative industries that are suffering greatly right
22 now and that have been, you know, struggling more and
23 more over the last 20 years.

24 And so I think what we'll be talking about
25 20 years from now isn't just that the copyright system

1 is broken, but the creative economy that's a shadow of
2 what it once was.

3 MS. TEMPLE CLAGGETT: Thank you.

4 Mr. Buckley?

5 MR. BUCKLEY: Yes. Mr. Buckley, FarePlay. I
6 found it very interesting that you introduced this
7 session by saying you wondered if there would be an
8 increasing number of takedown notices as time went
9 on.

10 And I think that's really at the heart of
11 the problem and the heart of the situation. We're
12 basically working with a law that's clearly broken.
13 I don't think anybody can argue the fact that this was
14 a law that was designed to make a simplified process
15 for Websites who made an error in terms of posting
16 copyright material could remove that material without
17 having a lawsuit having to ensue. And the intention,
18 also, was on the other side for the creators in that
19 they have a streamlined way to get content removed
20 from infringing situations.

21 The problem is the law was written
22 improperly. It does not refer to a specific piece of
23 content. And that's why we have an incredible whack-
24 a-mole situation which we're all very aware of. And
25 that's really the genesis for all of these takedown

1 notices that you're talking about.

2 The reason we have more takedown notices
3 today than ever before is twofold. The first is we
4 have a system that doesn't work, that's totally
5 broken. The artists were supposed to be protected
6 under the Constitution. Their work was supposed to be
7 protected. It has not been.

8 So the other piece that's happened is that
9 now the takedown notices are automated. And that does
10 mean there is a higher incidence of takedown notices
11 being generated. But the very core of the problem is a
12 broken law that fails to fulfill its purpose as it was
13 intended by the legislators that created it.

14 Thank you.

15 MS. TEMPLE CLAGGETT: Thank you.

16 Mr. Carlisle?

17 MR. CARLISLE: Yes. As the copyright officer
18 of Nova Southeastern, my primary gig is fair use. That
19 is what I'm designed to do. I'm designed to evaluate
20 fair use not only amongst the professors, but the
21 staff, the library which is attached to the university
22 and everything else.

23 I think I can already see where if we don't
24 change 512, where it's going -- and that is to push
25 the expansion of the concept of fair use beyond where

1 it currently sits for the courts.

2 When I'm examining fair use, I'm hemmed in
3 by what the courts tell me it is right now,
4 particularly what the Eleventh Circuit says it is
5 right now.

6 It's not what I want it to be or what I
7 think personally, but what the courts guide me. And we
8 see this push to expand it beyond where the courts are
9 currently.

10 And the Supreme Court keeps reminding us
11 that every fair use case has to be judged on an
12 individual basis. There are no bright-line tests.

13 There are no bright-line rules. But we see
14 this, you know, this expansion going on.

15 To point out the example, we recently had
16 the Supreme Court turn down certiorari in the Authors
17 Guild case, leaving intact the Second Circuit's
18 decision that a mirror-image copy was transformative
19 use. Now, the Sixth Circuit says a mirror-image copy
20 is not a transformative use.

21 The Eleventh Circuit says a mirror-image
22 copy is not a transformative use. So we have a split
23 amongst three circuits on what precisely is a proper
24 boundary of fair use, even when you start with the
25 fact that there's a mirror-image copy.

1 And this was made apparent in the Berkeley
2 study, which has been referenced several times in
3 these proceedings, where 7 to 8 percent of the problem
4 notices were because they were possible fair uses. And
5 the three instances that were enlisted were remixes,
6 mashups and covers. Well, unless we're going to read
7 115 of the copyright law, cover version needs to be
8 licensed. And unless we're going to read 114 out of
9 the section, a remix needs to be licensed.

10 And I -- before I came here, I did a Westlaw
11 search on just the word remix and just the word
12 mashup -- mashup, rather. And I could not find a
13 single case where a court took on a case of fair use
14 regarding mashups or remixes and found a finding of
15 fair use.

16 So this is an area in which fair use has not
17 been extended to by the courts. But we're going to see
18 this push to get it even further. And the -- where
19 it's going is we have a guy out in California who's
20 got a million-dollar funding to make a Star Trek movie
21 with no permission from Paramount.

22 MS. TEMPLE CLAGGETT: Thank you.

23 Ms. Coleman?

24 MS. COLEMAN: Hi. Good afternoon.

25 I just want to reiterate a lot of what

1 everybody's saying, that this law currently doesn't
2 work the way it was intended to because it was written
3 prior to the advent of YouTube and the explosion of
4 technology. What we need is a system where we can have
5 things taken down and stay-down and to protect the
6 copyright owners, the songwriters and the artists and
7 the intellectual property owners so that the value of
8 their works are not diminished.

9 Thank you.

10 MS. TEMPLE CLAGGETT: Thank you.

11 Mr. Deutsch?

12 MR. DEUTSCH: Imagine an alternate universe
13 where there was no DMCA and no section 512 and the
14 strict rules of secondary liability applied on the
15 Internet. You would have a stunted world, as far as
16 you're -- we're concerned today.

17 People live on the Internet. They
18 communicate through the Internet. They create through
19 the Internet. They do their business on the Internet.

20 The Internet service provider groups that
21 make this possible could not exist without a section
22 512, and people forget that. There are certainly
23 problems with infringement. But not all of the woes of
24 the creative community are due to 512 or even due to
25 the availability of infringing material on the

1 Internet. We have had economic problems which have
2 affected all trades, all creative trades. It doesn't -
3 - it's not dependent on whether things are or aren't
4 on the Internet.

5 It's something like blaming the schools for
6 the entirety of society's problems.

7 But we do have a section 512. And what it
8 has done is it has met its purpose. It has encourage
9 enormous investment in the Internet.

10 It's provided new mechanisms for curbing
11 infringement. It has achieved enormous amounts of our
12 national goals. The spread of broadband is an
13 important national goal, particularly in dis-served
14 areas. That couldn't have happened without 512.

15 We have to recognize, I think, that while
16 the law can't -- the law itself is well- crafted. The
17 need for parties to continue to talk and make the
18 system work better, make notice-and-takedown work
19 better, that's important. But by no means should we be
20 considering ripping it up and starting over again.
21 We're far past that point.

22 MS. CHARLESWORTH: Just to reiterate my
23 colleague's question, what we're interested in is not
24 -- I mean, I think we've all heard a lot of positions
25 about 512. But I think the question here is -- I think

1 the question was, assuming we just continue down this
2 path 20 years from now, what will we be looking at.
3 And a particular sub- question that I have is, is the
4 notice-and-takedown system as we currently are
5 experiencing it scalable? I mean, when you're at a
6 billion notices for Google, what is that saying, and
7 what kind of resources are going into that on both
8 sides? And is that a sustainable way to handle
9 infringement?

10 So I'd be interested in -- particularly in
11 hearing people comment on those questions.

12 MR. DEUTSCH: Well, it's difficult. As you
13 have heard on many panels, the world of creators runs
14 from individual singer- songwriters to gigantic
15 studios and record producers. They have different
16 needs, different problems, and it really is impossible
17 to create a system that does everything for everyone.

18 The same is true on the other side of the
19 fence. I -- there are hundred -- there are tens of
20 thousands of designated agents of parties who -- in
21 the Copyright Office, and they're all different. Some
22 are --

23 MS. CHARLESWORTH: But the question --

24 MR. DEUTSCH: -- Google, and some are much
25 smaller and much differing needs.

1 MS. CHARLESWORTH: Well, I mean, a related
2 question to what I just asked, is this a sustainable
3 model?

4 Even if we can't achieve perfection, is
5 there --

6 MR. DEUTSCH: It --

7 MS. CHARLESWORTH: -- could it be better? And
8 I --

9 MR. DEUTSCH: It --

10 MS. CHARLESWORTH: I think we can move on
11 down the line.

12 MR. DEUTSCH: Thank you.

13 MS. TEMPLE CLAGGETT: Ms. Feingold?

14 MS. FEINGOLD: Thanks.

15 Just to put some numbers into context, my
16 name is Sarah Feingold. I'm counsel of Etsy. I started
17 Etsy in 2007, and I was the first attorney, and I was
18 the 17th employee. Etsy's an online marketplace where
19 people around the world connect both online and
20 offline to make, sell and buy unique goods. And our
21 mission is to reimagine commerce to build a more
22 fulfilling and lasting world.

23 Without the DMCA, Etsy just plain wouldn't
24 exist. And there are over 1.6 million sellers on our
25 platform who are empowered to make money because of

1 the DMCA and because of our platform. To say that the
2 DMCA is broken, I don't see that it's broken. I agree
3 with my colleague from Amazon. I -- every single
4 person here is a content creator. There's more content
5 on the Internet because we have access to it. Our
6 phones take pictures, and that is copyrighted content
7 right there. And then as soon as we send a lengthy
8 email, that's copyright-protected content.

9 So there is just more content out there.

10 And without the DMCA, then we wouldn't have
11 free speech, and we wouldn't have the Internet as we
12 know it and as we rely on it. And I think that our
13 society would be worse off for it. And so I think that
14 the DMCA just as it is is doing pretty well.

15 MS. TEMPLE CLAGGETT: So just to drill on
16 down specifically on my question following a little
17 bit of what Ms. Charlesworth did say, I think in your
18 comments there was some fear, however, that you would
19 be subject to an increasing volume of notices. I think
20 that you've said that you right now have a manageable
21 volume of notices. But absent some legislative change
22 are you concerned that Etsy would suddenly have to
23 handle the hundreds or thousands or millions of
24 notices that other services have to handle today?

25 And would you be able to do that?

1 MS. FEINGOLD: So as -- I've been at Etsy for
2 a while. And as Etsy has scaled, so has our DMCA
3 function. Right now, we have a form, and we try to
4 make things very easy for people to submit notices. I
5 have a team that reports directly to me -- dedicated
6 people. And we see the DMCA as a floor, not a ceiling,
7 who are always trying to do best practices, provide
8 education.

9 And so we would scale as our notices scale.

10 MR. GREENBERG: I think part of this
11 question, if I can just try this one more time, is not
12 to suggest that the DMCA is now broken, but that it is
13 a law that is 18 years old. Are stakeholders -- and I
14 mean that on both sides, or all three, right -- users
15 -- user groups, too -- are they satisfied that this
16 has aged well and will continue to age well? Because
17 what I hear in some of the comments is either that 512
18 is perfect and it should not be touched with at all
19 because it's the best statute ever written, or this is
20 a theory of the second best, where we're just in a
21 situation where any tinkering is going to upset one
22 party too much.

23 So is it perfect? Or will it at least scale
24 well and adapt over time? Or should we be a little
25 more forward-thinking?

1 MS. FEINGOLD: In my opinion, the DMCA is
2 working right now as it is. And I would want to see
3 how the changes looked before I could really comment
4 on those changes.

5 MS. TEMPLE CLAGGETT: Thanks.

6 Ms. Garmezy?

7 MS. GARMEZY: Well, in terms of directors,
8 and particularly independent directors who are police
9 -- having to police their own material, I think it's
10 fair to say if we continued -- if the DMCA and section
11 512 continued as it is now, they would assume there
12 are no protections for them and find alternative ways
13 to try to make up the revenue that they'd be losing on
14 their productions because, already, almost to a
15 person, everybody we've talked to -- independent
16 directors -- who have tried to use section 512 have
17 ended up turning away from it as completely unworkable
18 for them and finding - - figuring out other ways they
19 can take their films to the marketplace and try to
20 make up the revenue that they have lost.

21 I would say, in terms of your questions
22 about the future, I'm not a lawyer, but it's my sense
23 that if something could be done with the takedown,
24 stay-down provision, that would, I think, make a huge
25 difference at least for creators. And I would also

1 venture to say that not all content on the Internet is
2 equal and that perhaps there should be some assessment
3 of professional content created by people who are
4 earning -- doing this to earn a living and other
5 content that's created. And perhaps there have to be
6 different -- a different view of what's applied to
7 full-length professional content versus other content.

8 MS. TEMPLE CLAGGETT: Thank you.

9 Mr. Joseph?

10 MR. JOSEPH: Thank you.

11 I'd actually like to focus on a part of
12 section 512 that hasn't gotten a lot of attention here
13 today. And that's section 512(a), which is the safe
14 harbor for the conduit function. And that, both
15 retrospectively and prospectively, is working as
16 intended, and the balance is right.

17 And it will continue to be right 20 years
18 from now.

19 Despite the many calls from content owners
20 for change in certain provisions of section 512, based
21 on my preliminary review and I grant that I haven't
22 looked at every one of the 91,000 comments that were
23 filed -- there is very little, if anything, asking for
24 a change directed at section 512(a) from the content
25 owners.

1 section 512(a) has led to massive investment
2 and is the only way that we will continue to see
3 massive investment by service providers that have
4 opened the door to huge new opportunities, both for
5 the economy as a whole and for copyright owners, in
6 particular.

7 The Internet, as others have said, has now
8 become a medium that pervades everyday life, and it's
9 not just because content is available over it.
10 Commerce is conducted on it. Education is conducted on
11 it. Enormous amounts of information are available on
12 it. And politics is conducted over it. This would not
13 have happened.

14 The broadband deployment that is a
15 fundamental policy of the United States would not have
16 happened without section 512(a).

17 If any change is necessary in section
18 512(a), it is time to eliminate the idea that
19 somebody's Internet access to do -- in order to do all
20 kinds of lawful conduct can be terminated as a
21 condition, or must be terminated as a condition of the
22 safe harbor.

23 I'll stop with that. Thank you.

24 MS. TEMPLE CLAGGETT: Thank you.

25 Mr. Kennedy?

1 MR. KENNEDY: I have a couple of concerns
2 with the 512 looking at it going forward.

3 I -- my members are in a position right now
4 where I would say we're approaching market failure and
5 failure, I think, to make some adjustments to 512 will
6 contribute to the acceleration of that condition.

