

UNITED STATES COPYRIGHT OFFICE

SECTION 512 STUDY

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PUBLIC ROUNDTABLE

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9:00 a.m.

FRIDAY, MAY 13, 2016

Ninth Circuit

James R. Browning Courthouse

95 Seventh Street

San Francisco, California 94103

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U.S. COPYRIGHT OFFICE:

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

2

3 SCOTT ANDREWS, eBay, Inc.

4 ERIC CADY, Independent Film & Television Alliance

5 DERON DELGADO, American Association of Independent

6 Music

7 TIM DIGGLE, Videogame Developer

8 PAUL DODA, Elsevier

9 ALEX FEERST, Medium

10 CATHY GELLIS, Digital Age Defense

11 JOSEPH GRATZ, Durie Tangri LLP

12 DAVE GREEN, Microsoft

13 DEVLIN HARTLINE, Center for the Protection of

14 Intellectual Property

15 DAPHNE KELLER, Stanford Law School Center for Internet

16 and Society

17 KEITH KUPFERSCHMID, Copyright Alliance

18 JOSHUA LAMEL, Re:Create

19 JEFF LYON, Fight for the Future

20 DEAN MARKS, Motion Picture Association of America

21 MICHAEL MASNICK, Copia Institute

22 BRIAN MCNELIS, Lakeshore Records

- 1 CORYNNE MCSHERRY, Electronic Frontier Foundation
- 2 MICHAEL MICHAUD, Channel Awesome, Inc.
- 3 PETER MIDGLEY, Brigham Young University
- 4 GABRIEL MILLER, Paramount Pictures Corporation
- 5 TOM MURPHY, Content Creators Coalition
- 6 MICHAEL NASH, Universal Music Group
- 7 SEAN O'CONNOR, University of Washington (Seattle)
- 8 BRAXTON PERKINS, NBC Universal
- 9 CHRIS RILEY, Mozilla
- 10 TONY RODRIGUEZ, Digimarc
- 11 JAY ROSENTHAL, ESL Music/ ESL Music Publishing
- 12 CHARLES ROSLOF, Wikimedia Foundation
- 13 JEFFREY SEDLIK, PLUS Coalition
- 14 ELLEN SEIDLER, Fast Girl Films
- 15 VICTORIA SHECKLER, Recording Industry Association of
16 America
- 17 BEN SHEFFNER, Motion Picture Association of America
- 18 IRA SIEGEL, Copyright Enforcement Group Inc.
- 19 T.J. STILES, Author
- 20 JONATHAN TAPLIN, USC Annenberg Innovation Lab
- 21 BOB TOURTELLOTTE, FilmMcQueen LLC
- 22 JENNIFER URBAN, University of California-Berkeley

- 1 School of Law
- 2 RUTH VITALE, CreativeFuture
- 3 FRED VON LOHMANN, Google
- 4 STEPHEN WORTH, Amazon
- 5 BETSY VIOLA ZEDEK, Disney
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1 P R O C E E D I N G S

2 MS. TEMPLE CLAGGETT: Thank you all for
3 coming this morning, and thank you for those who
4 attended yesterday as well. We are going to start
5 today off with session five, "Technological Strategies
6 and Solutions," which will give us an opportunity to
7 see if there are things that we should encourage or
8 employ in order to make the notice-and-takedown
9 process more effective.

10 As usual, if you would like to speak, please
11 raise your placard and we will call on you. We'll
12 start, as usual, also with just going around briefly
13 for you to identify yourselves by name and
14 affiliation, and then I'll start off with a question.

15 For those of you who were not here
16 yesterday, my name is Karyn Temple Claggett. I'm the
17 Associate Register of Copyrights and Director of the
18 Office of Policy of International Affairs. I have on
19 my left Jacqueline Charlesworth, who is the General
20 Counsel of the Copyright Office and, on my right,
21 Senior Counsel Kim Isbell, in my office.

22

1 SESSION 5: Technological Strategies and Solutions

2

3 MS. TEMPLE CLAGGETT: So we'll start on this
4 side with everyone, if you will just go around and
5 identify yourself by name and affiliation.

6 MR. ANDREWS: Hi. I'm Scott Andrews, and
7 I'm with the IP division of the legal department at
8 eBay.

9 MR. GRATZ: Joseph Gratz. I'm a partner at
10 Durie Tangri LLP, here in San Francisco.

11 MS. KELLER: Daphne Keller, director of
12 intermediary liability, Stanford Law School Center for
13 Internet and Society.

14 MR. KUPFERSCHMID: Keith Kupferschmid, the
15 CEO of the Copyright Alliance.

16 MR. LYON: Jeff Lyon, CTO at Fight for the
17 Future.

18 MR. MARKS: Dean Marks, Motion Picture
19 Association of America.

20 MR. MCNELIS: Brian McNelis, SVP Music,
21 Lakeshore Records.

22 MR. MILLER: Gabe Miller, vice president of

1 content protection at Paramount Pictures.

2 MR. MURPHY: Tom Murphy, of the Content
3 Creators Coalition.

4 MR. PERKINS: Braxton Perkins, vice
5 president, creative content protection, NBC Universal.

6 MS. URBAN: Jennifer Urban, University of
7 California-Berkeley School of Law.

8 MR. RILEY: Chris Riley, head of public
9 policy at Mozilla.

10 MR. RODRIGUEZ: Tony Rodriguez, CTO,
11 Digimarc.

12 MR. ROSLOF: Charles Roslof, legal counsel
13 at the Wikimedia Foundation.

14 MR. SEDLIK: Jeff Sedlik, president and CEO
15 of the PLUS Coalition.

16 MS. SEIDLER: Ellen Seidler, independent
17 filmmaker.

18 MR. TAPLIN: Jonathan Taplin, director,
19 Annenberg Innovation Lab, University of Southern
20 California.

21 MR. VON LOHMANN: Fred von Lohmann, legal
22 director for copyright at Google.

1 MS. ZEDEK: Betsy Viola Zedek, principal
2 counsel for antipiracy at the Walt Disney Company.

3 MS. TEMPLE CLAGGETT: Great. Thank you.
4 Yesterday, we heard a lot about repeat infringements,
5 the whack-a-mole problem, options for notice-and-stay-
6 down and the use of automated technology to assist in
7 the notice-and-takedown process.

8 So for today's session, we really wanted to
9 drill down on the use of technology. Is there a
10 technology out there that would make the notice-and-
11 takedown process less burdensome on both the senders
12 of notices, as well as the ISPs who receive them?

13 We can kind of throw it out there with a
14 general broad question, and then, once we go through
15 that question, we can drill down in terms of the use
16 of that particular -- or a particular technology after
17 we discuss that. So is there a technology out there
18 that would really serve to make the notice-and-
19 takedown process less burdensome, more effective? And
20 if so, what are the resources needed to employ it and
21 why isn't it employed more often than it is?

22 Anyone who would like to speak, please raise

1 your placard. Okay, and I'm going to start on this
2 side with Mr. Gratz.

3 MR. GRATZ: Thank you. There certainly are
4 some problems in the notice-and-takedown ecosystem
5 that technology can help with, in the sending of
6 notices, in the receipt and processing of notices.

7 The technology itself is rapidly changing
8 and will -- has always been and will always be rapidly
9 changing. And that is why technological solutions
10 with a limited exception that I'll talk about is
11 already in the statute, needs to be the subject of
12 voluntary rather than mandatory measures. That's
13 because technology is suited to some situations and
14 not others and some particular technologies are suited
15 to some situations and not others.

16 As I spoke about briefly yesterday, there is
17 a very large, at least numerically, number of OSPs for
18 whom the Internet of today is largely the Internet of
19 1998, the number of -- and kind of takedown notices
20 and the kind of content being removed is largely what
21 the statute originally sort of was designed to aim at.

22 Technology, for example, is better suited to

1 video hosting sites to identify full-length
2 audiovisual works and it's suited very poorly to
3 personal blogs and use of text or images on personal
4 blogs, suited so poorly that more often than not, it
5 seems it would be likely to miss at least some
6 important fact that should be taken into account.
7 That's because technology can't be, at least above a
8 very low baseline, context-sensitive.

9 There are some works and some -- and some
10 uses of works that will almost always be subject to a
11 takedown, right? There's a full-length blockbuster
12 movie will -- there is almost no context in which that
13 will be not infringing or otherwise -- or fair use.
14 Meanwhile though, a creative commons-licensed photo
15 under attribution-only terms will be lawful in almost
16 every context in which it appears.

17 And because technology can't be sensitive to
18 context above -- at least above a very low threshold,
19 technology needs to be only be used in those contexts
20 where it's appropriate. And that's why it's a proper
21 subject of voluntary rather than mandatory measures.

22 MS. TEMPLE CLAGGETT: And you kind of used

1 technology broadly. In terms of your view of that,
2 the use of technology would be helpful if only on a
3 voluntary basis. Are you talking about technology
4 from the perspective of sending out notices or the
5 notice-and-stay-down context of filtering and things
6 like that?

7 MR. GRATZ: I think that is both true of
8 robotic or otherwise automated notice sending and of
9 filtering, which is what we mean when we say anything
10 about stay-down. There are contexts where both the
11 sender and the recipient are going to want automated
12 noticing. But those are the situations largely in
13 which the sender and the recipient already have every
14 incentive to do that and are doing that. The same is
15 true of filtering.

16 MS. TEMPLE CLAGGETT: Thank you. Mr.
17 Kupferschmid?

18 MR. KUPFERSCHMID: Thank you. If you don't
19 mind, I'm going to rework your question a little bit.
20 You asked, I believe, is there technology that would
21 make the notice-and-takedown process less burdensome
22 and more effective. And what I'd like to say is, is

1 there technology today and could there or will there
2 be technology in the future because I certainly think
3 that there will be and can be, certainly with regard
4 to filtering.

5 One other point I want to mention, just if
6 you look around the table of who's participating here,
7 you see a lot of lawyers and you see a lot of policy
8 people and you see a lot of people representing
9 creators or creators themselves and users,
10 representatives of users. But you don't see any
11 technologists, any computer science people. And
12 that's disappointing. Well no, he's pointing to Fred.
13 Like I said, there may be some people around the table
14 here.

15 So as opposed to those who represent those
16 technology companies. And I think they're an
17 important part of, you know, getting their advice
18 because my idea of -- in terms of the technologies
19 that would help the notice-and-takedown problems here,
20 I don't think there's any question whatsoever that
21 technology is not only part of the solution, not only
22 a big part of the solution, but maybe almost the

1 entire part of the solution.