7 While I can see that the disruptions over
8 the last 25 years technologically have created some of
9 the circumstances for the photographers, I think there
10 is also, undeniably, aspects of 512 that have
11 contributed. I think that the imposition of a small --
12 or the creation of a small claims alternative to
13 federal court would certainly be a step in the right
14 direction in terms of -- and I realize that's a little
15 bit outside the scope. But I think that's important to
16 note.

17 I think the big problem that I see is that
18 the DMCA as is currently constituted and is working
19 isn't really contributing to the dialogue that I think
20 is necessary between OSPs and the creative community,
21 particularly around the fact that OSPs continue to
22 reap enormous benefits economically from the acts of
23 creation that are being shared. And I think that that
24 has to be looked at as part of this. Thank you.

25 MS. TEMPLE CLAGGETT: Thank you.

1 Mr. Korzenik? Is that right?

2 MR. KORZENIK: Thank you.

3 Just so you know where I'm -- my experience
4 comes from, I -- our firm is Miller Korzenik Sommers,
5 and we represent largely news organizations. So we are
6 not -- we are owners, but we are also users. And
7 therefore, our interests are very much, I think, in
8 many respects kind of balanced within the copyright
9 system.

10 But your question about what we should look
11 forward to and what we need to be careful of is -- as
12 512 goes forward into the future, there's an
13 interesting parallel here with the right to be
14 forgotten in Europe and the way that it is policed. As
15 anxiety and worry about privacy increases, the
16 takedown notices within the European system increase.
17 They increase in volume.

18 And what happens is, is that companies like
19 Google and other search operators are faced with
20 thousands and thousands of takedown requests that they
21 have to evaluate. And even though -- even if they
22 intend to try to balance these and figure out how to
23 do things, a lot of this, quote, "censorship" occurs
24 outside of the view of the public. So we don't really
25 know completely what is lost.

1 And those burdens increase on them, and the
2 system can create. Now, this 512 is overall,
3 generally, a good idea. But we need to be careful in
4 the future that we're not setting up a system that
5 create presumptions against speakers, creates burdens
6 on speakers who have new forms of fair use, new forms
7 of conversation and interaction in social media. All
8 of those are new, many of them untested by the courts
9 as to whether they're fair use or not, but all of
10 which need to be protected and valued and assisted.

11 The final point I'll simply make is that the
12 good thing about 512 and the good thing about American
13 law, generally, as opposed to European, is that we
14 favor new technologies. We're not afraid of them. And
15 we tend to protect them as best we can rather than tax
16 them as they do in Europe. And we should continue in
17 the vein of Sony Betamax and in the vein of a 512 that
18 has increasing protections against creating silent
19 presumptions against legitimate speakers, legitimate
20 fair use and so on. That would be good for the system
21 if we were able to build those type of protections.

22 MS. TEMPLE CLAGGETT: Thank you.

23 Ms. LaPolt?

24 MS. LAPOLT: Thank you, Ms. Temple Claggett.
25 And to answer your question, no, it's not sustainable.

1 Is it just me? Or is everybody here just really
2 miserable? So it's obviously not working. This entire
3 system is a hot mess because you have two separate
4 communities that desperately need each other. And it
5 seems to me that nobody's listening to each other.

6 So what if we just fix things a little bit?
7 Like, with 512, stay-down, takedown or takedown, stay-
8 down, keep it down for more than 10 days? Well, you
9 got -- we figure out in a small claims type of way if
10 it's supposed to be down.

11 So we say -- we send a takedown, and someone
12 we want to -- we send a takedown, and the ISP has a
13 certain responsibility with its metadata to keep track
14 of that file. And if someone makes a counterclaim to
15 that file and says that it should stay up there, then
16 we should have a certain period of days, more than 10
17 days, to work it out.

18 But while we're working it out, it should
19 stay-down. And I'm not asking for six months. Maybe 60
20 days.

21 And by the way, why force my clients to file
22 a lawsuit against you? Because they will [. . .] file
23 a lawsuit. But why force us to file a lawsuit if we
24 just have this period of time where we could work it
25 out in an arbitration-type friendly, happy sort of way

1 to figure out if it can stay-down or not?

2 And then on top of it, to, like, figure out
3 why something should be fair use before my clients
4 make a case for your stealing my material.

5 It doesn't seem to me to be a very amicable
6 type of way to try and fix this system.

7 So I think your -- to answer your question,
8 no, it's not sustainable. And we need to work together
9 to figure out what is sustainable so we can all make
10 it better because this is a hot mess.

11 MS. CHARLESWORTH: I had a quick follow- up.
12 I just want to make sure I understood what you were
13 saying.

14 On the stay-down, are you suggesting that
15 all other identical files or -- you would identify the
16 same file that are perhaps continuing to be uploaded,
17 and those would be kept down, too, during this period
18 of -- I don't know -- decision- making?

19 MS. LAPOLT: Yes and no. I'm not saying that
20 my community, being the music community, is really
21 great with metadata and trying to keep track of our
22 information. And there's a big, you know, argument
23 that the technological society or community has as far
24 as giving them proper information so they can, you
25 know, have transparency.

1 But I'm saying if I make a claim to take
2 something down and there is a specific file, a URL,
3 that I am saying that is infringing material.

4 Whether it's infringing copyright recording
5 or the underlying musical composition embodied on that
6 recording, that is the property in question.

7 So that's what I'm saying. That metadata
8 should be housed, you know. And they should keep that
9 metadata, knowing that if someone puts it back up,
10 they should at least notify me and say, hey, we have
11 this metadata, and you claim this was an infringement
12 two days ago or five months ago. We have it back up.
13 There should be some kind of process where we can all
14 work together to try and achieve the same result,
15 which is co-existence for a healthy community
16 together.

17 MS. TEMPLE CLAGGETT: Thank you.

18 Mr. Michaud?

19 MR. MICHAUD: Hi. Basically, my company not
20 only makes content on YouTube, but also has a big
21 Website that has millions of people that come to it.
22 And yesterday when we had the first panel, a lot of
23 people were talking about the take-down, stay-down,
24 how it's too hard right now with the DMCA for people
25 to go and monitor their files and find it. But with

1 take-down, stay-down, you're placing the burden from
2 them now onto the Websites, and it's a different story
3 now. Now it's our burden and not theirs.

4 There should be a joint progress for that
5 where you can't harm the individual small Websites
6 that are doing content. And all content is equal at
7 the start. It's the viewers who determine what type of
8 content is popular and what is good. And basically,
9 there are artists and there are also producers who do
10 shows, who do movies on YouTube far bigger than stuff
11 in the current industry. And a lot of them start out
12 with fair use. They rely on fair use to get their work
13 out there, and then they move from there, whether it
14 be cover by Justin Bieber or Lindsey Stirling. And
15 then they do their own stuff and go from there.

16 It's something that isn't really defended
17 much in the current DMCA and something that takedown,
18 stay-down possibly would make even worse, at least in
19 my opinion, because right now there are a lot of
20 examples of abuse within DMCA with wrongful takedowns.
21 We had four takedowns last year. All four were wrong.

22 MS. CHARLESWORTH: Did you file counter-
23 notices?

24 MR. MICHAUD: Yes.

25 MS. CHARLESWORTH: And what happened?

1 MR. MICHAUD: Well, we had to wait the 10
2 full business days for them to drop it. They didn't
3 respond. They just dropped it. So our account on
4 YouTube lost an entire month of revenue because of one
5 DMCA takedown.

6 The tools in place now work. Generally, any
7 claim you get on YouTube or something like
8 Dailymotion, it's tied to a 20-second clip. It could
9 be a 40-minute video. That 20-second clip can take
10 that video down with a global block, which is the same
11 thing as a DMCA takedown without the legal
12 proceedings. Or they can take the monetization from a
13 video, or they can remove the monetization from a
14 video. It's the standard.

15 20 seconds is the standard. Everything you
16 have is 20 seconds.

17 MS. CHARLESWORTH: That's through -- just to
18 be clear, that's YouTube Content ID --

19 MR. MICHAUD: ID, yes.

20 MS. CHARLESWORTH: -- you're referring to. So
21 when I -- you're a participant in the Content ID
22 processing community?

23 MR. MICHAUD: Everyone in YouTube that puts
24 their video up and wants to monetize, they have to use
25 Content ID. They're all part of it.

1 MS. CHARLESWORTH: Okay. So you're agreeing
2 to that -- are you agreeing to those terms then when
3 you do that? It's, like, the 20- second takedown rule?

4 MR. MICHAUD: Well, yes. That's not a term,
5 though. That's what the standard is for the movies to
6 use and the music industry. There's a 20-second clip.
7 That is what they set. YouTube does not set terms.

8 MS. CHARLESWORTH: Right. But you -- okay.
9 But it's -- that's through the Content[BG3].

10 That's not the law. That's through the - -

11 MR. MICHAUD: Correct.

12 MS. CHARLESWORTH: -- Content ID system.

13 MR. MICHAUD: I'm just saying the tools are
14 in place currently just at least on YouTube to
15 takedown content. They can do a global block.

16 And don't even have to -- they don't even
17 use a DMCA. They can just do a global block, and the
18 content is blocked everywhere.

19 MS. CHARLESWORTH: Right. Okay.

20 MR. MICHAUD: And that's automatic.

21 MS. TEMPLE CLAGGETT: Thank you.

22 Mr. Mohr?

23 MR. MOHR: Thank you.

24 A few brief remarks, some of which will be,
25 basically, familiar. The first place I'm going to

1 start, I guess, is with the question you asked, which
2 is if things stay the same, what's the future of 512.
3 I can say -- I should make our position clear, which I
4 don't think I did yesterday, that we are not calling
5 at this time for amendments to the statute. But that
6 is not to say that it is not showing a sense of
7 strain.

8 And in the coming months as court cases come
9 down, we believe that there are areas that can and
10 should be clarified. And we identified a number of
11 them in our comments, and I won't reiterate them now.
12 I think the -- our hope is that we can see creator
13 growth in those things that we view as positive
14 development such as voluntary agreements and like
15 Content ID and the Donuts agreement and a variety of
16 other measures that help to keep infringing material
17 off of the Internet.

18 But it could just as easily happen that
19 things go south. And if they do and they get worse, I
20 think, from our perspective, then at that point, we're
21 going to have to reevaluate our position.

22 MS. TEMPLE CLAGGETT: Thank you.

23 Mr. Osterreicher?

24 MR. OSTERREICHER: Thank you.

25 Before we even get to sustainability, after

1 two days, my observation is that both sides in the 512
2 issue are not only not talking to each other or even
3 at each other, but more like past each other,
4 seemingly sometimes in different languages. The haves
5 speak of reasonable profits and the cost of doing
6 business, while the have-nots point to unbridled
7 corporate greed.

8 Providers label takedowns as free speech
9 abridgments, while creators point to the blatant and
10 pernicious theft of their work. One side asserts fair
11 use should be an affirmative defense to the claim of
12 copyright infringement, while the other believes it
13 should be a condition precedent to filing a takedown
14 notice.

15 The ISP is saying maintain the status quo,
16 everything is working fine; while creators, big and
17 small, say the shortcomings and the unintended
18 consequences of section 512 need to be fixed.

19 These are a few but -- of the diametrically
20 opposed views expressed during these roundtables. To
21 continue from the theme yesterday, it is the best of
22 times, and it is the worst of times.

23 While the basis for copyright law is to
24 promote the progress of science and useful arts, if
25 such vehicles such as section 512 cannot actually help

1 secure for any period of time the exclusive rights of
2 authors to their respective works so as to allow them
3 fair compensation, we may at some point see the demise
4 of such useful and creative works as they continue to
5 be misappropriated on an unprecedented scale.

6 Turning a blind eye to infringements and a
7 deaf ear to the pleas of creators has created an
8 imbalance in the online ecosystem. Having these
9 roundtable discussions are helpful, if for nothing
10 else, than to illustrate the disparity on these
11 issues. And I commend the Copyright Office for holding
12 them.

13 In the meantime, I'll leave it as incumbent
14 that we do better at making this and other copyright
15 issues a more meaningful discussion rather than a
16 debate where everyone loses some more than others.

17 MS. TEMPLE CLAGGETT: Thank you.

18 Ms. Pilch?

19 MS. PILCH: Absent legislative change, I
20 think the situation will continue to deteriorate.

21 It will continue to reduce possibilities for
22 highly creative and talented people to benefit from
23 their own talent and work. And that is not a positive
24 vision.

25 Since 1998, the Internet has become

1 something other than what Congress intended. It's a
2 system that thrives on illegal commerce and that
3 freely enables a black market in information and
4 creative works. The Internet is fine, but the black
5 market it creates is not.

6 Section 512 has enabled a system that
7 rewards disrespect for the moral and material
8 interests of others and works they create or in which
9 they hold legitimate rights. The Internet, as
10 supported by the safe harbors, in my opinion, is not
11 open and democratic. It's a closed system that
12 provides an unfair advantage to itself. That needs to
13 change, or society will, in fact, be worse off.

14 And I think that these social issues are
15 just as important as the existence of the Internet
16 itself.

17 MS. TEMPLE CLAGGETT: Thank you.

18 Mr. [Roo'-pee] is it? Or [Ruh'-pee]?

19 MR. RUPY: [Roo'-pee].

20 MS. TEMPLE CLAGGETT: Rupy.

21 MR. RUPY: Nailed it the first time.

22 MS. TEMPLE CLAGGETT: Okay.

23 MR. RUPY: So thank you.

24 I just wanted to speak briefly and follow up
25 on some of the earlier comment that were made

1 regarding the DMCA, the future of the DMCA and the
2 particular comments by Mr. Deutsch and Mr.

3 Joseph. USTelecom, as I said earlier, is of
4 the view that the DMCA is a well-crafted statute that
5 is fulfilling its intended goal.