2 There are some fantastic companies in
3 Silicon Valley here, where we're around today,
4 companies that make great technologies, like Google,
5 Apple, Microsoft's around here someplace, Oracle and
6 the list goes on. And if you can build a car that can
7 drive itself, you damn well can, you know, make a
8 filtering program that can consider, that can take
9 into account fair use and other factors as well.

10 I'm in the Copyright Alliance and am a big
11 believer in technological solutions here. Are those
12 solutions going to be perfect? No. But they don't
13 need to be perfect. What they need to be is the best
14 solution that's out there, okay? And that's when you
15 compare it to other alternatives. And people will
16 say, oh, well you need human reviewers.

17 Human review has got to be a part of the
18 process. And maybe that's good as a second pair of
19 eyes, if you will. But I don't think there's any
20 evidence that human review is any better. I think
21 there's actually evidence to the contrary.

22 MS. CHARLESWORTH: I had a follow-up

1 question. What do you do with Mr. Gratz's assertion
2 that -- for example, for photographs, where we have
3 image recognition technology and it is possible to
4 recognize a photograph -- but it would be impossible
5 to have any kind of automated process because the
6 context would vary.

7 MR. KUPFERSCHMID: So for one, I will defer
8 to Jeff Sedlik, who's more of an expert on photographs
9 than I am. But I will say, like I said, you talk to
10 lawyers and the response is going to be, gee, how can
11 a computer program possibly do what we can do, which
12 is decide whether something is fair use or can be used
13 in a context. And I think it absolutely can.

14 It's just software programs are created by
15 humans. They can build that into the program to a
16 large extent. Like I said, is it going to be perfect?
17 No. But if we try to search for the perfect solution,
18 we will never get to where we need to be. I think
19 just -- I think the solutions -- using technological
20 solutions can get us pretty darn close to that though,
21 where we need to be.

22 MS. ISBELL: One more follow-up, just to get

1 to Mr. Gratz's point, how do you go about marrying the
2 technology to the right context? What's the best
3 mechanism to do that? Is that voluntary agreements?
4 Is that some sort of regulatory setting? Like how do
5 you address the potential mismatch between
6 technologies and OSPs?

7 MR. KUPFERSCHMID: Yeah. No, I think
8 certain voluntary agreements are the way to go and
9 preferably sort of voluntary agreements, not just by -
10 - that are one-sided, you know, an OSP for instance
11 just coming up with its own sort of technological
12 solution.

13 But rather, the stakeholders coming
14 together, perhaps aside -- outside the purview of the
15 government, where everything is going to be -- isn't
16 going to be in a transcript, okay, but bringing the
17 groups together is something we are very, very
18 supportive of. And all the different stakeholders, to
19 try to come up with a voluntary agreement that can
20 solve these technological issues.

21 MS. CHARLESWORTH: But I'm sorry. But
22 what's the connection between it being voluntary and

1 whether the technology works? I mean, you're
2 suggesting that you can't have a technological
3 solution that's somehow addressed by the government or
4 imposed or suggested by the government. But the
5 technology is the same whether it's under a voluntary
6 agreement or --

7 MR. KUPFERSCHMID: Yeah.

8 MS. CHARLESWORTH: I mean, why is that a
9 better way to solve the technology problem? If the
10 technology is working, why wouldn't it -- why
11 shouldn't it be broadly adopted by people or benefit
12 people who are outside of the voluntary agreements?

13 MR. KUPFERSCHMID: So I think there's
14 certainly a role for the government to play here and
15 we can talk about the STM provisions as well, if need
16 be. But in terms of trying to come up and -- come up
17 with those solutions and develop those solutions, I
18 think it's important that we do that sort of out of
19 the limelight of the government. I think we'll have a
20 better chance of getting that -- getting that
21 accomplished, number one.

22 And then, number two, the problem is if you

1 codify a technology, as Mr. Gratz correctly mentioned,
2 technology moves really rapidly. And you may be
3 codifying something that frankly just isn't as
4 effective as the next best solution that's going to
5 come along a few months or a few years later. And so,
6 that's a little bit of the risk with -- like I said, I
7 think there's a role for the government to play. But
8 I also worry about codifying something sort of outside
9 of the STM process here.

10 MS. TEMPLE CLAGGETT: Well, could you --
11 just to follow up a little bit, could you codify
12 something that's high level that would account for any
13 potential future developments in technology? So, for
14 example, that would encourage or require the use of
15 appropriate and reasonable technology to do x, y and
16 z, that would be able to accommodate new technologies
17 that might come on the scene.

18 And it might be appropriate and reasonable
19 with respect to whatever context that particular ISP
20 is in -- so unique to the ISP, but not something
21 that's a specific technology that is mandated for
22 everyone.

1 MR. KUPFERSCHMID: Yeah. So I think you can
2 do that. But then the effectiveness of that, I'm not
3 sure exactly how effective that would be.

4 If you look at the STM provisions that are
5 in 512 now, it was the intent I believe to come up
6 with that type of solution, to leave the door wide
7 open for changes in technologies and changes in the
8 Internet that might occur. And that provision,
9 because of it being tied to the safe harbor and
10 because sort of it was drafted so broadly, it really
11 hasn't been used virtually at all, so that's --

12 MS. TEMPLE CLAGGETT: Which was going to be
13 a follow-up question --

14 MR. KUPFERSCHMID: That's right.

15 MS. TEMPLE CLAGGETT: -- that I had on STMs
16 because does that suggest -- because it set up a very
17 voluntary kind of asking the various interested
18 parties to collaborate together, but it didn't
19 mandate or require it. Was that a factor in it not
20 actually moving forward in the 18 years since the DMCA
21 has been adopted or was there something else that has
22 caused that provision not to be able to, I think, do

1 what it was intended to do, which is to encourage the
2 collaboration and development of these types of
3 standard technical measures.

4 MR. KUPFERSCHMID: Yeah. I think the fact
5 that it wasn't mandatory -- obviously, if it was
6 mandatory, we'd have something. So -- and the fact
7 that it's almost like there's a disincentive, if you
8 will, because of the tie into the safe harbor. So
9 there's -- I think there's no incentive for the OSP
10 community to sort of come to the table under that
11 specific provision.

12 I don't mean that -- I don't want anybody to
13 misinterpret that, to say that the OSPs aren't
14 encouraged or aren't on their own going to create some
15 technology that might help the notice-and-takedown
16 process. But not under that provision, which is
17 important because there's language in there that says
18 that that technology needs to be sort of available in
19 a nondiscriminatory way and available to all types of
20 people and creators.

21 And as we heard yesterday, and I'm sure
22 we'll hear today as well, that's a problem. It's a

1 problem for -- the notice-and-takedown system is
2 working the worst or not at all for the individual
3 creator and for the smaller OSPs. That's exactly an
4 area where the STM provision, if we can get that up
5 and running and working, could really help those
6 groups.

7 MS. CHARLESWORTH: Well, so I had a follow-
8 up that just relates to what you said. I mean, one of
9 the concerns about voluntary measures that we heard
10 repeatedly in New York is that they tend to be the
11 product of larger scale entities and that smaller and
12 individual creators don't have access to participate
13 in those arrangements. And therefore, they do nothing
14 for them.

15 I mean, and you represent a lot of small
16 creators or individual creators. So I'm wondering, I
17 mean, how do they participate in a voluntary process?

18 MR. KUPFERSCHMID: So I'm hoping, frankly,
19 that's something the Copyright Alliance itself can
20 help out with because we represent so many individual
21 creators. My hope is that we can represent even more
22 individual creators going forward and therefore have

1 the same ability to sort of negotiate and discuss in
2 representation of those individual creators with OSPs
3 and other technology companies about potential
4 solutions.

5 So you do -- if you have a big -- you know,
6 be it a motion picture studio or a label or any big
7 organization, hopefully by the Copyright Alliance
8 bringing together all those individual creators under
9 one tent, we have that same ability.

10 MS. TEMPLE CLAGGETT: Thank you. Mr. Lyon?

11 MR. LYON: Well, first off, I'd disagree
12 that there are no technologists in this room. I
13 myself am the CTO at Fight for the future. Before
14 that, I worked on several startups and big tech
15 companies. I oversaw software engineering for some
16 pretty big teams. And I know about the challenges
17 that people who are building companies face -- startup
18 companies face -- when having to deal with the DMCA
19 already.

20 And what we have right now is a takedown
21 system that does employ technological measures which
22 are largely the automated Content ID-style takedowns

1 that you see on sites like YouTube. And those are
2 prone to false positives. And they are having a
3 devastating effect on our culture because people are
4 being censored. Those may be the exceptions. But the
5 exceptions are bad enough that we can't change the
6 rules to make it even more possible that this will
7 happen on a broader scale.

8 And so, when we talk about technological
9 measures, you're talking about forcing people to
10 employ -- who are creating startups -- measures that
11 do some kind of filtering and content matching. Those
12 are very expensive propositions. I do believe Google
13 spent tens of millions of dollars developing their
14 system.

15 And so, there's going to be -- even if the
16 Copyright Office paints in really broad strokes and
17 says, well, you know, just do some type of
18 technological measure within this framework, you're
19 still creating a situation where it's effectively a
20 one-size-fits-all, even if it's a very broad one-size-
21 fits-all. And that does not lend itself to small
22 startups who are trying to innovate in a very crowded

1 space with deeply entrenched players. Yeah.

2 MS. TEMPLE CLAGGETT: Yes. That's actually
3 something that we did here, as well as in New York, in
4 terms of the difficulty that some of the smaller ISPs
5 or OSPs might have in terms of employing some of these
6 technologies, the cost and burdens in terms of just
7 instituting them.

8 One of the questions that we had was whether
9 a system that did not mandate the use of those
10 technologies on startup OSPs, but waited until the OSP
11 got to a certain level -- we were talking about a
12 certain number of users, certain amount of content,
13 certain number of notice-and-takedowns.

14 But that's something that would allow a
15 startup company to certainly develop into the type of
16 company that might be able to have the resources to
17 employ those technologies. Is that something that you
18 would consider to be a reasonable compromise, where
19 you would treat a startup technology company different
20 than something that's been around and has the
21 resources to be able to employ it?

22 MR. LYON: Well, it would certainly be

1 better than not having such a provision. But really,
2 there hasn't been enough talk about preventing false
3 positives and wrongful takedowns of content with fair
4 use.