6 And just to underscore some of the points
7 that were raised earlier about evidence and that
8 through the massive investment that is taking place in
9 broadband environment, since 1996, broadband providers
10 have invested \$1.4 trillion in deploying broadband
11 infrastructure throughout the country -- 1.4 trillion
12 with a T. In 2014, those same broadband providers
13 invested \$78 billion to deploy broadband
14 infrastructure.

15 And as Mr. Joseph noted, that investment is,
16 in part, based on the provision of 512(a) relating to
17 liability. But also, there is a focus from the
18 administration, from Congress and from other federal
19 agencies on deploying broadband infrastructure and
20 ensuring adoption by Americans.

21 And as Mr. Joseph pointed out, you know, the
22 content issues aside, just talking about the role that
23 broadband plays for Americans, it is integral to their
24 life. It is integral to education. It is integral to
25 healthcare. It is what American consumer use to

1 communicate, learn and communicate.

2 So thank you.

3 MS. TEMPLE CLAGGETT: Thank you.

4 And I'm sorry. I can't see your placard.

5 Mr. Van Arman?

6 MR. VAN ARMAN: Thank you.

7 My name --

8 MS. CHARLESWORTH: Could you introduce what
9 group you're with as well?

10 MR. VAN ARMAN: Say it again.

11 MS. CHARLESWORTH: Your name and affiliation.

12 MR. VAN ARMAN: Yes.

13 MS. CHARLESWORTH: Okay.

14 MR. VAN ARMAN: Yes. My name is Darius Van
15 Arman. I am with the Association of American
16 Independent Music. And I'm chairman and also business
17 owner. I own a group of companies called Secretly
18 Group, which is a group of labels based out of the
19 Midwest of America.

20 And from our perspective -- and I'm speaking
21 here on behalf of A2IM -- from our perspective, the
22 DMCA has problems. And to answer your question -- you
23 know, what happens if things don't change, is it
24 sustainable, what is the future -- our members, for
25 the most part, are very concerned about control of

1 their works. They want there to be a marketplace for
2 the fruits of their labor, for their investment. And
3 as we see things now with the way Safe Harbor
4 provisions are and with the DMCA, we're afraid that if
5 things aren't changed that there won't be adequate
6 compensation in the future to keep on inspiring
7 additional investment in creative works and as such.

8 So from our perspective, we think things
9 should be adjusted. We are concerned that it's not
10 sustainable. And it's very important that we do get
11 control over our works so there is a marketplace that
12 we can continue to innovate and create new works for
13 the public.

14 MS. TEMPLE CLAGGETT: Thank you.

15 Ms. Besek, did you have something?

16 MS. BESEK: I was -- I didn't answer at first
17 because I think I took issue with the basic premise of
18 the question, which is what happens if there is no
19 legislative change and 512 just continues on the way
20 that it is. But the fact is that that will not happen
21 because, regardless of whether there is legislative
22 change, there will be judicial change. And so 512 is
23 not something that's static. It will change over time.

24 And if the past is predictive of the future,
25 I think that's rather concerning because, in the last

1 18 years or so, I think courts have often placed a lot
2 of emphasis on the ability of service providers to
3 flourish and grow and perhaps less emphasis on the
4 concerns of right holders.

5 And you can see that in a lot of different
6 ways -- the defining storage very broadly, defining
7 red flag knowledge very narrowly, reading
8 representative lists out of the statute, basically,
9 leaving right holders with little recourse other than
10 sending notice after notice after notice to prevent
11 reposting of their material. And they can never really
12 prevent it.

13 So that means that the service providers can
14 continue to base businesses on these infringing
15 postings. And then, you know, the -- what happened
16 with 512(h), that it's -- it has limited effect now
17 with the requirement that you have to file a John Doe
18 lawsuit. There's limited liability for service
19 providers, even when their own contractors are the
20 ones who impose the infringing materials and then
21 requiring content owners to evaluate fair use before
22 they seek takedown notice.

23 Now, I'm not saying every single one of
24 these decisions is bad. But I do think when you
25 accumulate them all, it does suggest that whatever

1 balance people thought they were achieving at the time
2 hasn't been achieved. And I don't think that we can
3 assume that the trend of decisions will necessarily be
4 better or different if we go on the way we are.

5 So what I think, if we do continue, the only
6 thing that we can say with confidence is that ISPs are
7 going to continue to pay a lot of money to respond to
8 takedown notices and to, you know, facilitate counter-
9 notifications. And copyright owners are going to spend
10 a lot of money to file notices. Plus, the copyright
11 owners are going to be, essentially, losing a lot of
12 money because their material's going to be up there.
13 That's always going to be the default, it's going to
14 be up there.

15 So I don't -- you know, I don't think we can
16 assume things will not change.

17 MS. TEMPLE CLAGGETT: Thank you.

18 Oh, did you have a follow-up?

19 MS. CHARLESWORTH: Well, I was just going to
20 -- sort of following on to that comment, how do you
21 see -- I mean, if courts were - - 512 will continue to
22 be interpreted. But assuming that it's been
23 interpreted is sort of -- as narrowly as possible or
24 close to that I think is what you're suggesting or
25 copyright owners who are seeking to engage in

1 takedown.

2 How do courts get out of that? How would
3 they reverse that trend? I mean, do you see that as a
4 likely outcome or a likely possibility?

5 MS. BESEK: I mean, obviously, the only court
6 that can reverse its trend pretty quickly is the
7 Supreme Court, and I don't see that happening in the
8 near future. I mean, it may be -- you know, over time,
9 there can be some evolution in the lower courts. I
10 don't see that happening quickly and probably not in
11 my lifetime.

12 MS. TEMPLE CLAGGETT: All right. So one more
13 high-level question maybe before we get into specific
14 provisions or specific potential solutions. You know,
15 we've heard a lot about the DMCA potentially not
16 working. We've also heard that the DMCA is working.

17 Just to help us further for our discussion
18 about potential solutions, I wonder if we can decide
19 on what the goal is and what a measure of success
20 would be under a working DMCA.

21 Is it overall reduction in piracy? Is it
22 more content being, you know, out there in the world?

23 I think before we decide what the solution
24 should be, if at all, if any, we have to decide what
25 the goal itself is. So what would be a measure of

1 success under the DMCA or as it exists today or as it
2 might exist in the future is my question.

3 Start with Mr. Band.

4 MR. BAND: So I think if you look at the
5 objectives that were set forth in the -- in section
6 512 initially, I think those are the appropriate
7 metrics. Do you have a thriving internet? And do you
8 have a thriving creative environment? Do you -- in
9 other words, do you have, you know, a robust Internet?
10 And do you have robust content creation?

11 And you know -- and this goes back to a lot
12 of the facts that Michael Petricone was citing before.
13 And I think that that's what we have to look at. And
14 remember, you know, the Internet isn't -- the
15 Copyright Act is not about protecting particular
16 business models. It's about promoting the progress of
17 science and useful arts.

18 And so again, to the extent we need to look
19 at, again, how robust the Internet is, you know, the
20 number of users and the volume of traffic and all that
21 kind of activity that -- all the metrics for Internet
22 activity, new services and around the content side,
23 it's how much content is out there and, again,
24 focusing on overall content as opposed to how this
25 specific company that may have done well 20 years, how

1 is it doing 20 years from now.

2 MS. ISBELL: So I'd like to drill down on
3 that a little bit. If we decide that those are the two
4 metrics that we're going to look at, how do we measure
5 them? Is it just sheer number? Is it comparatively,
6 maybe U.S. compared to other countries? Is it
7 historically? What's the benchmark that we should be
8 measuring against?

9 MR. BAND: I think that there are -- it would
10 -- you know, we would want to make sure both that
11 we're -- that the success of the U.S. industry
12 continues, both the -- on the Internet side and the
13 creative side. To the extent that those aren't the
14 same and, again, to some extent, you know, I could say
15 the company I'm representing here it is the same. But
16 -- so it's both U.S. success and international
17 success.

18 And I think you'd have to look at a lot of
19 statistics. I mean, there's all kinds of metrics. And
20 certainly, it will be -- certain things are going to
21 be a little difficult, more difficult to measure. With
22 creative content, obviously, as Sarah Feingold was
23 saying before, I mean, you know, all of us are
24 creating works all the time. The number of photographs
25 that, I think, created every day is, you know, in

1 excess of a billion photographs, right, because we all
2 have digital cameras. So obviously, there's no
3 question that the absolute number of works created has
4 increased exponentially over the past, you know,
5 decade.

6 Now, there's always a question of the
7 quality. That's a much more difficult and complicated
8 question. But certainly, there doesn't seem to be any
9 sort of shortage of high- quality content available.
10 Again, there's always new distribution models.
11 Certainly, in the publishing world, we have open
12 access publishing.

13 It's a completely different business model,
14 but no shortage of high-quality content available that
15 way. You have creative commons licenses.

16 So there's all these -- it's a very
17 complicated world. It's evolving. It -- but it means -
18 - so I think there's -- a lot of creativity is going
19 to be involved in coming up with the metrics. But we
20 have 20 years to do it, right?

21 So it shouldn't be a problem.

22 MS. TEMPLE CLAGGETT: Thank you.

23 Mr. Barblan?

24 MR. BARBLAN: So I think the real goal is to
25 restore balance and to have a system where people

1 really work together and pull their weight and combat
2 piracy. And I think, obviously, it seems impossible to
3 completely eradicate piracy, and that's too high of a
4 bar to try to achieve.

5 But I think if we had a system where service
6 providers were incentivized to do more than just the
7 bare minimum, to do more than just remove files when
8 they get a direct URL link and, basically, do nothing
9 else to prevent piracy, I think we could at least
10 arrive at a place where, you know, the most popular
11 streaming Website in the world isn't a market
12 substitute for music that you have to buy.

13 And I think another thing to keep in mind in
14 this whole discussion is to think about how the
15 atmosphere we have now versus the atmosphere we want
16 encourages the production not just of art and content
17 in general, but of professional-quality content that
18 the people can make a living at as professional
19 artists. I mean, there's a big difference between
20 making art and making a living making art. And it's a
21 difference that everybody should appreciate and that
22 everybody's noticed.

23 I mean, if you go on YouTube and listen to
24 somebody playing a cover song that they recorded
25 themselves, that's -- that can be entertaining. But

1 it's not the same thing as a professional quality
2 album that cost, you know, several hundred thousands
3 of dollars to record.

4 And I think the goal is to have a system
5 where creative economies that encourage the production
6 of professional quality content and that enable people
7 to actually make a living as artists are flourishing.
8 And you know, it's tough to think of what things we
9 can look at to measure that. I don't think it makes
10 sense to just measure the amount of works that are out
11 there.

12 But maybe one place to start is just to look
13 at the overall availability of pirated content on, you
14 know, what types of sites and how that number goes
15 because, if we see numbers like that to continue to
16 increase, if every new movie, every new book, every
17 new song is basically available pretty easily to
18 anyone that wants to get it for free, I think there's
19 -- we're going to continue to see the kind of market
20 disruptions that are making it really hard for people
21 to make a living as creators.

22 MS. TEMPLE CLAGGETT: Thank you.

23 And Mr. Buckley?

24 MR. BUCKLEY: Thank you.

25 It is about money. I found Mr. Rupy's

1 comment fascinating in that he tried to separate the
2 value of broadband from content. And really, what's
3 the point of broadband without content?

4 And Mr. Band tried to say to us that, you
5 know, really, there was no proof that piracy in the
6 Internet had basically cut the revenue of the record
7 business 60 percent from what it was 15 years ago and
8 has had a similar impact on photography and literature
9 and things of other sort.

10 In the spirit of full disclosure, I will
11 admit that I have circulated a petition late last year
12 that request a stay-down provision as -- to go along
13 with the takedown part. And so really, we're not
14 asking the -- we're not asking anybody to create a new
15 law. We're not asking anybody to create a new
16 regulation. We're just asking the legislatives to take
17 a look at a law that is not operating the way that it
18 was designed to function to begin with.

19 To Mr. Barblan's point, we have seen a
20 decrease in terms of the quantity -- quality of art
21 that's turned out. Hollywood now makes 30 percent
22 fewer movies than they made a decade ago.

23 They make 60 percent fewer what I would call
24 nuance movies, which would be story-driven movies.

25 What Hollywood has resulted to is making

1 event films that demand the viewer pay a premium price
2 to go into a theater to see films in high definition
3 and 3D. That is one of the ways that the film industry
4 had a very successful year last year.

5 In my petition, we talk about an author who
6 filed 571 takedown notices on one site to have one
7 book removed, and he was never able to accomplish
8 that. So I do believe that, unless we seriously take a
9 look at balancing the compensation for artists and the
10 tremendous amount of wealth they've generated for the
11 tech sector and the Internet, we are going to lose
12 that rich heritage of art that we've honored for so
13 long.

14 Thank you.

15 MS. TEMPLE CLAGGETT: Thank you.

16 Mr. Carlisle?

17 MR. CARLISLE: In keeping with Ms.

18 Pilch's lead, I'm going to take off my Nova
19 Southeastern University hat, put on my own hat and
20 reach back to my former career both as an
21 entertainment attorney and as a musician.

22 The purpose of the Copyright Act is to
23 promote the progress of the useful arts. And as hard
24 as that may to put and crunch into numbers of the
25 study, we should be asking ourselves is 512 promoting

1 the progress of the useful arts at this time. We've
2 heard testimony about the shrinking songwriters in
3 Nashville. Well, maybe if we're building artist
4 communities back up again, maybe that'll happen.

5 But what I'm really afraid of -- and I mean
6 this with all sincerity -- is that we are killing an
7 entire generations of creative artists.

8 We're never going to hear them because they
9 can't make a sustainable living doing what they're
10 doing.

11 And as far as the quality is, I'll admit to
12 being an old guy. But I went to my son who is 19 years
13 old. And I said who is the game- changing musician of
14 your generation. Who's your Jimi Hendrix? Who's your
15 Eddie Van Halen? Who's your Prince? Who's your Kurt
16 Cobain? And he was stumped. And the best answer he
17 could come up with was Eminem, whose career is now 20
18 years old.