5 MS. CHARLESWORTH: Were you not here
6 yesterday? You were here.

7 MR. LYON: Oh, yeah.

8 MS. CHARLESWORTH: We did talk a lot about
9 that.

10 MS. TEMPLE CLAGGETT: And I'm going to have
11 a follow-up question about that as well. I think as
12 we go around, we'll hear from those who employ the
13 systems in terms of how they try to protect against
14 false positives.

15 How do you balance obviously trying to
16 protect against false positives while also trying to
17 be effective in terms of the use of automated
18 technology? Because I think -- I assume that you can
19 see that there would -- there is a need in some
20 circumstances to use automated systems to the extent
21 of the volume of infringement that's out there. So
22 how do you do that balance?

1 Are you saying that the goal should be no
2 false positives? Is there a middle ground that
3 appropriately reflects concerns about protection of
4 legitimate content but also the ability to be able to
5 go after the volume of infringement that's out there?

6 MR. LYON: Okay. I do believe there's a
7 good middle ground. And there are a lot of different
8 contexts where infringement happens. Certainly
9 BitTorrent sites are almost a hundred percent
10 infringing all the time. But things on YouTube are
11 frequently flagged just because somebody posts a
12 negative review and uses a product picture from that
13 company or something like that. So I do believe I
14 spoke about this yesterday.

15 But one potential fix for that is to have an
16 exemption for us to 30 seconds of copyrighted audio
17 and video for the purposes of fair use or
18 transformative work online. And I think something
19 like that would prevent a lot of the false positives
20 we're seeing right now.

21 MS. TEMPLE CLAGGETT: And I think yesterday
22 a number of companies talked about the fact that they

1 actually only went after, kind of on a voluntary
2 basis, full-length content. So that's something that
3 I take it that you think is an appropriate way to
4 incorporate considerations like you had mentioned in
5 an automated process to target full-length content.

6 MR. LYON: Full-length -- could you explain
7 the --

8 MS. TEMPLE CLAGGETT: Like so, as opposed to
9 an automated system that -- and I'll let those --
10 maybe Dean Marks or others who are here can discuss
11 how their system works -- but it seems like from
12 yesterday, several companies said that they adjusted
13 their system or their automated process to focus on
14 full-length content.

15 So, for example, a full-length film as
16 opposed to a clip of a film so that the actual
17 automated system would not even hit a clip of a film.
18 It would only identify and incorporate in its process
19 any time that there was a full-length infringing film
20 as a way to kind of consider things like avoiding fair
21 use uses and other legitimate content that might be
22 out there.

1 MR. LYON: Well, certainly if you're
2 triggering on a full-length film and there's no other
3 content or commentary surrounding it -- because a lot
4 of times, people will post a film but they'll also
5 have their own commentary on top of it. And there are
6 contexts where that is a fair use situation. So it
7 could -- it really could go either way.

8 MS. TEMPLE CLAGGETT: Thank you. Mr. -- I
9 think it's McNelis?

10 MR. MCNELIS: Yeah.

11 MS. TEMPLE CLAGGETT: Yeah.

12 MR. MCNELIS: Thank you. Just from my
13 experience as a small stakeholder using Content ID,
14 it's been a really wonderful tool for us and we
15 appreciate Google and YouTube making it available to
16 us. It certainly could be better. You know, there's
17 issues with it where, you know, it doesn't detect
18 things that Shazam would detect a lot faster, a lot
19 clearer. Maybe it's designed that way to address the
20 issues that Mr. Lyon brought up.

21 In my experience, the majority of things
22 that Content ID flags that one might interpret as a

1 false positive are generally interpretative or
2 generally the user making a claim they read something
3 on the internet. Somebody told them, oh, you can do
4 that, it's fair use. And to our perspective, most
5 cases, it's not.

6 You know, just because you want to take our
7 song and make a full-length whatever out of it, you
8 know, a lot of times, I would say 90 percent of the
9 time, 95 percent of the time, we look the other way on
10 a lot of stuff, not because it is in fact fair use but
11 because we determine internally that it's not going to
12 cannibalize our core business.

13 But we get to make that decision. You know,
14 it's about consent. It's about choice. It's about,
15 as creators, having the ability to determine where in
16 context we want our work used. For example, I
17 wouldn't want a song or an artist I represent to have
18 a song in a Thai sex video tourism promotion on
19 YouTube. Even if that video is not being monetized,
20 it's a highly offensive use to us and the artist in
21 question.

22 So to say that something like that is fair

1 use, it's just not. It's just not and it's
2 interpretative. And my understanding is that really
3 only judges can determine finally what actually is and
4 is not fair use. So this idea that there's these
5 false positives, I think that that may be an inflated
6 perspective because the only way to categorically know
7 what is fair use is to have it go to a court.

8 And I think that most people in my position
9 are using our best efforts and best judgment to look
10 at things honestly and go: "Is this something that's
11 going to affect our bottom line or is this something
12 that we can live with?" -- and we act accordingly.
13 Thank you.

14 MS. TEMPLE CLAGGETT: Thank you. Mr.
15 Miller?

16 MR. MILLER: Yeah. Good morning. So I was
17 one of the individuals who made a comment yesterday
18 about, at least from our perspective, our enforcement
19 programs are geared towards full-length content.

20 I mean, we obviously care about content
21 that's not -- that's infringing that's not full-
22 length. But that's really where we focus our

1 attention and it's really we primarily focus our
2 attention on, you know, the rogue -- really the folks
3 who are out there doing nefarious things and pirating
4 full-length copies of our content. Now, to a couple
5 of sort of the big topics that have been discussed
6 already, I think it might be helpful if I give you a
7 little bit of an understanding of how the systems work
8 that we use --

9 MS. TEMPLE CLAGGETT: Yeah, that would be
10 helpful.

11 MR. MILLER: -- and the human and automated
12 components to that as well, which are by no means
13 universal but it will give you an idea. And there are
14 some folks downstream here who might have a different
15 experience. The -- you know, first and foremost, I
16 just want to say that it's not a -- and I know this
17 point has been made before, but it's worth
18 underscoring -- it's not a situation where we create
19 bots and sort of send them out into the universe of
20 the internet and that's all -- you know, kind of like
21 releasing the sentinels in The Matrix and we never see
22 them again.

1 MALE: X-Men.

2 MR. MILLER: Oh, X-Men, okay. You know,
3 it's nothing like that at all. And in fact, I don't
4 really personally think about it as an automated
5 system or process that's sort of tweaked or over --
6 you know, that humans oversee. I think about it in
7 the opposite way, that it's -- you know, these are --
8 people are making policy decisions and business
9 decisions and that tools that happen to be automated
10 to make this whole process scalable are used along the
11 way.

12 So to be specific, if we wanted to target,
13 you know, streaming sites, let's say, who are, again,
14 streaming full-length copies of our films, we will --
15 and let's say we want to -- you know, maybe one of the
16 first things that we might do is create a list,
17 sometimes called a black list, which would be the list
18 of -- shall I continue?

19 MS. TEMPLE CLAGGETT: Yeah.

20 MR. MILLER: Okay -- which will be the list
21 of sites that we -- you know, that fit that kind of
22 description. We're not going out and searching the

1 entire internet, right? It wouldn't even be feasible.

2 And then, we could even create a white list which
3 would be sites that we definitely want to exclude or
4 maybe there are some licensees that we -- you know.

5 Then, we create search parameters, which may
6 be search terms and they could be inclusive as well as
7 exclusive search parameters, things we include and
8 definitely exclude, all of course with the idea of
9 narrowing the pool of what we're -- the universe of
10 what we're looking at. And then, you can use
11 automated tools to go out and use those search
12 parameters and target the target sites and use
13 technologies like fingerprinting technology.

14 And you can go out and look at a streaming
15 video and if it's a potentially infringing video, you
16 know, essentially take a snapshot of it in a way or
17 take a look and it'll create a fingerprint. That
18 fingerprint could be -- can be compared to a
19 fingerprint that's created from our original -- you
20 know, our copyrighted content. And if there's a match
21 to a significant threshold, a video match, an audio
22 match, both, maybe it's a percentage match, maybe it's

1 a timeframe that we're looking for at a particular
2 threshold or higher, then we'll send a notice or our
3 vendor will.

4 If it's below that threshold, it will get --
5 it will likely get routed for human review and
6 somebody will actually look at that, down to a minimum
7 threshold. And then, if there's -- if it's below a
8 minimum threshold, we won't even look at it. It's
9 just purged because, you know, we only have so many
10 resources and we're not -- you know, again, we care
11 about that content and very likely a lot of the stuff
12 that's below even the minimum threshold's probably
13 infringing at some point.

14 But we just don't have the resources. And
15 that's not, again, where we're really focusing our
16 energy, you know, because the massive amounts of
17 infringement online of our full-length content is such
18 a problem that that's really where we have to focus
19 our resources.

20 MS. TEMPLE CLAGGETT: Now, so -- but we have
21 heard I think a lot yesterday and some today about
22 this. Obviously, there's a concern about false

1 positives and I think we've heard, and probably will
2 hear a little bit more once we go around, about
3 studies in terms of percentages of improper notices
4 and things like that.

5 Do you think that those are inflated in
6 terms of the amount of false positives given how you
7 described at least what you're doing? Or is it just
8 coming from a different type of sender that doesn't, I
9 guess, employ the type of measures that you're saying
10 you do?

11 MR. MILLER: Well, yeah. I mean --

12 MS. TEMPLE CLAGGETT: Because there's some
13 disconnect in terms of you saying you're -- and I
14 think we've heard this before, yesterday -- focusing
15 on full-length content and going through these types
16 of both human review in the target analysis as well as
17 human review later on, and an overwhelming number of
18 false positives. So I'm just trying to see what's --
19 trying to figure out what the disconnect might be.

20 MR. MILLER: Well, I certainly have not had
21 the experience of 30 percent false positives. And
22 with respect to Professor Urban's study, you know, I

1 haven't see the data and it's obviously recently
2 released. So I don't know yet. I can't really answer
3 some of that question.

4 But you know, I'll also say again with
5 respect to that study, because we're still going
6 around the table here, you know, again -- and this
7 point was made yesterday -- it's focused on Google
8 Search primarily, I mean, 99-point-some percent of it,
9 I think. And that's -- it's a different part of the -
10 - you know, we were just talking about streaming
11 sites. There's Search. There's -- you know, there's
12 a whole bunch of different pieces of the content
13 protection ecosystem, if you will.