19 So that's what I really want to see. I want
20 to see the next game-changing musician come in and
21 light it up. And you know, God bless Prince. He was
22 one of a kind. And I read these accounts from, you
23 know, Google saying what a wonderful you're doing with
24 -- you know, with YouTube. Just look at Justin Bieber.
25 I'm sorry.

1 I'll take Prince instead.

2 Thanks.

3 MR. GREENBERG: A quick question because in
4 the last three comments you've all mentioned the death
5 of the creative class, professional creative class.
6 And I'm just wondering if there - - what the
7 perspective is on sort of a more expansive
8 understanding of the creative class in the digital
9 age. Or if -- really, we should maintain the
10 perspective we've had on what makes a professional
11 artist -- an income-driven artist -- going forward is
12 what it was in the '80s of '90s.

13 MR. CARLISLE: Well, the problem is, is that
14 we have this shrinking revenue pool. When I was an
15 entertainment attorney, there used to be an old saying
16 that touring sold records. That's why you killed
17 yourself three and four months on the road for a year
18 doing these -- my client, Lynyrd Skynyrd used to call
19 torture tours, right? You're away from your family.
20 You're out on the road, and it's a hard way to make a
21 living.

22 But you knew at the end of the line you were
23 going to sell records. And if you sold enough records,
24 you were going to make some money on selling those
25 records. That business model just does not exist

1 anymore. Your records are now a lost leader for your
2 concert tours.

3 And I can tell you from 26 years of
4 experience as an entertainment attorney, touring is a
5 very expensive operation to undertake. And let's also
6 not forget that the original startups - - we hear a
7 lot about startups -- the original startup was four
8 guys in a van and equipment going from town to town
9 and playing at bars. That, in fact, was The Police's
10 first tour in America, was four guys and their
11 equipment in a van.

12 And if that kind of effort and that kind of
13 dedication doesn't pay off, again, people who can't
14 make a living doing art will stop making art.

15 MS. TEMPLE CLAGGETT: Thank you.

16 Mr. -- I'm sorry. Ms. Coleman.

17 MS. COLEMAN: So I wanted to go back to what
18 you said about goals. And the goals of the act should
19 protect copyright owners and switch the balance that
20 currently exists. The balance right now is not to the
21 content creators and the artists and the songwriters.
22 The balance right now is in the ISPs and the DSPs
23 because we constantly have to be policing them. And it
24 takes all of our time and all of our effort to decide
25 who we're going to write letters to and how we're

1 going to go about that and then find -- figuring out
2 who we're going to go up against. So there's an
3 inequity in the way that you have to respond to the
4 act right now in order to protect your interest.

5 I also want to make a comment about cover
6 songs. Without cover songs, the music publishing
7 industry would not exist. That is the basis of what
8 music publishing is. You have a hit composition, and
9 people love it and want to record it and make their
10 own tribute versions to it over and over and over
11 again. Whether it's on the Internet or it's in a CD,
12 which doesn't exist, or a download, it's something
13 that we need to protect the music publisher's right to
14 monetize and the songwriter's right to make money from
15 the use of these cover versions.

16 Thank you.

17 MS. TEMPLE CLAGGETT: Thank you.

18 Mr. Deutsch?

19 MR. DEUTSCH: I think -- I'm sorry. I don't -
20 - I think we should not overlook the fact that the
21 Internet, as it has developed and on -- will continue
22 to develop, has created enormous opportunities for new
23 artists. It is simply -- it is true that we are not
24 living in the model of 1990 or 1995. But no portion of
25 our economy is.

1 We have evolved enormously in 20 years - -
2 in manufacturing, in services. People who had great
3 high-paying jobs have to look elsewhere because those
4 jobs evolved away from our economy. And much of which
5 -- much of the blame that I hear being placed on
6 Internet service providers should really be directed
7 to the evolution of the economy.

8 On the other side of the balance in 1990 or
9 1995, a young, creative artist who couldn't find a
10 label or who couldn't find a producer didn't get
11 heard. Today, because of the Internet, because of
12 YouTube and many other means of distributing music or
13 art, they are heard. Some of them become hits, viral
14 hits. Some of them make money and earn a living that
15 they couldn't get -- that never could have occurred in
16 the pre-Internet era. And it's -- we think that you
17 have to acknowledge that, even on the creative side,
18 there are winners from the system that has evolved.

19 Other industries have had to roll with the
20 punches. The creative copyright industries have had to
21 roll with the punches. But by no means is the Internet
22 and the availability of content the sole villain in
23 this picture. It seems to be made out to be so by some
24 of the speakers.

25 MS. CHARLESWORTH: I have a follow-up

1 question on that because it's sort of embedded in a
2 lot of what we've been discussing. And sure, I take
3 your point that there are artists that break out on
4 the Internet without any investment or support from an
5 intermediary -- a publisher or a record label.

6 But I mean, do you see our society as
7 evolving to a place where we don't have companies or
8 resources that invest in up and coming artists to help
9 them start their career? Because that has been the
10 model for a long time. And I think that's what we're
11 hearing, whether you're talking about films or music,
12 that there's not enough money to be made in the
13 current ecosystem to invest in many new artists. And
14 is that a social loss? I guess that's my question.

15 MR. DEUTSCH: I think it's -- I think it
16 remains to be proved that that is so. As far as I can
17 tell, the value of entertainment companies -- for
18 example, the stock market capitalization remains --
19 they continue to be profitable. You can't necessarily
20 compare today's record market to 1980s. But in 1950,
21 the big bands were out of work. Evolve -- evolution in
22 styles of music, in what consumers want to watch and
23 want to hear has always been a feature of the American
24 cultural landscape. And there's no reason to believe
25 that the advent of the Internet or the ready

1 availability of content is going to change it.

2 The people who want to create, who feel the
3 urge to create and the need to create will continue to
4 come to the floor. And we think -- my own view is many
5 more people are now doing that because they have the
6 means of getting their works out to others than
7 existed where -- when the only way to do that were
8 large intermediaries.

9 MS. CHARLESWORTH: So I guess your vision in
10 the future is we probably may not need those sorts of
11 investments.

12 MR. DEUTSCH: No, not at all. I think it's
13 going to be a mixed future. As it has evolved already,
14 there are going to continue to be large entertainment
15 companies, large record labels, music publishers, all
16 of whom provide the capital to facilitate the
17 distribution of artistic works. I don't think that's
18 going to change.

19 Alongside it, there's going to be new
20 artists that come to the floor because they're able to
21 get out to viewers. They become viral sensations. They
22 are picked up on links. That is something new and, I
23 think, something cumulative as opposed to subtractive
24 in the cultural world.

25 MS. TEMPLE CLAGGETT: Thank you.

1 Ms. Feingold?

2 MS. FEINGOLD: I'd just like to add on some
3 of the comments. And my colleague was just saying that
4 a measure of success of the DMCA and this could have
5 an impact of killing artistic communities. I see it as
6 having the opposite impact.

7 Just thinking about Etsy, right now, we have
8 1.6 million active sellers on Etsy, who together in
9 2014 grossed \$2.39 billion in sales.

10 86 percent of these sellers are women and
11 most with home-based businesses. And because the
12 barriers to entry have been lowered, Etsy has created
13 new entrepreneurs who may not have brought their
14 products to market previously. And so people are
15 empowered because the DMCA exists, because these new
16 barriers to entry are so much lower.

17 And we have found that our sellers use Etsy
18 income to pay their bills to support families and to
19 build businesses. And this really matters to small
20 makers and small economies and to everyone in general.
21 We are all creators around here. We are all making
22 content. And when the barrier to entry is lower, then
23 people can be discovered and found and be able to make
24 some money off of that.

25 MS. TEMPLE CLAGGETT: Thank you.

1 Mr. Joseph.

2 MR. JOSEPH: Thank you.

3 To talk about goals, let's go back to the
4 basics. Let's go back to the Constitution and the
5 purpose of copyright law. The Supreme Court has made
6 clear that copyright law exists to promote the
7 progress of science. I'm sorry with respect to those
8 who have said useful arts.

9 Actually, if you look at the parallel
10 structure of the clause, that refers to patent law.
11 Copyright law and the purpose of copyright law is the
12 progress of science.

13 Golan versus Holder teaches us the progress
14 of science refers broadly to the creation and spread
15 of knowledge and learning. And Senator Hatch said the
16 same thing in his article in the Harvard Journal of
17 Law & Technology. The Supreme Court has emphasized
18 that the ultimate goal of copyright law, which is what
19 we should be thinking about, is to serve the public
20 interest, not authors' private interests.

21 Sony teaches us that the monopoly privileges
22 that Congress may authorize are neither unlimited, nor
23 primarily designed to provide a special private
24 benefit.

25 Rather, the limited grant is a means by

1 which an important public purpose may be achieved.

2 And Golan, again, teaches us that evidence
3 from the founding suggests that inducing dissemination
4 as opposed to creation was viewed as an appropriate
5 means to promote science.

6 Dissemination sounds an awful lot like the
7 Internet.

8 But let's step back a second. As the
9 Copyright Office, your goal is to consider the public
10 interest -- what is best for the public and how do you
11 evaluate the best public policy to promote the
12 creation and spread of knowledge and learning. I don't
13 have more specifics for that, but I think those are
14 the touchstones that you all need to look at as you
15 are evaluating what you might do to the Internet, what
16 you might do to hold the balance that section 512 set.

17 Thank you.

18 MS. TEMPLE CLAGGETT: Thank you. Mr. Kennedy.

19 MR. KENNEDY: I'm struck by what Mr.

20 Joseph just said, and in the context of
21 this. And this is what I really wanted to focus on. If
22 you look at the underlying assumption that the goal of
23 the copyright laws that exist is to promote scientific
24 knowledge, that knowledge gets created on the basis of
25 people who are able to focus, have the discipline, the

1 attention, and the capacity to make that their
2 livelihood and their career.

3 And there's an intentionality to the act and
4 an the acuity of observation that accrues from the
5 ability to master craft. And I think fundamentally
6 money in the context of the way Mr.

7 Buckley phrased it is about having the
8 ability to focus and master craft. And ultimately it's
9 that's mastery of craft that provides the context for
10 the material that's given to the public, and the
11 public interest is therefore served.

12 And it seems to me that if you begin to have
13 a system that progressively reduces that capacity of
14 artists of all types and scientists to have the
15 ability to focus, you're diminishing what the public
16 can ultimately get. And I don't think our society is
17 in a position to afford that kind of diminishment.

18 MS. TEMPLE CLAGGETT: Thank you. Mr.
19 Korzenik.

20 MR. KORZENIK: Yes. Quick comment on

21 Mr. Joseph's observation. I agree with him
22 very much that the emphasis on public interest is an
23 important one. Copyright systems around the world
24 balance the interests of three groups: authors,
25 distributors and the readers, the audience. French

1 system is author driven.

2 Ours and common law system tend to be
3 distributor favoring. The people who care most about
4 the public interest in this country and lobby for the
5 public's interest are the librarians, and they don't
6 always succeed in getting what they want.

7 They often don't.

8 So I sympathize and agree with Mr.

9 Joseph's point here. Second point I would
10 just make is that while we have this -- everyone
11 conveys the sense that this Internet is a place of
12 incredible chaos and disruption. It is in some ways,
13 but there's another feature of it that we all need to
14 understand. And it's bubbling up more in Europe and
15 Russia and China and other places of that type.

16 The Internet is an incredible tool for
17 policing and social control. It's an incredible,
18 potent tool for censorship, whether it's done
19 privately through methods of, you know, private
20 control and notices and takedown, et cetera, or
21 whether it's done publicly and shut down.

22 Internet reveals a lot of things to us that
23 we didn't see before. It reveals sexual use that
24 existed all the time but that we now see and are
25 troubled by.

1 Police abuse that existed before, but we now
2 see for the first time and copyright abuse, too, that
3 existed before in the print world that no one knew
4 anything about but which we now know because we see it
5 through this new window. So one thing that we need to
6 be most mindful of is that this is a tool of
7 incredible policing and incredible control, and its
8 controls need to be moderated so that legitimate
9 speech, fair use speech, new fair uses that we need to
10 be sensitive to are not suppressed.

11 MS. TEMPLE CLAGGETT: Thank you. Ms. LaPolt.

12 MS. LAPOLT: Well, I don't understand how my
13 client's property is public interest. They create
14 something and own it. Mr. Joseph, I don't understand
15 why it should be out there for everybody to use it.
16 Maybe your house should be available for the public as
17 well to just come and use your house, but we can take
18 that up outside the room.

19 As far as your questions Ms. Charlesworth, I
20 just want an answer as far as this social loss that's
21 going on in the music community. There is a social
22 loss in the music community because up until now or
23 still now the only companies that put up any risk
24 money really are record companies. I mean, music
25 publishers as much as I love them and work with them

1 all the time, they only give you as much money as you
2 have in the pipeline.

3 So if you don't have any money in the
4 pipeline, they'll sign up your copyrights, but you
5 won't get any type of upfront advance for that.

6 You know, there's other services they
7 provide, but really record companies are the ones that
8 put up all the money for the risk. And they're not
9 doing that and if they do do that, they're making the
10 artist to sign other interests in their business.

11 So a record company is going to invest in my
12 artist because they think that she's a hit artist.

13 They don't have the money to put up \$1
14 million to break her anymore, \$2 million.

15 They'll do it providing I give them 25
16 percent of my touring, 25 percent of my publishing, 25
17 percent of my sponsorships and endorsements, 25
18 percent of this, you know, so it becomes a business
19 that's just unsustainable. And they're not able to
20 earn a living based upon this kind of a business
21 model, and I think simple fixes with section 512 would
22 enable us all to get along.

23 You know, we're not asking -- nobody's
24 saying that the Internet has not been a valuable tool
25 to the promote artists. Certainly, some independent

1 artists survive that way, and they can earn a living
2 but I don't see it myself. I just think that we need
3 to work together to try and to make it better.