14 So, and that works a little bit differently,
15 obviously, the Google Search. No content is being
16 taken down unless, you know, you count the search
17 results as Google's content in a way. But those false
18 positives are -- seem high.

19 And also, just again, in reference to that
20 particular study, you know, some of that 30 percent
21 included things that were actually infringing
22 material. It just may not have matched the actual

1 underlying work. That doesn't mean, you know, that
2 there's speech that's being suppressed. And then,
3 maybe there's a glitch. And I'm not going to sit here
4 and say -- and I assume nobody else will say that
5 there's never computer glitches and something happens
6 and we send out millions of notices. Unfortunately,
7 that's going to happen.

8 But you know -- and we really do encourage
9 people to reach out to us and let us know, be it
10 through a counter-notification process or otherwise.
11 I mean, this hasn't really been said. But you know,
12 when we send out a notice or vendors send out a
13 notice, there's contact information there.

14 So if a user, for example, on the UGC side
15 feels like their content was taken down but they don't
16 -- they feel intimidated by the counter-notice process
17 or they want to remain anonymous, they can reach out
18 to us other than just sending a counter-notification.
19 And if there really was an error, we want to know
20 because we want to fix it so it doesn't happen again.

21 MS. CHARLESWORTH: On that, is there any
22 empirical evidence or have you studied -- you know,

1 done quality control studies in terms of removal,
2 identification of full-length content and the accuracy
3 of your systems or are there broader studies available
4 on that?

5 MR. MILLER: Well, candidly, there's
6 probably people around this table who might be better
7 suited to answer that question. But -- and to Keith's
8 point earlier, the short answer is I don't have that
9 certainly at my fingertips from an empirical
10 standpoint. I mean, I have some anecdotal, you know,
11 tidbits.

12 But to Keith's point, there also are people
13 who -- and companies who do this for a living, and
14 some of them may be represented here. But a lot of
15 them aren't, who should definitely be part of the
16 conversation because they could better answer that,
17 certainly better than I could.

18 MS. CHARLESWORTH: Okay. Well, if others
19 have comments on that score or a response on that or
20 in the reply comment phase, if there are -- if you
21 know of entities that would be interested in
22 addressing that question, that might be helpful to

1 getting to the bottom of some of my colleagues'
2 questions and mine.

3 MS. TEMPLE CLAGGETT: Yes.

4 MS. ISBELL: One last follow-up. In New
5 York, a representative from Warner Brothers testified
6 that of the -- I think they said 25 million -- notices
7 that they sent out in 2015, about 1 to 2 percent were
8 sent to search engines like Google. And the rest, the
9 majority were sent to P2P, followed by hosting sites
10 for download and then followed by streaming content.
11 Do you have any idea what your breakdown is? You
12 know, is search a large portion of the notices you
13 sent out or is it a smaller portion?

14 MR. MILLER: Search would be a larger
15 portion than 1 to 2 percent. You know, it can change
16 from year to year because, again, it's a -- it's my
17 point about this being a human process. You know, we
18 look at our program, how it's working, how it's not
19 working and we change it.

20 That's a -- search and P2P, I mean, P2P is
21 really an enormous issue, especially outside the
22 United States. I mean, it's an issue here too. But

1 that is a significant portion of the enforcement. And
2 you know, and then sort of the other OSPs are a
3 smaller piece. I can't give you percentages. I
4 could guess 25 percent, 25 percent and 50 percent,
5 search, OSPs and P2P.

6 MS. TEMPLE CLAGGETT: Thank you. Mr.
7 Murphy?

8 MR. MURPHY: So I want to respond to some of
9 the comments that Mr. Kupferschmid and Mr. Lyon had
10 mentioned about sort of --

11 MS. TEMPLE CLAGGETT: And could you just
12 announce your affiliation when you --

13 MR. MURPHY: Sure, with the Content Creators
14 Coalition -- about not being able to legislate
15 technology. And that in general, I agree with that
16 type of statement. But I think it's misleading, that
17 every technology begins with a set of requirements.
18 They call it a PRD, a product requirements document,
19 and engineers code to that every day and that's what
20 much of this innovation revolves around, that it's an
21 iterative process.

22 Technology evolves. So do media. So does

1 everything. And I think you did a great job yesterday
2 of reminding us the point about this being a balance
3 and about a dialogue. And the whole point of
4 technology is to create a balance and a dialogue.

5 Mr. Miller mentioned that the counter-notice
6 process might be an opportunity for lots of
7 improvement, that technology can flag something and
8 then people can respond to it. It can be iterative as
9 well, just like everything else is, that there is no
10 one technical silver bullet or one legislative silver
11 bullet. It's about creating systems and environments
12 and economies that are balanced and evolve as well.

13 One other point I want to make about Content
14 ID, I think Mr. von Lohmann may have been a little
15 misrepresentative of how much access artists have to
16 Content ID. And I think whatever technological
17 solution we're talking about, we need to separate the
18 mechanics of that process from the economics of that
19 process.

20 And one of the problems that we've
21 encountered with a lot of smaller artists is that the
22 actual business terms of being given access to Content

1 ID are extremely prohibitive. They in some cases
2 required artists to make available their entire back
3 catalog and even their entire future catalog. So it
4 created many economic burdens upon the artists just to
5 have access to a platform to be able to execute their
6 right. And so, as we're talking about these, to be
7 very diligent on the differences between the economics
8 and the mechanics of the system that we create.

9 MS. TEMPLE CLAGGETT: Thank you. Ms. Urban?

10 MS. URBAN: Thank you. So -- thank you very
11 much. There's a lot around the table that's already
12 been said that I can agree with based on the studies
13 that we did. So for example, what Keith said about
14 the importance of talking to technologists and talking
15 to those who are working with technologies I think is
16 incredibly important based on what we found because of
17 the section of online service providers who are in the
18 "DMCA Auto" or "DMCA Plus" categories using these --
19 using these technologies and because we talked to
20 large rightsholders, all the rightsholders are using
21 these technologies.

22 They were, as Mr. Miller described them,

1 using them in quite bespoke ways, in ways that worked
2 for their particular context. And one of the things
3 that was striking in talking with online service
4 providers was that employing a new technology isn't
5 necessarily simple for a number of reasons.

6 And I kept trying to think of requirements
7 or categories that you could create. For example, a
8 few minutes earlier, you know, where we were talking
9 about how much content someone has, how many resources
10 they have, those kinds of things. And it turns out
11 that those things don't necessarily track to
12 technological complexity.

13 So you might have a legacy system that's
14 really hard to retool, for example. And you might be
15 large, but you might not have a lot of revenue. So it
16 gets complicated. But so I think having conversations
17 that take those things into account is important.

18 I'm really glad Mr. Miller went through that
19 really nice description of the ways in which Paramount
20 thinks about this because I thought I was going to
21 need to do that. And I thought, oh God, I won't have
22 time to say anything else. It's very similar to

1 things we heard from other rightsholders. It also
2 differs from some rightsholders because, again,
3 they're bespoke.

4 But what we were able to pull out of that
5 were a number of things. One is that in the
6 appropriate context, automated technologies obviously
7 have a role to play. And there's actually a lot of
8 nuance and human judgment that goes into using them.
9 And that we pulled from that a set of best practices
10 that both the rightsholders and the online service
11 providers described to us, whether they're detecting
12 and noticing or whether they're processing notices.
13 Mr. Miller mentioned targeting to begin with. You
14 choose who you target.

15 And then, we see in the quantitative data
16 that the automated notices largely are targeting
17 largescale file sharing infringement, for example.
18 And -- yeah --

19 MS. TEMPLE CLAGGETT: And not to interrupt
20 you, but, kind of in terms of I mentioned the
21 potential disconnect I guess in terms of the headline
22 percentage from your study as opposed to the processes

1 that some here today and yesterday have said how they
2 use automated technology.

3 MS. URBAN: Right.

4 MS. TEMPLE CLAGGETT: One of the things that
5 was thrown out yesterday was that perhaps the people
6 here who -- the people who are here are those who've
7 kind of done some of the best practices that you've
8 identified and we're not actually hearing from those
9 who don't employ best practices.

10 But I'm trying to kind of get out, what is
11 the disconnect in terms of if you're looking at
12 whether automated systems are effective and
13 appropriate and should be encouraged? You do have
14 this concern that you don't want to focus on the --
15 just a stark number of, oh, that's going to cause 30
16 percent improper notices.

17 So I'm just trying to drill down into the
18 disconnect there in terms of the large number of
19 improper notices that you found versus what we're
20 hearing from some rightsholders here today and
21 yesterday in terms of the processes that they've put
22 in place to avoid improper notices.

1 MS. URBAN: Sure. So to begin with,
2 remember that the studies should be read together.
3 And the qualitative study reflects a great deal of
4 what has already been said around the table and that
5 we've heard about the detail of the practice and then
6 the nuances of the practice. The quantitative studies
7 are a separate look at a number of different
8 characteristics, not just the flaws in the notices. I
9 know that's gotten a lot of attention. And to be
10 frank, the fact that 30 percent keeps flying around is
11 a little frustrating when you're a researcher and
12 there's so much more in the paper.

13 But so, for notices to Google Web Search,
14 someone pointed out this is to Google Web Search. We
15 can see for that time period who was sending notices
16 to them and we can see some of the -- we can see some
17 of the successes. And I think what we can most learn
18 from it are some of the kinds of mistakes so that if
19 you want to improve automated systems or you want to
20 check your automated system, you can look at those
21 kinds of mistakes and see if there are improvements to
22 be had.

1 The other thing that you mentioned, Ms.
2 Claggett, that I think is really important again is
3 that, you know, everybody is not in the room. And
4 there are vendors and we've since had actually --
5 we've been contacted by some rights enforcement
6 vendors to talk about the study who -- we didn't say a
7 lot about this because we just didn't have -- our data
8 was too thin and I didn't want to say this.

9 But you know, there was a sense from some of
10 the online service providers that there are some
11 rights enforcement organizations that market
12 themselves based more on how many notices they send
13 than on these kinds of practices that we're talking
14 about. And I got a call from someone from another
15 kind of rights enforcement organization to verify that
16 and to say that, you know, he tries to market himself
17 on quality. And these are the six -- these are the
18 six, seven parameters that he thinks are really
19 important before you send an automated notice.

20 So I would hope that from the data, what we
21 can get out of that is a partial picture. It won't be
22 a complete picture, but a partial picture of the kinds

1 of ways that these sorts of systems can be employed,
2 can be improved. I don't know what the end result is,
3 other than best practices.

4 You know, maybe you have a series of high
5 level requirements that are voluntary for people to
6 build to, that kind of thing. But the idea is to be
7 able to sort of learn from this in order to move
8 forward with, you know, good practices if you've got
9 them, better practices if you don't.

10 MS. TEMPLE CLAGGETT: Yeah. And I think you
11 said you were kind of frustrated with the number being
12 the thing that is kind of floated around after the
13 study. I think the general public often wants just
14 kind of a sound bite of what it is. And we obviously
15 don't want to make policy decisions based on a sound
16 bite. We want to actually go behind the data.

17 One of the questions was -- what was the
18 conclusion of the study? Is it that automated systems
19 work, but could be improved, or that automated systems
20 should not be encouraged? And it sounds like you're
21 saying that automated systems do work. There are
22 certainly best practices that should be employed, but

1 that they are an appropriate way to try to address the
2 volume of infringements that are out there. Is that -
3 - is that correct?

4 MS. URBAN: It is correct. I would say they
5 are appropriate in their correct contexts and they are
6 appropriate when they are used properly. And again,
7 you know, we are really in a room of people who are
8 trying to use things properly. That the large section
9 of the online service providers who aren't engaged in
10 the high volume enforcement, I'm not sure they're
11 appropriate for those service providers.

12 And I'm not sure, you know, they're
13 necessarily appropriate every time that you want to
14 send a notice. But they certainly are appropriate in
15 their context. There is an issue -- there are several
16 issues of market power and competition that can come
17 up if you end up with systems that are concentrated
18 and, you know, you only have a few systems available.

19 We talk about it from more -- because we
20 talk to OSPs and big rightsholders, more of the OSP
21 perspective in the paper, the fact that Content ID and
22 Audible Magic are very dominant players in the

1 marketplace. And what that means, we weren't able to
2 do a good -- a study of the smaller rightsholders.
3 Keith has brought that up. We all agree that's
4 important.

5 But one of the things that we were able to
6 find out from just trying to talk to OSPs and also
7 look at public record elsewhere is that smaller
8 rightsholders don't necessarily have access to some of
9 these technologies. And that's another -- you know,
10 that's another question of market competition that I
11 think is important to think about.

12 MS. TEMPLE CLAGGETT: And then, just one
13 final question. We kind of alluded to this earlier
14 and also in previous panels in terms of the concept of
15 trying to approximate a fair use review in an
16 automated system. Do you think that that's something
17 that is possible?

18 You know, is a target of full-length content
19 plus targeting specific pirate sites, is that a good
20 approximation for fair use -- a fair use analysis? Do
21 you think that that's something that can be done in
22 kind of an automated system or process?

1 MS. URBAN: I don't -- I think it's
2 important to talk to technologists. I don't think
3 that there is any way to fully encode fair use. And I
4 doubt any copyright professor would say otherwise. I
5 take Keith's point that we also all like to be useful.
6 But it is a matter of context and judgment.

7 Copyright infringement is always a matter of
8 context and judgment with these sort of complex rules.
9 That said, you know, there certainly seem to be
10 heuristics and algorithms that you could use as well
11 as human processes, like Mr. Miller is talking about,
12 like how you target, how do you think about fan uses,
13 how do you think about tolerated uses.

14 I don't know that -- I would be skeptical of
15 anything that was entirely algorithmically based and
16 did not involve at least sampling to look back to have
17 some human review to get a sense of how close we are.
18 So I would say that you couldn't do it perfectly. You
19 certainly could I believe, based on what we learned,
20 develop systems that have some -- that have some
21 measure of reflection of those kinds of issues.

22 MS. TEMPLE CLAGGETT: Great. Thank you.

1 Mr. Riley?

2 MR. RILEY: So I'll start with one of the
3 observations that I made yesterday in that we're
4 talking about two different kinds of problems. One is
5 protecting fair use and the other is, for lack of a
6 more succinct description, the whack-a-mole problem.
7 In the protecting fair use problem space, I won't
8 spend much time on that.

9 I think we've spent a lot of time thus far
10 today talking about the challenges that technology
11 standing alone has because it is not sufficiently
12 sensitive to context, as Mr. Gratz mentioned. So I
13 think there's a solution there, which I will talk
14 about more in a later session, is properly calibrated
15 disincentives for notice senders.

16 So let's talk about the whack-a-mole problem
17 again. I hear the concerns that are being raised. I
18 want to think about them a little bit more,
19 particularly for smaller interests, those who aren't
20 part of sort of the millions of notices sending
21 systems. But what I'm hearing for solutions to that
22 problem thus far continues to sound wrong to me.

1 So I'm speaking for Mozilla here. We are a
2 nonprofit organization. At the core of our mission is
3 protecting the open internet and the global flow of
4 information that is part of that. And this package is
5 central to so much socioeconomic value today. And
6 from that point of view, our red line is very clear
7 against legal mandates to use technology to block
8 communications and content and to interfere with that
9 open flow. So I do very much believe there's a role
10 for technology in this space, whether it's voluntary,
11 whether involved in sending and receipt of processing
12 notices. I can see that.

13 But I strongly caution against mandating
14 technology, particularly for blocking. And that
15 caution should be amplified by an order of magnitude
16 when hope for success is predicated on the invention
17 of technology that engineers say is impossible.

18 MS. TEMPLE CLAGGETT: Thank you. Mr.
19 Rodriguez?

20 MR. RODRIGUEZ: Thanks. Good morning. So
21 just a couple of quick comments based on what's been
22 stated already. So you know, first off, it's great to

1 be here as a technologist and someone who has spent 20
2 years in building copyright identification
3 technologies. And in particular, our role in both a
4 provider of that technology to broad markets,
5 governments and the like and also being a provider of
6 takedown services and the like on behalf of e-book
7 publishers.

8 And so, we basically have a foot in both
9 worlds. We're building technologies that provide
10 highly accurate, extremely-low-false-positive
11 identification technologies but we're also leveraging
12 that infrastructure on behalf of e-book publishers.
13 So we see the tension that arises there.

14 Just an overall general comment as well,
15 it's great to have this conversation and to have -- I
16 wish there were more technologists in the room and
17 hopefully in the future discussions whether that's
18 around STM or others. We can bring other people to
19 the table.

20 But I wanted to just basically reiterate
21 that we shouldn't be making assumptions about what's
22 possible with technology. This is a market like many

1 markets, where there are people that profit largely
2 outside of this room based on the inefficiency of the
3 market. And so, there are people that are highly
4 motivated to make sure that content identification is
5 inefficient and the like.

6 So moving forward to really the points that
7 have been brought up previously, I want to make two
8 points, which is that we've been talking about false
9 positive, and that was a point that was brought up
10 earlier. I just want to make the distinction between
11 a false positive of identifying the content and then a
12 false positive of what it means as it relates to
13 context and fair use. And so, technologies do have a
14 role to play in fair use.

15 But we also believe, because we operate
16 these services, that there's a human element. So to
17 be clear, we know that it can be done better and we're
18 doing it at an efficient scale. But in essence, right
19 now, what we're not seeing is people wanting to come
20 to the table -- you know, and there are people like
21 Jeff and others that -- in the Copyright Alliance,
22 that are promoting this. But we need to see more of

1 that so people actually consider what technologies can
2 be brought to bear.

3 MS. CHARLESWORTH: I had a follow-up. In
4 terms of your experience, you talked about human
5 review or the human element in applying technologies.
6 Can you elaborate on that? And in particular, what
7 measures you see in your experience in terms of
8 addressing context and fair use. Like what do you
9 deploy or how does your technology work within that
10 framework to try to identify fair uses?

11 MR. RODRIGUEZ: Okay. Yeah, I'd be happy
12 to. So just a very 10-second background. As opposed
13 to fingerprinting, which will identify a class of
14 content that will give you no indication as to who the
15 originator is, what the licensing rights are and all
16 the associated metadata with that instance of the
17 content versus the class of the content, we're able to
18 be much more efficient about how we deploy the human
19 resources.

20 So when we do encounter content, we're able
21 to basically backtrack up to where the licensing
22 rights for the specific instance of the content and

1 then apply the human resources to basically review
2 that prior to issuing takedown. And so, that's a
3 central element to how we operate.

4 Again, to be clear, I think that -- and I
5 don't want to be prescriptive as it relates to
6 technologies. I think there are multiple technologies
7 that can be brought to bear. But a technology like
8 ours, which is essentially like a VIN number, right?
9 This problem's been solved for cars and counterfeit
10 parts for vehicles. There's a VIN number that's
11 stamped into the car, into the engine block. We're
12 doing the same thing for media and for imagery.

13 And so, we're able to backtrack up and
14 deploy those human resources in a really efficient
15 way. And that's basically a combination of basically
16 a front-end system that basically is doing the
17 searches and then a backend system that is doing the
18 human review, similar to how it's been previously
19 described.

20 MS. CHARLESWORTH: Thank you.

21 MS. TEMPLE CLAGGETT: So what is -- could
22 you describe what is the percentage in terms of

1 automated versus human review? How does that work
2 again?

3 MR. RODRIGUEZ: So from an automated
4 perspective, the actual search itself is largely
5 automated. But every notice that we issue, there's a
6 human review step. So, but we're operating with such
7 high confidence based on the technology that the human
8 review step, we're able to deploy those resources very
9 efficiently. So it's more of a rifle shot would be
10 maybe a way to describe it.

11 And this is particularly important to the
12 small rightsholders because -- it's been brought up
13 previously and we see this time and time again -- if
14 you're one of the 8,000 Content ID participants, this
15 is great. You have a tool set at your disposal. But
16 for the small rightsholder, they can't get in that
17 door. And that doesn't mean that they work and their
18 efforts and their passions are any less valuable.
19 They should be afforded the same right. And so, you
20 need an efficient solution to support the smaller
21 rightsholders. And that's been part of our focus.

22 MS. TEMPLE CLAGGETT: Great. Thank you.

1 Mr. Roslof?

2 MR. ROSLOF: Thanks. I wanted to speak out
3 against the idea of amending the law to require
4 service providers to implement filtering systems.
5 From our perspective, as a small service provider,
6 requiring filtering would be, first of all,
7 unnecessary.

8 We don't have a huge problem with copyright
9 infringement on our sites, which --. Our sites are
10 geared toward hosting public domain and freely
11 licensed content. When users do mistakenly upload all
12 rights reserved copyrighted material, it's taken down
13 fairly quickly by the volunteers on our sites who
14 monitor for that. And as a result, we receive very
15 few DMCA notices and even fewer valid DMCA notices.