4 MS. TEMPLE CLAGGETT: Mr. Mohr.

5 MR. MOHR: A couple of points. I think in
6 measuring the success of section 512, I mean, if you
7 read our comments you can fairly characterize them as
8 schizophrenic, and the reason for that is because
9 there are -- I think there have been two threads
10 correctly identified. The first is this interest in
11 generating new services, and I think that interest has
12 succeeded.

13 And I think there's another interest.

14 It's an issue here that frankly, in my mind,
15 was probably correctly referred to by Mr. Joseph but
16 incompletely explained. And that interest goes to the
17 purpose of -- we can start with the purpose of the
18 cause, but it runs into the way in which our members,
19 certainly large chunks of them, feel that the online
20 market is shaking out.

21 And that is for example, Congress, true they
22 have they have the power to pass the Copyright Act.
23 The reason the founders stuck it in there were --
24 there were a couple reasons. One was to unify state
25 law because the states couldn't provide for all of

1 them. The other was because of a recognition of the
2 benefits of an incentive for authors and publishers to
3 make useful things.

4 And this is not a direct quote, but it's a
5 fairly close paraphrase to say that the public good
6 coincides with the claims of individuals.

7 Eldred also has a footnote that goes -- that
8 mentions the benefits of the incentives of the profit
9 motive explicitly. It is in that area where our
10 membership is seeing the most strain, and it is in
11 that area where we believe -- again, we believe the
12 courts can sort that out, but we think that a
13 functioning 512 will begin to restore some of the
14 incentive that has been lost through poorly considered
15 decisions. Thank you.

16 MS. TEMPLE CLAGGETT: Mr. Osterreicher.

17 MS. OSTERREICHER: So I think the one thing
18 we might all agree on is that images drive page views.
19 I don't know for you -- any of you that went out for
20 lunch, you might have seen a whole bunch of news
21 photographers out on the front steps waiting to
22 photograph Shelly Silver after he's sentenced today.
23 But I was a news photographer. Most of those guys out
24 there don't work for newspapers anymore because, A,
25 there aren't a whole lot of them or as many of them as

1 there used to be in New York and, B, because the
2 staffs are smaller.

3 So the only way that they get to make a
4 living -- and they don't want to earn a lot of money;
5 they love to do it; I loved to do it -- is to go out
6 and spend hours waiting around for this few moments of
7 chaos when they try and get maybe a better picture
8 than somebody else. Sure, we could have a pool and one
9 camera there, but the only way that they actually then
10 after getting paid probably relatively little for a
11 day rate if somebody's assigning them or they're out
12 there on spec, is by licensing those images.

13 And if there's no way to protect the
14 licensing of those images, at the very least get them
15 taken down when people misappropriate them, then I
16 think, you know, in answer to your question of what
17 things are going to look like, if we're all going to
18 depend on user generated- content, and there's
19 certainly a place for that but, you know, there's a
20 saying, "Don't believe everything you read." And
21 there's another one, "Seeing is believing."

22 We'd like to believe that news images are
23 not something that are Photoshopped, that while being
24 creative, they actually tell a truth.

25 And so, it's a small microcosm of people

1 that create images and create work, but I think it's
2 hopefully one that's useful to show how important it
3 is to be able to protect that work in order to have
4 people like them out there working for the public good
5 in reporting.

6 MS. TEMPLE CLAGGETT: Ms. Pilch.

7 MS. PILCH: I'll add to what Mickey just
8 said, that for those who went outside during lunch
9 there was something else going on, not only the
10 Sheldon Silver situation but there was a group of
11 musicians demonstrating in relation to this event.

12 I don't know how many people saw that, with
13 posters that said things like, "Takedown means stay-
14 down," "Congress, fix the DMCA." So many things were
15 going on outside today.

16 The goal, getting to the question, the goal
17 in my opinion should be that everyone flourishes but
18 not based on the negative factors of theft,
19 misappropriation, and involuntary exploitation. To my
20 knowledge public policy has never endorsed theft,
21 misappropriation, involuntary exploitation,
22 racketeering, and trafficking in information.

23 The idea that some should feed the Internet
24 [for free] is nothing less than a new form of
25 oppression, really, and it's nothing this nation's

1 legal system should tolerate. This is not free speech
2 as some would say. It's not even speech or expression.
3 It's just economic abuse. The goal should be to end
4 the economic abuse, even out the economic rewards, and
5 I think that the measures of success will show up in
6 economic indicators, fewer takedown notices, fewer
7 complaints and a richer culture.

8 MS. TEMPLE CLAGGETT: Thank you. Mr. Van --
9 I'm sorry.

10 MR. VAN ARMAN: Van Arman.

11 MS. TEMPLE CLAGGETT: Van Arman. Thank you.

12 MR. VAN ARMAN: It's in the public interest
13 that creators are motivated to create new works, and
14 an imbalanced copyright system that doesn't allow for
15 there to be a marketplace for ideas, for works, the
16 public is much poorer for it. And, you know, what --
17 if we were to adjust the DMCA safe harbors in section
18 512, how do we know 20 years from now whether we made
19 the right adjustments? I think you look at whether
20 there are still digital services that are being
21 launched, that are innovative.

22 From our perspective as independent music
23 companies and creators, we do need there to be
24 innovation; we want there to be innovation. We don't
25 want to be stuck with a world where there's only

1 broadcast radio. The fruits of what's happened because
2 of the DMCA, some of them have been very good. There's
3 innovative digital services, and our works have
4 reached the public because of that, and we've earned
5 more money because of that. But we've also seen our
6 marketplace undermined.

7 And so when we look at the big picture our
8 industry has just taken a big hit, and if we look 20
9 years from now, you know, what's going to demonstrate
10 whether a tweak to law has been good for everyone or
11 not.

12 I think we need to know that there are
13 professional classes that are still viable, that there
14 are still photographers who are able to make a living
15 off of their, you know, work, that music companies and
16 music artists are continuing to create ambitious and
17 important works.

18 MS. TEMPLE CLAGGETT: Thank you, and before
19 I go to June, I just want to ask one last question
20 because I don't think we're going to actually have
21 very much time. And so my first question was what
22 would the future look like if we didn't do anything.

23 My second question was how do we measure the
24 success or success if that were to be a goal to do
25 something. And so my final question is an opportunity

1 for you to provide your comments on what would be an
2 appropriate solution to many of the issues that have
3 been raised both today and yesterday? How do we
4 develop either a tweaked law, more dialogue, more
5 communication that would allow us to have some of the
6 goals or see some of the goals that we just heard
7 from? So what are the particular solutions that you
8 see?

9 I think we've heard previous comments on
10 increased dialogue, voluntary solutions. Many people
11 have mentioned stay-down. We probably won't have an
12 opportunity to get into much detail on how other
13 countries are handling things overseas, but an earlier
14 panel noted that in some other countries there has
15 been seen a reduction in piracy given some of their
16 new laws. So what would you propose as a solution that
17 we might want to consider moving forward to some of
18 the issues that have been raised about section 512?
19 And I'll ask that final question and give everyone
20 just a few minutes to answer, but I think June you had
21 something that you wanted to say with respect to the
22 previous question. Is that right?

23 MS. BESEK: Well, I'm going to start by
24 answering your question just because there's limited
25 time, which is I think is the most important thing

1 that could ameliorate the situation would be a
2 takedown, stay-down type of regime.

3 I understand there have been objections to
4 that raised here, and some of the points are well
5 taken but, you know, in terms of concern about
6 people's material not getting up, I think there should
7 be an opportunity to object if your posting is
8 filtered out if you believe it's not infringing.
9 That's a failsafe just like it is now with notice-and-
10 takedown.

11 And I also think it's possible that there
12 could be different standards for different classes of
13 service providers at least, you know, for some period
14 of time, you know, if there's a startup for a limited
15 period of time to have a different standard.

16 I am pessimistic about this being done
17 through a purely voluntary regime partly because there
18 are those providers who base their business model on
19 having access to this content and partly because there
20 are many service providers who operate in good faith,
21 but there's simply not much in it for them to do this.

22 I mean all they're doing is adopting a
23 regime that's going to create, you know, possibly more
24 effort for them, although I would argue that having a
25 takedown, stay-down might actually help them. But in

1 any case, they just don't see what's in it for them.
2 They're not consciously trying to base their business
3 model on somebody else's content. So I would strongly
4 wish and urge that something be done in the way of
5 takedown, stay-down.

6 MS. TEMPLE CLAGGETT: Thank you. Mr. Band.

7 MR. BAND: So Amazon would oppose any
8 statutory change, in particular anything like a
9 takedown, stay-down, a notice-and-stay-down regime. A
10 lot of things we talked about before, voluntary
11 measures, increased cooperation between the various
12 industry sectors, would obviously be helpful. Dialogue
13 is always good.

14 And then the final point is just to echo
15 what Andy Deutsch was saying. We do live in a time of
16 rapid technological change and it's, you know,
17 stressful for everyone, but -- and it does mean that
18 everyone is going to have to reinvent themselves
19 repeatedly.

20 MS. TEMPLE CLAGGETT: Thank you. Mr. Barblan.

21 MR. BARBLAN: So I think there's this
22 misconception that artists and the creative community
23 are somehow Luddites and that they don't embrace new
24 technology, and I think the opposite is true. The
25 creative industries have invested tons and tons of

1 money into all sorts of new technology, and they've
2 embraced new business models. And they've really
3 revolutionized the way that art can be created and
4 disseminated, and I think that when you fail to
5 respect their property rights, when you make it so
6 easy to steal from them, you actually reduce the
7 amount of revenue that they get that they can then use
8 to continue that creative investment, that they can
9 use to not only create new technology but to develop
10 new business models and new forms of art all together.

11 And I agree with June that some sort of
12 stay-down mechanism would be the best -- would be a
13 really good step in the direction of making it harder
14 to steal from artists. And I think once a service
15 provider is on notice that a certain work isn't
16 licensed for their site or whatever, they should then
17 bear the responsibility of making sure that that work
18 doesn't reappear. And I think that they should have a
19 lot of latitude in how they decide to do that.

20 If they want to do it through automatic
21 filtering mechanisms or if they want to change the way
22 that content is uploaded to their sites or the terms
23 by which content gets uploaded. I think, you know,
24 you've got these industries that are incredibly
25 technologically advanced. They can tell what you're

1 thinking after you type in five words into a search,
2 and I just find it hard to believe that these
3 incredibly innovative industries won't be innovative
4 enough to figure out a way to keep content down once -
5 - if the burden was shifted to them to keep it down
6 after the first notice.

7 MS. TEMPLE CLAGGETT: Thank you. Did you
8 have something, Jeff? No. Mr. Buckley.

9 MR. BUCKLEY: Without stay-down we don't
10 have any anti-piracy law in this country. The
11 Grooveshark case --

12 MS. TEMPLE CLAGGETT: I'm sorry. Could you
13 use your mic?

14 MR. BUCKLEY: Oh, I'm sorry. I have such a
15 loud voice. I thought that everybody could hear.

16 The Grooveshark case, which was an
17 infringing company in Gainesville that operated for
18 over a decade, basically at the end, they admitted in
19 court under -- in front of a judge that basically they
20 had used the takedown provision as a way to avoid
21 prosecution because basically what it enabled them to
22 do was to follow directions, remove content and repost
23 it.

24 They had a server where everything was
25 stored. They referred to it as their Pez strategy, and

1 what they would simply do is they would take the piece
2 down and put another piece, the exact same piece of
3 content, up over and over again. They actually were
4 caught and actually put out of business because they
5 had sent an internal email out to their employees
6 because there are about 5000 songs that they needed.

7 And that is one thing that is clearly
8 illegal is to have your employees do that kind of
9 work. So my sense is -- and the other thing that I'll
10 add quickly, I don't want to take any more time, there
11 should be penalties for people who file false take-
12 down claims. There has to be recourse on both sides. I
13 don't believe there should just be a free passage for
14 somebody to destroy somebody else's career or put them
15 out of business. I think it has to be balanced and
16 there have to be penalties that work on both sides of
17 the equation. Thank you.

18 MS. TEMPLE CLAGGETT: Thank you. Mr.
19 Carlisle.

20 MR. CARLISLE: Yes, again I'm going to be
21 speaking personally and not on behalf of Nova
22 Southeastern University. If section 512 worked,
23 YouTube wouldn't be using it as a negotiating tactic.
24 It's like, you know, you'll either take what we're
25 going to pay you, or we'll just throw you into whack-

1 a-mole hell. I mean it's almost like protection, you
2 know, but it's a nice son you got there. You don't
3 want anything bad to happen to him, you know.

4 So once we get takedown and stay-down, that
5 levels the playing field, so we can't have Spotify
6 complaints saying why should we pay you any more
7 money. YouTube won't pay it to you. All right. And it
8 also rather fairly starts to place the burden on some
9 policing of the Internet on the people who are
10 profiting from it, you know, the YouTubes of the
11 world, the Facebooks of this world, and everybody else
12 who's profiting from this content.

13 I know that there's a lot of opposition
14 there but I think the only solution that really can
15 work. Think if we didn't have to process a billion
16 notices in a year what would that mean for our
17 businesses? Less notices get sent. Less sent out
18 notices have to be acted upon. Less bad notices get
19 sent. Less bad notices have to be acted upon. Thank
20 you.

21 MS. TEMPLE CLAGGETT: Thank you. Ms.
22 Coleman.

23 MS. COLEMAN: Hi. So I would like to urge you
24 to think about innovation as a whole with respect to
25 the section 512 and what works and what doesn't work.

1 We know what doesn't work today.

2 We don't know what won't work in five or ten
3 years from now. We don't what the future is going to
4 hold across the board. Nobody would've thought we
5 would be here talking about this in this way.

6 So when you go back and you make your
7 recommendations and you look at everything that
8 everyone has said, think about takedown, stay-down.
9 Think about small claims. Think about innovative
10 plans, not for the long term but perhaps the short
11 term with re-review in the future so that everybody
12 can benefit and thrive in the marketplace and that
13 there is a level of equal playing field and balance.
14 Thank you.