16 And second of all, requiring filtering would
17 be unduly burdensome. If we had to proactively
18 monitor for infringement ourselves, we wouldn't be
19 able to rely as we currently do on our volunteer
20 efforts that are very effective. And we also can't
21 afford to implement a system. I think what Content ID
22 costs to create is our entire annual budget. And as

1 far as I know, there is no existing system that we
2 could purchase that would fulfill all our needs. We
3 host a wide variety of content, including text, video,
4 audio and images in a wide variety of file formats.
5 And I don't think there's any existing solution that
6 could handle all of that.

7 Second, I wanted to also address the point,
8 Ms. Temple Claggett, that you mentioned before about
9 maybe filtering could be required for some service
10 providers but not others. And I'm not sure that
11 there's a way to draw that line very well. If it's
12 based on like -- if it's based on size or number of
13 users, we have tens of millions of files and
14 encyclopedia articles. We have over 15 billion page
15 views per month. We have millions of registered
16 accounts. I'm just not sure -- like where would we
17 fit into that?

18 MS. TEMPLE CLAGGETT: Thank you. Mr.
19 Sedlik?

20 MR. SEDLIK: Thank you. Well, as you know,
21 the PLUS Coalition exists because the Copyright Office
22 came to industry and suggested that we form a

1 coalition for all the stakeholder groups in the visual
2 arts community -- those who create, preserve,
3 distribute and use visual works -- to get together to
4 collaborate on creating a system for identifying
5 rightsholders' images and also to create a system for
6 machine-interpretable rights for images. And that's
7 what the PLUS Coalition is, the museums and libraries
8 as well as the creators and others collaborating on
9 that goal. And I'll talk about that a little bit
10 later in the next session.

11 However, this connection between
12 rightsholders, rights information and their work is
13 essential. And that's where technology can come in
14 and solve quite a few problems. In the takedown
15 process, you could use an identifier to identify the
16 work that you're referring to. I mean, in the
17 statute, as I mentioned yesterday, it says that you
18 must provide "information sufficient to locate the
19 material." That doesn't have to be a URL. That can
20 be the identifier for the image. That can be the
21 image itself. You submit the image and as long as you
22 can use that image to easily locate the work in your

1 system, then that's "information sufficient to locate
2 the material."

3 MS. TEMPLE CLAGGETT: Just to back up, so
4 you're saying if you send in your notice a copy of, I
5 don't know, the image itself or the metadata in the
6 image, then from your perspective that would require
7 the service provider to basically search on their,
8 website for that image to take down?

9 MR. SEDLIK: That can be employed as a
10 voluntary measure or otherwise. However, as we've
11 seen on YouTube, it works quite well. If I was to go
12 right now and upload any video there, it's going to
13 tell me whether that video matches any other video
14 that's been registered with them.

15 This is using it in a different way. It's
16 not really used for enforcement or to limit use or to
17 limit access. It's to link the work to the rights
18 information and the rightsholder so that in a
19 situation where you have a takedown notice, the
20 information in the takedown notice can actually link
21 to our global image information network, the PLUS
22 Registry, to discover who owns the image, who has --

1 who created the image, who has the rights to license
2 the image and also what the rightsholder asserts are
3 the rights available. And I'm not commenting on any
4 fair use issues. That's a separate issue.

5 But whether it's a Creative Commons license
6 and the rightsholder wants to push that work out there
7 and make sure that it's used to the maximum for the
8 benefit of society, that's great. Whether it's a
9 commercial rightsholder who wants to be compensated,
10 that's great as well. We don't really take any role
11 in that. But we do feel that this could be very
12 helpful to use for filtering to detect repeat
13 infringement, which is a huge concern of the
14 independent rightsholder who is constantly dealing
15 with this whack-a-mole problem. We cannot keep our
16 content down.

17 So the image recognition could be used
18 there. And as well, the availability of this
19 nonprofit, open system, available through an API to do
20 image identification, can remove a lot of the burden
21 from startup ISPs from developing their own
22 technology. I mean, you know, the bigger companies

1 can develop their own systems, as they have done. But
2 as the Copyright Office communicated to us, there
3 needs to be something that anybody can use that's
4 nonproprietary that can be built in to any system.
5 And that's what we're doing.

6 I will close with this: individual artists'
7 image metadata is their primary standard protection
8 measure. Rightsholders put information in their
9 images in order for people to be able to discover the
10 information about their images. And when OSPs remove
11 that information, it breaks the connection between the
12 rightsholder and the rights and the work and destroys
13 the ability for the rightsholder to be able to sustain
14 their work and enjoy their exclusive rights throughout
15 the copyright life of the work.

16 MS. CHARLESWORTH: On that point, is that a
17 common practice? And could you comment if so, or if
18 not, elaborate?

19 MR. SEDLIK: The use of embedded metadata is
20 extraordinarily common. There are open organizations.
21 For example, the IPTC, at IPTC.org, has an open
22 working group that anyone can participate in to create

1 standards and approve standards for the type of
2 information that goes into images and how it goes into
3 images and how it can be read from images. And if you
4 look at any application that's used to create or
5 manage images, you can find a way to get metadata in
6 and you can find a way to read that metadata.

7 Even consumer-level cameras have a copyright
8 field in them so that the creator, consumer,
9 professional, enthusiast can put their information in
10 that image. So it is widespread. The IPTC has been
11 in existence I think since 1967. PLUS
12 this] as well in our process, completely open to all
13 participants. And we had participation from all
14 sectors.

15 MS. CHARLESWORTH: I was also interested in
16 the stripping, the removal of the data. In your
17 experience, is that common?

18 MR. SEDLIK: Oh, I'm answering the wrong
19 question.

20 MS. CHARLESWORTH: No, no. Well, I think it
21 was helpful to explain what the data is.

22 MR. SEDLIK: Yeah. So the embedded metadata

1 is somewhat fragile. If an image is resized, that
2 metadata can be lost. It's just a quirk of the
3 technology. But there are commonly available
4 processes to -- when you resize an image, to extract
5 the metadata and reinsert it into the newly resized
6 image.

7 What we see is OSPs remove the metadata from
8 the image for a number of reasons. I would say at the
9 top of that list is to increase the speed of their
10 page loads, so that when you have a lot of images
11 loading, you don't have the extra burden of the
12 metadata that's in an image, which is a small
13 percentage of the image size. But collectively, when
14 you look at it, it can add up to a lot of data.

15 So we unfortunately see the routine
16 stripping of this metadata in the images that are
17 publicly displayed, which means that nobody can get at
18 that information. The rightsholder has satisfied
19 their -- I don't think it's a legal burden -- but
20 their professional burden as a rightsholder to insert
21 their information into the image so that it
22 rights information] can be discovered.

1 And then, it's stripped out especially on
2 social media but in other platforms as well. And it
3 is as simple as extracting it in the resize process
4 and reinserting it back into the image to maintain it.
5 Most applications do this. There is another concern,
6 and that is privacy. So there could be, for example,
7 GPS information in there that the photographer, who's
8 a photojournalist, does not want to be discovered.
9 But usually, they are going to eliminate that at the
10 upload stage before they distribute the image.

11 MS. CHARLESWORTH: And do you know whether
12 that process of removal has ever been challenged or
13 are there any discussions with any of the services
14 that engage in this, legal or otherwise, in terms of -
15 - because it sounds like, from what you're saying,
16 it's a fairly pervasive practice.

17 MR. SEDLIK: It is a pervasive practice.
18 And there are a number of -- there have been a --
19 there's been litigation around this issue, but no
20 definitive case law yet. But it is a hypercritical
21 issue at this point because the creators are losing
22 control over their images. Once you put it up there

1 [on the web] and the information is removed, it then
2 becomes virally distributed without your information
3 in it and you lose control over it and you can't --
4 you're basically competing with copies of your images
5 that are floating around out there in the ether.

6 And so, this has been raised in a number of
7 copyright infringement lawsuits in association with
8 infringement lawsuits where it [the removal] could
9 possibly be done with the intent to induce, enable, or
10 facilitate infringement. Oftentimes, this occurs just
11 in the resizing process for the purpose of speeding
12 page loads and without consideration of the effect on
13 the rightsholder.

14 MS. CHARLESWORTH: Okay. And I guess I had
15 -- I'm sorry.

16 MS. TEMPLE CLAGGETT: Go ahead.

17 MS. CHARLESWORTH: I have another question.
18 Has there been any progress made in terms of
19 integrating image recognition and so forth into
20 automated -- like a Content ID system? -- my
21 understanding is it's not part of Content ID
22 currently.

1 MR. SEDLIK: I don't think that it's part of
2 Content ID currently. But certainly, that's what the
3 PLUS Coalition is doing. Digimarc also has --
4 Digimarc has a system that doesn't involve image
5 recognition necessarily. They might use it in part of
6 their practices.

7 But with Digimarc, you take an identifier
8 and digitally watermark it into the image. It can't
9 be seen but it can be perceived by machines. With
10 image recognition, it is surprisingly effective. You
11 and I could stand shoulder to shoulder, take pictures
12 of Mount Rushmore and image recognition would be able
13 to tell the difference between our two images. But
14 it's not as precise a method as using identifiers.

15 So what we're doing at PLUS is we're using
16 identifiers, unique, persistent identifiers at the top
17 level that link to a record that gives you information
18 about the author and the asset itself and then also
19 links to information about the rights for that asset.
20 And then, if there is no identifier in the image
21 because it's been lost or removed, perhaps there's a
22 Digimarc in the image that has that identifier in it.

1 And if not, you've got image recognition.

2 And so, you throw this image against the
3 PLUS Registry. We'll do an image recognition search.
4 Currently, we use PicScout's technology to match it
5 against our closed database of image fingerprints and
6 it will return information from matching records in a
7 surprisingly accurate way, even if you're searching by
8 only part of the image or it's been flipped or
9 colorized, combined with other images, there's type
10 over it. You take your cellphone and take a picture
11 of a billboard and there's three images on it, it will
12 recognize all three images, give you the rightsholder
13 information for all three, that sort of thing.

14 So the technology is there and ready to use.
15 And there is a voluntary initiative by all the
16 stakeholders to get together and come together and
17 create a solution that doesn't necessarily involve
18 revising the statute.

19 I would say however that with regard to
20 standard technical measures, and in particular
21 copyright management information, that everyone would
22 benefit by the Copyright Office defining what

1 "Copyright Management Information" is for the various
2 different types of media, rather than relying on the
3 general statements in the statute because there's
4 litigation over that as well. And it would very much
5 help if the Copyright Office was the keeper of the
6 definitions for each media of what constitutes
7 "Copyright Management Information."

8 MS. CHARLESWORTH: Thank you.

9 MS. TEMPLE CLAGGETT: Thank you. Ms.
10 Seidler?

11 MS. SEIDLER: Hi. Google Search has come up
12 a lot in these discussions and yesterday Mr. von
13 Lohmann mentioned that it wasn't really appropriate
14 for any technological solutions to be applied. And I
15 know Google Search receives a lot of DMCA takedown
16 notices. And I wanted to make a suggestion as to
17 something that doesn't involve fingerprint ID or
18 anything. But the process that occurs with Google
19 Search when you send a takedown notice is you send it.
20 Google generally removes the search result.

21 But in its place, they put language that
22 basically says we've removed this search result

1 following a DMCA request. And then, in place of that,
2 they put a live link to the Lumen Database, with an
3 actual full copy of the DMCA notice. And in that
4 notice, the original link exists. You can click it
5 and go to the pirated content. So it's kind of like a
6 game of, you know, shuffling things around.

7 Google removes the link from the search
8 results, yet provides a link to the document that
9 actually has the same link in it. So it may be
10 following the letter of the law. But I don't think it
11 follows the spirit of the law. And I'm not suggesting
12 that the Lumen Database shouldn't exist. I think it's
13 important and I know Berkeley Law used that
14 extensively in their most recent study.

15 But what I would suggest is maybe using
16 technology to redact a little bit of the URL. And
17 researchers who really want to go and look at the
18 information could go to Lumen and actually get the
19 DMCA notice. But it doesn't need to be so convenient
20 that a user looking for pirated content can find it so
21 easily.

22 I know Google probably processes all these

1 takedown notices using technology and they fill in the
2 language using technology and these links using
3 technology. So why not when they post this DMCA
4 notice, redact a portion of the link so that it
5 doesn't link back to the pirated copy we're all trying
6 to get rid of in the first place?

7 MS. TEMPLE CLAGGETT: And this might be a
8 question for Mr. von Lohmann. But does this happen --
9 I mean, is this automatic, so every time you send a --

10 MS. SEIDLER: Yesterday before I came in, I
11 did a search for the movie Carol. I did "watch movie
12 Carol online." First page of results, it says at the
13 bottom, "In response to multiple complaints we
14 received under DMCA, we have removed seven results
15 from this page. If you wish, you may read the DMCA
16 complaints that caused the removals at
17 LumenDatabase.org," and then there are live links to
18 all the different DMCA notices. You go to those DMCA
19 notices. All the URLs are there un-redacted. And I
20 can click on those, right click and be taken to the
21 original infringing content.

22 MS. CHARLESWORTH: So it's convenient.

1 MS. SEIDLER: Yeah. It's very convenient.
2 I mean, I'm not saying everybody uses it, does it or
3 whatever. But I just think this is an example of sort
4 of a no-brainer in terms of fixing something that's
5 broken. And we could do so in a way that we wouldn't,
6 you know, affect the Lumen Database and the important
7 work that's done there. But we would make it less
8 easy for people searching for pirated content to find
9 it using Google Search.

10 MS. TEMPLE CLAGGETT: Thank you. Mr.
11 Taplin?

12 MR. TAPLIN: I think we all have to
13 acknowledge the volume of takedown notices requires
14 automation. And so --

15 MS. TEMPLE CLAGGETT: It's on. Yeah, there
16 it is.

17 MR. TAPLIN: I'm sorry. We all have to
18 acknowledge that the volume is so high that we need
19 automated tools. And I have to just say that Ms.
20 Urban's study, which has been put forth as the gospel
21 for two days, has been pretty much debunked by Thomas
22 Sydnor at the American Enterprise Institute. The 37

1 percent number is just taken out of air. And we
2 should not take that as the reality of the world.

3 Secondly, Content ID really works. Six
4 months ago, there were 44,000 ISIS videos on YouTube
5 and we had a really good discussion, facilitated by
6 Mr. von Lohmann, with the YouTube people and they
7 began to use Content ID to flag those videos visually
8 and now there are hardly any on.

9 Now, this does not mean that humans don't
10 come into the thing because if there was a news piece
11 from CNN that also happened to have an ISIS flag in
12 it, it was put into a human queue and then put back on
13 the system saying this was a news story. This was not
14 an ISIS video. So I think this notion that it's
15 either/or is not correct.

16 Finally, I have to just say I really, for
17 the first time, find myself in agreement with Mr.
18 Lyons (sic) about something. He is a great
19 technologist because he built an automated script that
20 comment bombed the Regulations.gov site when you
21 requested comments on this hearing and boasted that he
22 brought down the site completely. Now, whether that's

1 a denial of service attack or not, I'm not sure. But
2 he must be really a good technologist to have built
3 that. So I have to give him props for that. Thank
4 you.

5 MS. TEMPLE CLAGGETT: Mr. von Lohmann?

6 MR. VON LOHMANN: So I want to echo a lot of
7 what was said today about the important role
8 technology does have to play. And in fact, contrary
9 to what Ms. Seidler suggests, I never suggested that
10 technology doesn't have a role to play in Search; in
11 fact, quite the contrary. Google has made major
12 investments in making the notice-and-takedown process
13 on Search more efficient. We've been doing that for a
14 number of years. We did that in collaboration with
15 rightsholders. RIAA and Warner Brothers were our beta
16 testers for the efforts that resulted in the TCRP
17 trusted copyright removal program, that now processes
18 well in excess of 90 percent of all the takedown
19 notices we receive on Search.

20 That was a collaborative effort to figure
21 out how can we make this process work better, faster,
22 more efficiently. We together came up with a lot of

1 improvements that we implemented and that is why we
2 are able to process 3 million URLs a day in less than
3 six hours on average. That is the result of a lot of
4 technology and a lot of collaboration, which is
5 frankly what the DMCA was intended to encourage. So
6 that has scaled well.

7 I disagree with people who think that a
8 large volume of notices is a sign of failure; in fact,
9 quite the contrary. If the notices weren't doing any
10 good, if it was too expensive to send, we would expect
11 the numbers to be falling, not rising. And in fact,
12 we see them rising because the systems are more
13 efficient. We've heard from Digimarc. We've heard
14 from Paramount. We've heard from others that they are
15 able to search the Web more efficiently than they were
16 before. So I think that's all to the good.

17 Let me say a few things about false
18 positives in the few seconds that I have left. On the
19 false positive question -- and this echoes what
20 Jennifer Urban has said -- we have found a lot of the
21 volume of takedowns we get for Search are things that
22 are not in our index at all. So 83 percent of the

1 URLs we were sent in the month of April were not in
2 our index at all, which means we could never have
3 showed those to any user ever for any query because
4 they aren't in the index. We accept those URLs,
5 partly because rightsholders have asked us to, partly
6 to make sure those links don't get in the index in the
7 future. But it's a mistake to assume -- I mean, I
8 think that's a kind of false positive in the sense
9 that none of those links were ever eligible to appear.
10 And finally --

11 MS. CHARLESWORTH: Could I --

12 MR. VON LOHMANN: -- on Content ID, just
13 quickly, because it's been discussed and I think it's
14 relevant to the question of false positives.

15 First, Mr. Murphy is just flat wrong. It is
16 not the case that you're required to license your
17 catalog in order to use Content ID. That's just not
18 the case. On Content ID, less than 1 percent of the
19 Content ID claims are disputed by YouTube users. So
20 disputes are relatively infrequent. Now -- as a
21 percentage. But of course that's still a big number
22 because of the number of videos and the scale of the

1 platform. So I don't mean to -- you know, it's a real
2 issue we're working on to try to reduce that number
3 further.

4 But what's interesting is of those disputes,
5 we find 25 percent of those disputes, the
6 rightsholders themselves retract. In other words, the
7 rightsholder, using Content ID, recognizes that that
8 was a false positive. And a further 25 percent are
9 expired. In other words, if a rightsholder does not
10 reaffirm the match within I think 30 days, that match
11 will expire. So overall, half of the disputes that we
12 get on Content ID, rightsholders either admit it was a
13 false positive [by retracting] or by failing to
14 reassert, essentially admit the same thing.

15 So false positives exist and they are a real
16 issue. And Content ID, we try hard -- I'm sympathetic
17 to the question. It's not perfect. We're working
18 hard to make it better. But even Content ID, over \$60
19 million to develop, hundreds of engineers working on
20 it over more than eight years. It's not perfect. We
21 try hard and we, I think, are doing a good job. But
22 we're trying hard to do an even better job.

1 MS. CHARLESWORTH: Yeah. So a few follow-
2 ups. Maybe I'll just put them all out there and then
3 you can answer in the order you choose. I was
4 interested in your response to the Lumen issue that
5 Ms. Seidler raised and whether that's something that
6 could or should be addressed, whether you agree with
7 her perception.

8 On Content ID, I'm really interested,
9 because we've heard a lot of back-and-forth and there
10 seems to be some disagreement about who is eligible to
11 participate. And if not everyone's eligible, why not,
12 in terms of any sort of -- anyone who's willing to
13 open an account. And whether that's something that
14 could be considered in the future.

15 And then, the third question I had was --
16 you mentioned 83 percent of the URLs you're sent are
17 not in your search results. And I was just wondering
18 if you were investigating that and if you had an
19 explanation, at least from your point of view, as to
20 why that was?

21 MR. VON LOHMANN: So I guess taking them in
22 reverse order, with respect to the 83 percent figure,

1 I don't know why. Obviously that's the enforcement
2 vendors, the agents, the rightsholders who are sending
3 us those notices. So I'm not really in a position to
4 speculate. I do wonder sometimes if there is a little
5 bit, at least in some parts of that market, an
6 incentive to emphasize volume. As Professor Urban
7 mentioned, I have also heard that from certain parts
8 of the community.

9 The enforcement vendors have come to me and
10 said things like your transparency report is great but
11 it makes people -- it gives them an advantage by
12 sending a lot of notices and that's causing some
13 vendors to emphasize quantity over quality. And
14 again, I'm not in a position to know whether that's
15 true or to what extent that influences it. I do --
16 you know, rightsholders told us when we developed the
17 TCRP system that they were worried that we would --
18 their crawling would be faster than our crawling.