15 MS. TEMPLE CLAGGETT: Thank you. Mr. Deutsch.

16 MR. DEUTSCH: It is very much in the
17 interest of Internet Service Providers to cooperate
18 with copyright owners. And it is very much the case
19 that an Internet Service Provider whose model is
20 infringement will ultimately be caught and punished.
21 And in fact every case where that has been the
22 instance and where there's been any effort to
23 prosecute has been successful. 512 is not a shield
24 under those circumstance, and I don't think we should
25 take that situation as typical of the takedown system.

1 There's certainly room for technological
2 improvement. There's certainly room for meeting of the
3 minds and for improvement. No one is saying this is a
4 perfect system, no one, but changing it is to change
5 the balance that Congress struck in 1998 and which I
6 submit to you remains the proper balance. Copyright
7 holders who know their material are the best ones to
8 identify it to Internet Service Providers and the best
9 ones to provide the information by which it can be
10 taken down.

11 MS. TEMPLE CLAGGETT: Thank you. I just want
12 to follow up, and so once they have identified the
13 content to the provider and, assuming the provider has
14 a fingerprint or access to that, is there a reason
15 they shouldn't screen for that in the -- in other
16 words, the copyright owner has stepped forward and
17 said, "This is my content" and maybe supplied a
18 fingerprint or some kind of hashtag. Is it consistent
19 with your view to say that then the ISP has some duty
20 to track that and keep removing that same content?

21 MR. DEUTSCH: I think that there can be
22 methods by which the parties can agree so that there
23 isn't necessarily redundant noticing, but I don't
24 agree with the idea that it is ultimately the
25 responsibility of the ISPs who are processing

1 trillions and much larger numbers of bits and bytes
2 per day to be the ones who are ultimately monitoring
3 the system. That was a decision made when the DMCA was
4 enacted, and I suggest to you would, it's still the
5 most valid way of approaching the problem.

6 MS. TEMPLE CLAGGETT: Right, but once the
7 content has been identified, affirmatively identified
8 by the copyright owner, at that point should the ISP
9 bear some responsibility -- assuming there's a
10 technological capability of doing so -- of continuing
11 to remove that same file?

12 MR. DEUTSCH: It's a big assumption, but if
13 the parties can get together and agree on a method for
14 doing this, and that is something that they should be
15 talking about. Anything that is done voluntarily and
16 consensually is a good idea.

17 MS. TEMPLE CLAGGETT: Thank you. Ms.
18 Feingold.

19 MS. FEINGOLD: So I'm an ISP, and we remove
20 content based on DMCA takedown notices. In 2014, we
21 removed around -- we executed around 7,000 properly
22 submitted takedown notices. They weren't just DMCA. It
23 was for trademarks. There are all sorts of things all
24 mushed in there. So when you're asking about, you
25 know, what is the solution to some issues that have

1 been raised, I'm bringing up the word trademarks
2 because I'm seeing a lot of trademark abuse takedown
3 notices. And people are trying to not do counter-
4 notices because of the trademarks, but I'm not going
5 to get into that right now. You can read my comment.

6 And so we have removed, in 2014, around
7 176,000 listings. The question is, you know, what
8 about notice and stay-down? And notice and stay-down
9 would not work for a company like Etsy that's trying
10 to empower small businesses. First, it's
11 extraordinarily burdensome and second, you know, is
12 the notice an abusive notice? I see so many abusive
13 notices to squash free speech and fair use. It would
14 be just absolutely horrible, and second, is it even
15 the same material, and is the content still infringing
16 where and when it is reappearing? Those are really
17 difficult questions from a legal and technological
18 standpoint and it's beyond the scope of DMCA.

19 MS. ISBELL: I just want to follow up really
20 quick.

21 MS. FEINGOLD: Sure.

22 MS. ISBELL: You mentioned abusive notices --

23 MS. FEINGOLD: Yes.

24 MS. ISBELL: -- that are directed at free
25 speech. Has Etsy received those notices and what - -

1 MS. FEINGOLD: Yes.

2 MS. ISBELL: -- speech were they trying to --

3 MS. FEINGOLD: They're trying to take out
4 their competition, or somebody is saying something
5 about them, and they want to take it down. But if we
6 get a DMCA takedown notice, we remove the material.
7 That's what DMCA says, and I've seen takedown notices.
8 In my heart, I'm like please submit a counter-notice.
9 And they are not submitting counter-notices.

10 MR. GREENBERG: This may be semantics, but
11 we are lawyers. Are these free speech issues or unfair
12 competition?

13 MS. FEINGOLD: It could be both.

14 MS. TEMPLE CLAGGETT: Just one other quick
15 follow up. You mentioned that a lot of your notices
16 are trademark notices.

17 MS. FEINGOLD: Yes.

18 MS. TEMPLE CLAGGETT: And the DMCA doesn't
19 apply to trademark. Is the underlying content actually
20 trademark infringement, or are you just seeing people
21 trying to use trademark improperly?

22 MS. FEINGOLD: People are using trademark and
23 copyright together and using trademark either
24 improperly or properly, but because there's case law
25 that says, you know, if we have specific knowledge and

1 we remove it, we're not going to be held liable. We
2 remove it, but there's no counter-notice procedure for
3 someone to argue that it should be allowed.

4 MS. TEMPLE CLAGGETT:

5 Are you suggesting a trademark DMCA as a
6 potential solution?

7 MS. CHARLESWORTH: We'd love to take over
8 trademark here at the Copyright Office.

9 We're just itching to do that.

10 MS. FEINGOLD: I think that it needs to be
11 examined, and I would welcome the exploration of
12 something like that because I'm seeing a lot of free
13 speech and fair use being hindered by this loophole.

14 MS. CHARLESWORTH: I just have a question
15 because you are in a somewhat different kind of
16 business from some of the others here.

17 MS. FEINGOLD: Aren't we great?

18 MS. CHARLESWORTH: Kudos to you. You're
19 great.

20 MS. FEINGOLD: Thank you.

21 MS. CHARLESWORTH: What is your -- do you
22 have a repeat -- I assume you do have a repeat
23 infringer --

24 MS. FEINGOLD: We do --

25 MS. CHARLESWORTH: -- policy.

1 MS. FEINGOLD: Yes.

2 MS. CHARLESWORTH: Is that something you
3 could share with us? I'm curious to know how it works
4 when you're dealing with more physical goods.

5 MS. FEINGOLD: We have a repeat infringer
6 policy, and we have a team that examines the issues.
7 And it goes through human review.

8 It's very burdensome, and we take it really
9 seriously. I don't feel comfortable explaining all of
10 the nuts and bolts that go in it because people will
11 abuse it. And what we've seen is somebody will send a
12 takedown notice at, you know, 9 a.m., then 10 a.m.,
13 then 11 a.m. and say, "Oh, now it's repeat notices of
14 infringement. Now you have to remove -- now you have
15 to like terminate privileges to this person." And so
16 I'm seeing people abuse the repeated notices of
17 infringement section in that sort of way as well.

18 MS. TEMPLE CLAGGETT: And not to keep asking
19 Etsy questions, but you know, we are very interested
20 in Etsy.

21 MS. FEINGOLD: Okay.

22 MS. TEMPLE CLAGGETT: But is it something
23 unique to your particular atmosphere in terms of the
24 abusive notices?

25 I'm just trying to see if this is a unique

1 experience in terms of the fact that -- or I'll ask a
2 question. Are you seeing notices from competitors in
3 the sense that your -- the way that you work is that
4 you have individual businesses in one website, who
5 might be encouraged in some sense or incentivized to
6 try to abuse a process that might not necessarily be
7 what other types of websites would see?

8 So I just was curious as to whether that was
9 a factor in terms of the amount of improper notices
10 that you see.

11 MS. FEINGOLD: I can't speak for other I can
12 only speak for what I'm -- at websites.

13 Etsy, but we run the gambit. We get
14 takedown notices from big, giant household brands,
15 and then we have takedown notices from, you know,
16 maybe you partnered with your best friend and now you
17 have a falling out. And your business goes in
18 different ways, and then your best friend sends you --
19 or your ex-best friend sends you takedown notices.

20 And then you send her takedown notices. And
21 so Etsy's in the middle, and they're using it
22 against each other because they both think they're
23 right.

24 And so I'm seeing it all across the board.

25 MS. TEMPLE CLAGGETT: Thank you.

1 MS. FEINGOLD: You're welcome.

2 MS. TEMPLE CLAGGETT: Ms. Garmezy.

3 MS. GARMEZY: First, I just want to thank you
4 for these two days of discussion. I think it's very
5 important that you put this issue so openly on the
6 table. I've already made my statement about stay-down
7 and my belief that for the creators I represent, that
8 would make a huge difference, some ability to examine
9 it.

10 And the rest I say just for the record
11 because I know that the Copyright Office has always
12 operated with interests of creators in your mind. But
13 since I've heard at this table, statements that I
14 thought were no longer made, like, "Creators will
15 create no matter what," often made, you know, by
16 people who are earning a living while they make those
17 or the implication that creators are collateral damage
18 for changing times of which, you know, my members are
19 more than appreciative that they're in changing times,
20 things that currently help drive the Internet, like
21 motion capture, were created by directors.

22 So there isn't an ignorance of the power of
23 the Internet and its viability, but I do think the
24 true nature of creating is something very unique and
25 very special and very ephemeral, and not everybody can

1 do it. And I just would like to reiterate that it's
2 important to be guided at a time of great change like
3 this is, to be guided by remembering that about
4 creativity.

5 MS. TEMPLE CLAGGETT: Thank you. I think Mr.
6 Van Arman, is it?

7 MR. VAN ARMAN: If you're asking for some
8 suggestions on what might make the law better, for
9 small or medium-sized businesses, it's a real burden
10 to take something to federal court when a counter-
11 notice notification is provided to a small or medium-
12 sized creator. So for us, a big innovation, which I
13 think will help -- moves the right balance if there's
14 only so much that can be adjusted in the law is a
15 small claims process or something that is viable for
16 small and medium- sized businesses.

17 Also, the 10-day window to act after a
18 counter notification is provided also puts a great
19 burden on small and medium-sized businesses. And
20 finally, to whatever extent takedown notices can be
21 standardized and open standards are adopted for that,
22 that actually will reduce the cost for small and
23 medium-sized businesses as well to participate in some
24 sort of takedown regime.

25 MS. TEMPLE CLAGGETT: Great. Thank you.

1 Without seeing any other placards up, I want
2 to thank everyone on this panel for providing your
3 insight and thoughts. I invite everyone who has
4 indicated an interest in speaking in the final panel
5 to stick around and everyone else to stick around, but
6 to be prepared to provide your final comments in two
7 minutes.

8 We're going to take a brief break so it
9 might eat in a little bit to the time for the next
10 session, so we'll see you back here at 3:30. So we'll
11 start again at 3:30. Thank you.

12 MR. GREENBERG: And please do sign up at the
13 podium.

14 (Break taken from 3:13 p.m. to 3:30 p.m.)

15 SESSION 8: Wrap-Up/Open Mic

16 MR. GREENBERG: Okay. This is the last panel
17 of the day, and unfortunately, I'm going to walk out
18 into the crowd. We joked about our copyright talk show
19 earlier, but a lot of questions have come up over the
20 course of the last two days, due to the welcomed large
21 number of participants.

22 A lot of the questions haven't had a lot of
23 time to be answered. This is your forum to do that. As
24 we discussed yesterday, there will be a chance for
25 reply comments, but feel free to use this time now to

1 voice statements you wanted to make earlier but you
2 didn't have time to or also to raise future questions
3 for reply comments.

4 So I'm going to start us in order of the
5 list with those who are just observers and did not
6 participate in a panel. I will be holding the
7 participant sign-up list two rows back if you want to
8 come up and sign up while somebody else is at the
9 podium. So to start, I see David Green.

10 MR. GREEN: You see David Green.

11 MR. GREENBERG: Use the mic. Everybody should
12 speak into the mic and give the name and affiliation
13 for the court reporter.

14 MR. GREEN: So David, Vice President for
15 Public Policy and Creative Content Protection at NBC
16 Universal. I know you're only at about half- time
17 here, and you have another roundtable to go and
18 another round of comments to go.

19 But I'd like to just make my comments
20 towards what should the Copyright Office do and
21 shouldn't do at the end of that process. So my
22 suggestion is this. What it shouldn't do is undertake
23 a rewrite of section 512.

24 I think there's probably everybody in this
25 room who would change parts or a lot of it should that

1 opportunity prevail, but I think even if the Copyright
2 Office came back with a wonderful rewrite and
3 suggested it to Congress, all that would mean would be
4 a bloodbath as the different sides, you know, your
5 worst of sides and best of sides have battled it out.

6 With a trench warfare that is Congressional
7 activity, I think it would end up with little
8 progress. But I think that the Copyright Office should
9 do is really be a driver for progress through face-to-
10 face discussions.

11 CAS, which we talked about earlier, was a
12 great example. The content holders and ISPs have very
13 different views of repeat infringers, lots of other
14 things.

15 All those were cast aside, and the focus was
16 on reaching a compromise that met the goals of both
17 the ISPs and the content creators that was reasonable
18 and fair and that was able to evolve with time, that
19 includes independent filmmakers and non-majors and
20 really has had a very positive impact.

21 And I think that the Copyright Office can
22 and should encourage that kind of dialogue, encourage
23 members of Congress to do the same with a focus on
24 collaboration and not isolated pronouncement by an
25 Internet company, that it has singlehandedly fixed the

1 problem without that kind of dialogue.

2 Also from what we've heard today, you should
3 be advocating and helping to shape best practices,
4 prominently displayed education around the dos and
5 don'ts and uploads and downloads encouraging the
6 adoption of appropriate technologies, descriptions of
7 fair use that everybody can use. I think that would be
8 a hugely helpful impact, both of a report and the
9 ongoing activities of the Copyright Office. Thank you.

10 MS. CHARLESWORTH: I have a question.

11 We've heard a lot about having a dialogue or
12 sponsoring or helping, assisting a dialogue. How do
13 you get people to the table? I mean what is, I think
14 this question's been raised before, but since you're
15 at the podium now, what would your suggestion be in
16 terms of getting key stakeholders and also smaller
17 players at the table?

18 MR. GREEN: Well, I don't think that progress
19 gets made in a big room like this. It was hard enough
20 to get people even to sit together at the cafeteria
21 downstairs during lunch.

22 MS. CHARLESWORTH: Really? What was going on
23 down there?

24 MR. GREEN: But where stakeholders sit down
25 with each other, understand the problems.

1 Troy was describing that for the UGC
2 Principles.

3 Understand the goals. Understand that, you
4 know, there may be disagreements, and those kind of
5 encouragements to say look, with search, you guys go
6 together.

7 Get together and see if you can make some
8 progress. Come back to me, particularly if the me is,
9 you know, the chairs of Judiciary Committee, and tell
10 me what progress you've made in a certain amount of
11 time. That's the kind of thing that can actually put a
12 thumb on the scales and encourage cooperation to
13 really take place.

14 MS. CHARLESWORTH: Okay. Appreciate that.

15 MR. DUPLER: Todd Dupler. Hello. Hi, I'm Todd
16 Dupler. I'm with the Recording Academy.

17 The Recording Academy represents over 24,000
18 individual music creators, songwriters, performers,
19 musicians, and studio professionals like Maria
20 Schneider, who you heard from earlier.

21 And just wanted to kind of look back on what
22 I've heard over the last two days. It's mostly
23 remarkable to me that you've heard from the entire
24 creative community, everyone from large corporations
25 to individual creators of every discipline, from

1 musicians to visual artists, photographers,
2 moviemakers, authors, all of them saying that the
3 current system is not effective for them and not
4 working for them.

5 And different reasons for different
6 constituencies. The challenges of the visual artist
7 are different than the challenges of a movie studio,
8 but again, the message is the same, that they can't
9 use the system effectively to keep their work from
10 being infringed.

11 And when we hear from the service providers
12 that everything is fine; everything's all right, that
13 they're complying and that the system is working for
14 them, it just affirms what you've set up this entire
15 process, which was the reference to a A Tale of Two
16 Cities. And when we reach out to them in the spirit of
17 what we think the law means, which is to collaborate
18 and work with these services and say, is there
19 something we can do to work together. Can you help us?
20 They just kind of stick their fingers back in their
21 ear and say, no, everything's working fine. We're
22 fine. We don't need anymore, you know, collaboration
23 or voluntary agreements.

24 So I think that again, just illustrates that
25 there is an imbalance, that what was supposed to be a

1 balanced framework between the stakeholders is in fact
2 not balanced currently.

3 There have been a handful of things that
4 were suggested by multiple stakeholders that would
5 improve the current system. And so I just kind of
6 wanted to recount those and focus your attention on
7 them.

8 One was to formalize or standardize the
9 notice process for copyright holders to create some
10 sort of standard process to issue those notices.
11 Another would be to establish some sort of formality
12 or education process for users that are uploading
13 content. You know, we talked about there's a lot of
14 hoops you have to go through to issue a notice.
15 There's very little that someone who's uploading
16 content has to do in order to upload that content, so
17 both education or some sort of formality would be
18 appropriate there.

19 Another would be finding some way to
20 distinguish between good users who issue, you know,
21 good notices and those that are issuing bad notices to
22 differentiate among those users.

23 Another would be to, again, finding a way to
24 designate standard technical measures. That could be
25 something that the Copyright Office could play a role

1 again, as it's establishing what those STNs are.

2 Another would be perhaps to reestablish or
3 reassert the original intent behind red flag,
4 knowledge of what that's supposed to mean. And lastly,
5 what we've heard a lot about, which is takedown should
6 mean stay-down. And again, more specifically what that
7 should mean is when you've notified a service that a
8 work is infringing and is not licensed and you have
9 the technology to continue to track that, that that
10 should be an effective notice to keep it from coming
11 back up again.

12 There's been some controversy about how that
13 would actually work, but in the extreme, you know, we
14 have these circumstances we heard about of stacked
15 URLs, which is clearly outside the intent of, you
16 know, what this is supposed to be meant to accomplish.
17 So just wanted to kind of narrow the focus on those
18 positive aspects, and I hope that that will be
19 reflected in the report.

20 MS. CHARLESWORTH: Thank you, Mr.

21 Dupler. Sorry. Brad, you're up with your
22 microphone again.

23 MR. GREENBERG: Joshua Lamel. Is that right?

24 MR. LAMEL: Yes. My name actually got
25 pronounced right for once. I'm going to be testifying

1 in California, so I'm not going to talk at all about
2 anything that was discussed here today because I can
3 talk about that in California and talk about my
4 comments in

5 California. I represent Re:create, but I
6 want to just caution you on one thing.

7 MS. CHARLESWORTH: I'm sorry. Who do you -- I
8 couldn't hear who --

9 MR. LAMEL: I represent Re:create.

10 We're a coalition of 12 organizations
11 focused on a more balanced copyright system. We had
12 nothing to do with the filing of the 89,000 public
13 comments in this proceeding, but there were over
14 89,000 people, not those of us who are getting paid to
15 be here, but people who chose to be here. It's not
16 making their living, who chose to participate in this.

17 And I think it's important for California
18 that you have the opportunity to do this, that these
19 proceedings be livestreamed on the Internet. This is
20 about something that's impacting the future of the
21 Internet. It's something that there are a lot of
22 people out there who passionately, passionately care
23 about, who can't afford to be here today both on the
24 creator community, artist community.

25 There are people representing small groups

1 here, who they have people around the country who
2 would love to watch this and care about this. And on
3 the consumer community, Internet user community and
4 those 89,000 people who filed.

5 So I don't know if there's a way to do it or
6 a way to make it happen, but for when we're in
7 California, if you can find a way to make it so that
8 what we're all saying up there in the panel is
9 viewable to the 300 million people who live around
10 this country, I think that's something everybody out
11 here would support and want to see.

12 I want to thank you for holding this. I
13 think this has been informative and great, and I look
14 forward to testifying in California.

15 MS. CHARLESWORTH: Thank you.

16 MR. GREENBERG: Andrew Bridges.

17 MR. BRIDGES: Thank you. I'd like to thank
18 you for holding this forum two days. It deserves a lot
19 of attention. I wanted to make some observations
20 reflecting on things I heard today. First, there was
21 continued massive confusion on the part of a number of
22 persons between 512(a) service providers and other
23 types of service providers.

24 I heard people talking about "ISPs" and
25 follow-up questions about sites. "Sites," 512(c),

1 512(d) sites are very, very different from 512(a)
2 conduit service providers. And that distinction, I
3 think, kept getting eclipsed over the course of the
4 day.

5 Second, there was a lot of focus on Google
6 and YouTube, both of which have prevailed in
7 significant and costly litigation. Copyright holders
8 seem to have an obsession with them, and that distorts
9 the discussion about copyright law in general. And we
10 need to understand that there's a wide variety of
11 service providers of all categories in 512, including
12 some very small ones.

13 And I'm sorry. I see one minute. I think the
14 previous speaker had five minutes.

15 Sorry. I'll try to go as fast as I can, but
16 I think I may need more. Or not the previous speaker,
17 two speakers earlier. So there's different types of
18 service providers who could get injured by policies
19 that are developed in response to an obsession with
20 Google and YouTube.

21 Third, there's a lot of discussion about
22 good actors and bad actors, reflecting heightened
23 rhetoric and demonization that are counterproductive
24 to these discussions. The focus instead should be on
25 behavior, on activities, and on legal criteria with

1 honest debate about those legal criteria.

2 Next, there's a lot of discussion about
3 getting people to the table. "Come to the table" cuts
4 both ways, and there's been no recognition today of
5 the refusal of many important and prominent copyright
6 holders and copyright agents to work collaboratively
7 with service providers, including some so-called
8 "reputable" companies.

9 There was reference to "Best Practices for
10 User-Generated Content." Nobody pointed out that Veoh
11 Networks was one of the participants in that process,
12 and it was sued out of existence, into bankruptcy,
13 even as it won major victories under the DMCA. So that
14 shows a limitation on voluntary agreements.

15 Others have reported the absence of citizen
16 interests in various ways. I'll note that the
17 voluntary agreement over payment processing has not
18 included voluntary participation by merchants of those
19 payment processors who get threatened with loss of
20 payment services because they are in disfavored
21 business lines. Similarly, sites get blackballed by
22 advertising networks and told, "Well, you're
23 blackballed from the network until you make such and
24 such record label happy. Then you can come back in."

25 There's no due process there, and that is a

1 problem with voluntary agreements that don't take the
2 public into perspective. There's been no focus on the
3 very real abuse of the DMCA notices by companies who
4 game it for monetary purposes.

5 Perfect 10, for example, sends repeatedly
6 bad notices that courts have held to be bad, doing
7 things like faxing them late at night before a
8 holiday weekend on letterhead with -- on plain paper
9 with no letterhead, with no page numbering and like,
10 evidently hoping that service providers would lose
11 the notices to trigger litigation.

12 Rightscorp was known to send hundreds of
13 thousands of false notices and demand termination of
14 ISP accounts for alleged repeat infringement when it
15 could not determine that the IP address assigned to
16 a -- that the account holder assigned to an IP
17 address was actually the infringer and without
18 Rightscorp even determining that there was an actual
19 infringement before sending the notices. And
20 Rightscorp has sent probably over 100 million notices.

21 The last thing I want to point out is the
22 discussion, I think [based on] Ms. Temple Claggett's
23 question, a couple of times about the effect of the
24 DMCA on "legitimate content." I'd like to say that I
25 hope that the focus is not just on "content," but the

1 focus should be on lawful activity and free
2 expression.

3 And a lot of the policies concerning
4 copyright law and the DMCA have substantial effects on
5 free expression and legitimate activities,
6 particularly in the 512(a) context because the
7 activities that can be lost with a termination include
8 applying for a job, applying for government benefits,
9 participating in online courses, paying bills, making
10 ecommerce purchases and using email.

11 The irony of terminating customers and
12 cutting them off the Internet to stop infringement is
13 that that their only way to get back on the Internet
14 is to steal somebody else's wireless and to use rogue
15 services. That is counterproductive.

16 Thank you very much.

17 MR. ADLER: Hi, Allan Adler with AAP.

18 It's in the nature of commerce, especially
19 in a world of global markets and constantly advancing
20 technology, to constantly come up with new business
21 models. But whatever else you do in your investigation
22 of section 512, please don't indulge those who would
23 blame the victim. Telling rightsholders to fight
24 online infringement and deal with the shortcomings of
25 512 with new business models is not just condescension

1 and misdirection. It's also anachronistic. It's an
2 argument that may have had some legitimacy in 2006,
3 but it doesn't deserve any consideration at all in
4 2016.

5 Read the record of the House Judiciary
6 Committee hearing that was held in 2013. The hearing
7 was called, "The Rise of Innovative Business Models:
8 Content Delivery Methods in the Digital Age." And
9 you'll find all you need to know about the progress of
10 the development of new business models that has
11 occurred very rapidly in a very short period of time,
12 but nevertheless has had no impact on the continuing
13 spread of rampant online infringement.

14 Better yet, look around you. Look around all
15 of us. Look at the way we, our children, and for some
16 of us even our grandchildren are now accessing and
17 reading literature, watching motion pictures,
18 listening to music. If you do that, you can't doubt
19 that new business models for the distribution of
20 copyrighted works have been a success. It's occurring
21 all the time. It will continue into the future.

22 And even if we had not experienced the
23 explosion of new access and distribution models that
24 we clearly have experienced, the suggestion to fight
25 online theft with new business models would be

1 pernicious. Individuals like Maria Schneider, Damon
2 DiMarco and Hillary Johnson, who earn their livings
3 through art and who sat here today and plaintively
4 explained the plight that they face because of the
5 inadequacies of copyright law generally and section
6 512 in particular, should not be told that they have
7 to invent new business models along with their
8 creative works simply in order to be able to sustain a
9 living by creating art.

10 MR. GREENBERG: For the court reporter, that
11 was Allan Adler from AAP. Will Buckley.

12 MR. BUCKLEY: Yes. My name is Will Buckley.
13 Thank you for this final opportunity to speak today.
14 What I wanted to talk about, and it's kind of brought
15 up actually by two people previously, was the need for
16 transparency in this process. A minute ago a gentleman
17 referred to the fact that the U.S. Copyright Office
18 had received approximately 90,000 submissions the day
19 before the closing date.

20 Now, those submissions were actually
21 generated by an organization called Fight for the
22 Future, I believe, a mysteriously financed company
23 that basically put out claims that flooded your
24 servers, primarily with the same kind of message.

25 The other thing that I found a bit

1 disturbing was a gentleman got up a minute ago and it
2 kind of felt like an end run.

3 And that is, we're not really talking about
4 a free speech issue here. This is about property. This
5 is about somebody's content that they create. And free
6 speech is one of the things that's often used in this
7 discussion that takes it sideways and takes it in a
8 different place.

9 And as far as false DMCA notices, there are
10 a very small percentage, less than 5 percent.

11 And, in fact, very few of them have ever
12 gone to court. So that really hasn't been an issue in
13 this. Yes, they have gotten ratcheted up over time, as
14 I shared earlier. A lot of that was because of the
15 fact that there are companies like Rightscorp that,
16 you know, push these out.

17 But last of all, let me say this. I was at
18 UCLA last year with the House Judiciary Committee, and
19 I had an opportunity to talk to Bob Goodlatte at the
20 end of that meeting. And I was talking to him about
21 stay-down. And one of the things Mr. Goodlatte said
22 was, or Chairman Goodlatte said, we don't want to have
23 what happened with SOPA happen again. And what he
24 meant by that was, there was literally a cyberattack
25 that took place during the SOPA legislation that

1 scared the heck out of the people in Congress.

2 So when the gentleman from NBC got up and
3 talked about not wanting to have a bloodbath.

4 It's important to have those bloodbaths.
5 It's important to have rules and laws that work. And
6 thank you so much for giving me the time today to
7 speak. Thank you.

8 MR. GREENBERG: Thanks. David Korzenik, may
9 have left. Rebecca Tushnet.

10 MS. TUSHNET: Sorry.

11 MR. GREENBERG: That's all right.

12 MS. TUSHNET: So actually, I do want to do
13 something that is a little off topic, but we were
14 asked about the game changing musician of our
15 generation.

16 MR. GREENBERG: Can you just --

17 MS. TUSHNET: Rebecca Tushnet of the
18 Organization for Transformative Works. And before I
19 say anything substantive, although it does have a
20 point, I want to offer you the queen, Beyonce, who
21 just reinvented the music video. I offer you a man who
22 wrote a hip hop musical about Alexander Hamilton, Lin-
23 Manuel Miranda, who has embraced online engagement,
24 embraced online annotation of his lyrics on Genius,
25 which is itself a work of genius, something that

1 couldn't exist without 512.

2 And that's very clear. He's embraced
3 YouTube.

4 He's embraced Tumblr and GIFs. You might say
5 he's nonstop, and he is one of the people who grew up
6 in this new culture. And his junior activities are
7 visible on YouTube, you know. He is a product of this
8 new environment.

9 We'll keep getting our geniuses. They will
10 just be different. More seriously, I want to emphasize
11 that even accepting without any question that piracy
12 is a problem, "do something" is not a policy. And
13 "stay-down" isn't either. And we know this because we
14 know that trivial changes in files change the
15 fingerprint and the hash of a single file.

16 The specific things suggested in the past
17 two days, Content ID and BookID and audible magic,
18 they over block and under block, and we've had a ton
19 of findings about that. The biggest users of Content
20 ID can't say a good word about it.

21 They suggest that we need to add keyword
22 blocking and other measures to supplement it, and
23 those are the suggestions in Sony, UMG and Warner's
24 comments.

25 Content, so what I come out with is Content

1 ID doesn't work well, so everyone should have to use
2 it. That doesn't make sense, and these changes have no
3 connection to suppressing the worst offenders, the
4 overseas and the rogue sites that do nothing to comply
5 right now. So you want to cripple U.S. compliant sites
6 without even getting the benefit to be sought.

7 And I do want to point out something that
8 didn't get said in any of the panels --

9 MS. CHARLESWORTH: Can I -- I'm sorry.

10 Can I interrupt for one second?

11 MS. TUSHNET: Okay.

12 MS. CHARLESWORTH: I'm sorry. If Content ID
13 did work, would your view be different?

14 MS. TUSHNET: So, no, because Content ID is a
15 \$60 million program. It works because it does
16 sometimes, according to UMG, 60 percent of the time,
17 it detects changes in bits, but --

18 MS. CHARLESWORTH: All right. I'm sorry. I
19 didn't ask the question properly.

20 MS. TUSHNET: Okay.

21 MS. CHARLESWORTH: If an identification
22 system that was reasonably available, like
23 economically available and commonly available, did
24 work, would that change your view?

25 MS. TUSHNET: So the reason that people want

1 Content ID to do more than direct recognition of a
2 single, exact fingerprint is so they can catch
3 variations. Then we are starting to get into the fair
4 use question. You heard the YouTube creator point out
5 that right now the Content ID filter is set to catch
6 even 20 second clips in a 40-minute video. So no, I
7 don't think that would be the --

8 MS. CHARLESWORTH: So there's no
9 identification system that you would accept in sort of
10 a stay-down?

11 MS. TUSHNET: Certainly not as an imposition.
12 I mean Google has a business model, and you know, we
13 recognize that. We talked with them about fair use,
14 but certainly as a government imposition, it would be
15 intolerable for free speech. So can I just mention one
16 quick thing that wasn't --

17 MS. CHARLESWORTH: Yeah, yeah, yeah.

18 No, I interrupted you. Please go on. Sorry.

19 MS. TUSHNET: So please don't assume that all
20 works are like studio films. So I want to quote from
21 the Digital Media Licensing Association, who I agree
22 with very little about, but their comment says, "If
23 images are distributed by multiple representatives or
24 licensed on a non-exclusive basis, it can be nearly
25 impossible to distinguish an infringing from a

1 licensed use."

2 That's ten times more true if an ISP is in
3 charge of figuring out what's going on, which means
4 that stay-down for things that aren't films means that
5 properly licensed uses are going to be taken down to
6 the detriment of the copyright owner and the licensed
7 user. Yahoo also cites some experiences with takedowns
8 related to tobacco ads, where it's clear that the
9 first takedown being viable doesn't mean that the
10 second one is viable because they're used in very
11 different context.

12 Finally, you haven't heard unanimity from
13 the entire creative community. I represent 600,000
14 creators who feel very differently about all these
15 things. I ask you to remember the incredible
16 transformative works community. They're building
17 skills, particularly among women and underrepresented
18 minorities. I encourage you to read our green paper
19 submission to the PTO multi-stakeholder process.

20 And I encourage you to see if you can do it
21 without crying at some of the stories of how
22 transformative works transformed these women's lives,
23 their careers and their futures. Thank you.

24 MS. CHARLESWORTH: Thank you.

25 MR. GREENBERG: Jenny Pariser. Still here?

1 Hello.

2 MS. PARISER: Jenny Pariser, Motion Picture
3 Association. So first of all, thank you for holding
4 these hearings. Second of all, it's hard to imagine
5 that after two days I can come up with something new
6 to say, but I'm going to try.

7 So first of all, in terms of what the
8 Copyright Office might do in response to all of this.

9 What Motion Picture Association would hope
10 for is that the Copyright Office issues a report that,
11 among other findings you will no doubt make, you give
12 guidance on the proper interpretation of 512 to the
13 judiciary, a report similar to that which you did
14 under making available and many other issues that have
15 come up recently. These reports are enormously helpful
16 to the judiciary in understanding the proper way to
17 interpret these rules. I regret to say they don't
18 always follow the guidance issued by the Copyright
19 Office, but it is very, very helpful. We also cite the
20 Copyright Office, and it is extremely well taken, I
21 think.

22 Secondly, Jack, when you asked me about open
23 in the context of standard settings for standard
24 technical measures, and I responded more in the vein
25 of 512(i)(2)(b), reasonable and non-discriminatory

1 terms. And I had the opportunity, thanks of course to
2 Troy always having the Senate report in his pocket, to
3 spend a little more time looking at what open means.

4 So looking at the Senate report, and we can
5 address this in our reply comments if that would be of
6 use to your office, but just kind of quickly, the
7 Senate report says, "The Committee anticipates that
8 these provisions could be developed both in recognized
9 open standards bodies or in ad-hoc groups, as long as
10 the process used is open, fair, voluntary and multi-
11 industry."

12 So what does open mean in that context?

13 So I'm not an expert here. I think it can
14 probably mean one of two things. Number one, that the
15 door is open to anybody who wants to come in and be
16 part of the process, although that would make it
17 somewhat redundant with the use of the word open
18 earlier in the provision, that the standards bodies
19 are open.

20 Another way to interpret open there is that
21 the record is open, that you make it publically
22 available. In either case, whether the door is open or
23 the record is open, I'm sure any procedure that the
24 Copyright Office sponsored along these lines would be
25 both of those things.

1 You would presumably have a roundtable
2 similar to this. You would get the relevant
3 stakeholders in the room. The technical measure would
4 be discussed. Hopefully, an outcome would be achieved,
5 and the record would be open. So I don't think you're
6 at risk of running afoul of the open requirement in
7 either case.

8 MS. CHARLESWORTH: Thank you for that.

9 MS. PARISER: You're welcome.

10 MR. GREENBERG: Sarah Howes.

11 MS. HOWES: Hi everyone. So I hope that it's
12 okay. I took off my lawyer shoes and my lawyer blazer.
13 So I am a professional actor. I spent four years
14 training to be an actor, and then I spent another year
15 trying to make money off of it, which was very hard.

16 MS. CHARLESWORTH: I'm sorry. Can you state
17 your name for the record again?

18 MS. HOWES: Yeah, sure. My name is --

19 MS. CHARLESWORTH: I heard the Sarah, but I -
20 -

21 MS. HOWES: -- Sarah Howes, like how's it
22 going. And so I spent about four years training to be
23 an actor and one year having about three part- time
24 jobs trying to make it as a professional stage actor.
25 And so the discussions that were happening today, what

1 really stood out to me is the difference between a
2 professional creator and somebody who is engaging in
3 creative activities, which is amazing. And I would
4 never try to tell someone they shouldn't be an artist.

5 Everyone can be an artist, but not everybody
6 can be a professional artist.

7 Last night I went to go see Amy Pohler's
8 Comedy House. I went to see six improve actors
9 perform, and it was awesome. And they are far more
10 talented than I am. And when I got into the cab, the
11 guy -- the cabbie asked me, you know, "What do you do
12 for a living?" And I said, "Oh, actually I represent
13 artists. I advocate on behalf of artists." He's like,
14 "Oh, that's great.

15 You know, I've been thinking. I could do
16 art. I think I could be Tom Cruise." And I was like,
17 "You think that you could be Tom Cruise?" He's like,
18 "Yeah, yeah, yeah. It's easy. You know, look at him.
19 It's so easy. I could just be Tom Cruise and make
20 millions of dollars." And I said, "I would love to see
21 you try to be Tom Cruise because I spent four years
22 trying to be half as good as Tom Cruise."

23 It is very hard to be a professional artist.
24 It takes a lot of resources, a lot of investments.
25 Like I said, I spent tens of thousands of dollars on

1 my acting training. And so when you're considering
2 changes to copyright law, and this is me coming from
3 as a personal, professional artist. And when I'm
4 talking about artists, I'm not talking about them in a
5 hypothetical sense. I'm talking about my friends and
6 my family. And when we think about these artists,
7 there's a difference between a professional creator
8 and people that go out there and make art. And it's
9 very awesome that they go out there and make art, but
10 it's a lot different to try to make money off of art.
11 Thank you.

12 MR. GREENBERG: Thanks.

13 MS. CHARLESWORTH: Thank you.

14 MS. SCHNEIDER: Hi. You know me by now.

15 I'm Maria Schneider. This is my last
16 recording.

17 It won a Grammy award. It came out last
18 year. It cost me over \$200,000 to make. It took me
19 years to write the music. It took me a year in the
20 studio recording, editing, mixing, preparing this
21 package where I tried to make something really
22 beautiful that would somehow stand out from the rest
23 of the pack.

24 When I say it cost \$200,000 to make, I did
25 not include in that my time, the years writing the

1 music, my years spent producing it where I took
2 \$80,000 out of my savings to do that. So let's just
3 say this is well over a quarter million, pushing over
4 \$300,000 to make this album.

5 When I find links to this on Google -- why
6 do I talk about Google and why do I talk about
7 YouTube? When I find links from Google to Lime
8 Torrent, endless things now, and I also want to say I
9 have embraced the Internet like no artist has embraced
10 the Internet. I was the first artist to win a Grammy
11 only selling on the Internet, taking my music out of
12 stores.

13 I worked with a company called Artist Share,
14 where I document through the Internet and do
15 everything myself. I own my own work. Artist Share
16 allows me to have complete transparency. I know who
17 every fan is, and I put up video content documenting,
18 and that's partly what was so much work, documenting
19 throughout the year the making of this recording, the
20 writing of this music, this tremendous archive of
21 stuff through a very sophisticated program.

22 So when somebody takes all my videos, all my
23 scores and they put it up on Lime Torrent or some
24 other site, and there's links and I can't find a way
25 to take it down, I can tell you, it hurts me

1 financially. My first record sold between, in 1993
2 before anybody knew who I was, sold between 25,000 and
3 30,000 records. I have now won five Grammy awards. And
4 this record that has had huge critical acclaim, I've
5 sold close to 8,000 of them. It should be 80,000 by
6 now by all marks of where my career is.

7 This is like, and the analogy that I come up
8 with a lot for what I see with companies like YouTube
9 that have invented free, and now it's so accepted that
10 companies like Spotify, they offer no money because
11 they're competing with free. This is as if I would
12 take you guys and all of you and give away -- find
13 people that would give me the user name and the
14 password to your 401K and then offer it to anybody out
15 there. Give them 45 percent, and I take 55 percent
16 because I'm not sure what the split is on YouTube, but
17 it's something like that, and offer them a free for
18 all on your 401K. Because this is my asset.

19 This is my life. Come steal my apartment.
20 Steal my piano. Steal all my furniture. This is worth
21 more to me than that. I would rather you come and
22 steal my house. So it's the same thing. So I want to
23 thank you for giving us this forum. When I walked into
24 the building the other day and I saw on the building
25 next to us, it said pillar of good, and I said to

1 myself, "The Copyright Office is a pillar of good."
2 And I feel proud to be here. And I think we all want
3 to thank you and hope that this study will contribute
4 to some kind of meaningful change to people like me.
5 Thank you.

6 MS. CHARLESWORTH: Thank you, Ms. Schneider.
7 And for the record, Ms. Schneider was showing us her
8 CD as an exhibit.

9 MR. GREENBERG: I don't think we have anybody
10 else signed up. Is there anyone who wanted to sign up
11 but didn't know where the list was? Is everyone saving
12 their comments for the replies?

13 MS. CHARLESWORTH: All right. Well, thank
14 you. We will conclude this roundtable here in New
15 York. Thank you all very much for your participation.
16 We truly appreciate it, and we look forward to seeing,
17 perhaps, some of you in San Francisco.

18 (Whereupon, at 4:09 p.m., the meeting
19 was concluded.)

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05/09/2016

Karynn Willman

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