19 In other words, that there would be
20 infringing links that Google would not pick up and
21 include in its index before the rightsholder and their
22 enforcement agents were able to detect [and report]

1 them. And so, we said, okay, if that's a concern,
2 we'll accept URLs, even if they're not in the index on
3 the theory that we don't want to add those later.

4 And now, I think, as you've heard from Mr.
5 Miller, it's quite clear that the enforcement vendors
6 crawl much more quickly than we do. And I think that
7 83 percent is -- at least part of that 83 percent is
8 because rightsholders are finding infringing URLs on
9 the Web far faster than we are. So --

10 MS. CHARLESWORTH: So is that a good thing
11 then? Because it sounds like it's proactive -- like
12 it eliminates the link before it goes onto your site.
13 I mean, is that a success maybe?

14 MR. VON LOHMANN: That is -- I think that's
15 an interesting empirical question, right? It is a
16 success if that link would have appeared in the
17 future. It is not a success if that link would not
18 have actually ever entered our index. And as to the
19 percentage of how much of that 83 percent is in the
20 first bucket or the second bucket, I don't know.

21 As I say, once we have the URL, we're not
22 going to serve those in results. You know, and as I

1 say, I'm happy to have them. We use the -- I can talk
2 about more in the next panel -- we use those DMCA
3 notices for lots of other things. We don't just use
4 them to block in search results. We use them for a
5 demotion signal. We use them to block ads. We use
6 them for -- you know, they're valuable data for a lot
7 of other purposes.

8 So I'm not suggesting that we want to reject
9 those 83 percent. I'm just pointing out that when
10 people see the ever-rising number of URLs sent to us,
11 they often draw conclusions that are not as simple as
12 perhaps they seem on first blush.

13 So on the Content ID point, as I mentioned
14 yesterday, it is an enterprise-level tool. It's a
15 highly complex system. It's a very powerful system.
16 We have over 8,000 partners who use it. And among
17 those partners are many partners who in turn represent
18 smaller and independent creators. So there are
19 independent labels. There are organizations that
20 represent multiple categories of smaller creators.
21 There are multichannel networks which also in general
22 represent small creators.

1 So there are lots of ways for smaller
2 creators to have access to Content ID through an
3 intermediary effectively. And that's -- you know, as
4 I say, we're trying hard to expand access to Content
5 ID. But it's not a system that I think a rightsholder
6 -- a small rightsholder who doesn't want to spend
7 hundreds of hours becoming expert, both in the legal
8 question and in the functioning of this system, it
9 doesn't really make sense in that context. So as I
10 said earlier, you are not required to license your
11 content in order to use it. But it is an enterprise
12 system that's not well suited for everybody.

13 MS. CHARLESWORTH: What do you mean by an
14 enterprise system?

15 MR. VON LOHMANN: It's a very complicated
16 system. It requires you to understand a lot to learn
17 the system. It's not easy to use. That's because it
18 controls a lot of complicated things -- duration, you
19 know, certainty of the match, territory, nature of the
20 rights, is it audio, is it video. You have to exclude
21 content that you don't own.

22 We've run into this many, many times where

1 people claim content, not realizing that within their
2 content is content that's owned by someone else and
3 their claim will take down that other party's content.
4 There are disputes that have to be resolved, both from
5 users and from other rightsholders.

6 So we have lots of situations in Content ID
7 where different rightsholders will attempt to claim
8 the same content. And we already have an issue of
9 abuse in Content ID that we work very hard to prevent
10 where people are asserting rights over content they
11 don't actually own. So it's a system that is not a
12 consumer-level system for all of those reasons. So --

13 MS. TEMPLE CLAGGETT: And so, how do you
14 determine who will be eligible for Content ID?

15 MR. VON LOHMANN: So there are a number of
16 factors we look at. Basically, we're trying to ask
17 ourselves is this a rightsholder for whom Content ID
18 would be useful. And that turns on how much -- how
19 often does the content appear on the platform. Part
20 of that -- and we also want to ask -- does this person
21 show a sophisticated understanding of the legal
22 concepts, right?

1 So we look at things like have they sent us
2 DMCA notices, how many, how accurate have they been.
3 You know, what is -- for how many videos on the
4 platform, right? So the idea is we want to figure out
5 is this a person for whom Content ID makes sense.
6 Obviously we have a notice-and-takedown system. If
7 you -- if your needs are to remove, say, 10 or 20
8 videos a year, we don't think Content ID is a right
9 fit for you.

10 On the other hand, if you represent works
11 that you're taking down thousands of times a day,
12 well, then that's something that may very well be the
13 right tool for that.

14 MS. CHARLESWORTH: Earlier we heard -- I
15 think it was Mr. Kupferschmid -- talking about maybe -
16 - I don't know if this is his concept, but having sort
17 of a collective management of takedown claims or at
18 least discuss an issue of -- or issues around Content
19 ID with you collectively.

20 Are you saying that you're open to those
21 sorts of solutions where smaller entities and
22 individuals could operate through a collective and you

1 would be willing to have discussions about how to
2 facilitate that?

3 MR. VON LOHMANN: Absolutely. And in fact,
4 as I said, with Content ID, we already do that. We
5 have a number of intermediaries who represent smaller
6 creators. And by aggregating that, they can afford
7 the expertise. I think Mr. Kupferschmid is on to
8 something. I think it's a very good idea.

9 I've been saying for some time in the PTOs
10 process, where we talked about notice-and-takedown and
11 efficiencies, I suggested on several occasions that we
12 all together investigate mechanisms whereby we can
13 aggregate the enforcement needs of smaller creators in
14 a way that makes it more efficient for them to make
15 use of the services that Paramount and others already
16 use every day. So I think that would be a very
17 fruitful direction to explore.

18 MS. CHARLESWORTH: Okay.

19 MR. VON LOHMANN: And on Lumen, the last
20 question, I've heard this over time. People have
21 raised this issue. And I have to date never seen any
22 data to suggest at all that this is an important

1 vector for piracy. In fact, you know, my
2 understanding is if Lumen were to receive even a tiny,
3 tiny, infinitesimal portion of the traffic that some
4 of these notorious sites receive, their servers would
5 collapse much more readily than yours are alleged to
6 have collapsed thanks to Mr. Lyon.

7 So there is no evidence that that is a
8 piracy vector. And in fact, if you follow those links
9 on Lumen, you will find that for many notices, for
10 example, you'll get hundreds of links or thousands of
11 links, in many cases, from notices provided. It's not
12 a good way to find infringing content. Much of the
13 content is itself gone from the links in question
14 because, as you heard from Mr. Miller and others, they
15 don't just send takedown notices to Search. They send
16 takedown notices to the underlying sites that host,
17 which of course, I think we all agree, is the best
18 outcome, if we can get those shut down at the source.

19 So I have not seen any evidence to suggest
20 that Lumen, which was established again for
21 transparency purposes, that I think have been well-
22 demonstrated by the Urban, Karaganis and Schofield

1 report, that Lumen is a problem here. And this goes
2 back to what Mr. Green said yesterday, which I agree,
3 I wholeheartedly endorse.

4 We need to be talking about effective
5 measures. We need to have data and metrics to say
6 where is the piracy a problem, not engage in a game of
7 gotcha and saying I saw one thing here, therefore
8 you're bad, right? We are focused on scalable
9 solutions. Lumen is not the problem. Lumen is not
10 the rogue sites that we've been hearing so much about.

11 MS. CHARLESWORTH: Well, I will say it did
12 come up a number of times. And having read through
13 hundreds, or probably thousands of pages of the
14 comments, it came up more than once.

15 MR. VON LOHMANN: Did it come up with any
16 data tying it to real prevalence?

17 MS. CHARLESWORTH: No. But, so my
18 suggestion to you is, since you supply most of the
19 information to Lumen, maybe that's something Lumen
20 could look into is whether people are -- or I assume
21 you have some relationship with them. But I mean,
22 it's an interesting question --

1 MR. VON LOHMANN: I agree.

2 MS. CHARLESWORTH: -- as to whether it is a
3 gateway to finding the material that's being taken
4 down.

5 MR. VON LOHMANN: I agree. If you would
6 like to follow up with Lumen to get their traffic
7 numbers, I think that's great. But we don't control
8 Lumen. Lumen is its own nonprofit organization. It
9 was founded by law schools. I'm sure they would be
10 happy to share data about their traffic numbers. I
11 think it will almost certainly corroborate the fact
12 that they are not a major piracy site.

13 MS. TEMPLE CLAGGETT: And I do actually have
14 a practical question though on this point.

15 Even if they're maybe not a major piracy
16 site, if they do somehow facilitate people -- you
17 know, some portion of individuals going there to see
18 where these links are that were sent through the
19 takedown notices, is there a technological way that
20 you would be able to easily just redact or remove a
21 portion of it so that it isn't an active link that can
22 be copied?

1 Is that something that could be done easily
2 in a way that doesn't add an additional burden on your
3 end? But would address, maybe even a small concern,
4 but a concern nonetheless?

5 MR. VON LOHMANN: I think even as Ms.
6 Seidler admits, sending the URLs to Lumen is a good
7 idea because it does enable the kind of research that
8 we've already heard about. We'd like to see more
9 research and frankly more -- I wish we were not the
10 primary contributor to Lumen. I wish we had all of
11 the takedown notices contributed to a place where we
12 could transparently understand how many notices are
13 sent, for what purpose, to what sites. That would be
14 great.

15 So not only do I think we should continue to
16 send URLs to Lumen, I think everybody should send URLs
17 to Lumen and should send their takedown notices. I
18 think that would make our research much stronger. I
19 mean, it's ironic to me that people criticize the
20 Urban report for only including Google data. I would
21 love it to include everybody's data.

22 The problem has been no one else -- the

1 rightsholders obviously have that data. They're the
2 ones that send the takedown notices. But that hasn't
3 been contributed to Lumen. Now, as to whether Lumen
4 in turn can make those links harder to access, that's
5 a question I think you have to take up with Lumen.
6 That's not something we control.

7 MS. TEMPLE CLAGGETT: And one kind of final
8 question, follow-up question. We had heard in
9 previous panels privacy concerns from individual
10 senders of notices who had either gotten, you know --
11 I don't know -- for lack of a better word, bullied by
12 the fact that their name was put out there.

13 Is that something that you have heard from
14 directly, individuals who've been sending takedown
15 notices that have been concerned that your automatic
16 result says takedown notice sent from Karyn Temple
17 Claggett and then a connection to the Lumen Database,
18 which might actually have their further information as
19 to how to contact them.

20 Is that something that you've heard of? Is
21 it a concern that you guys are considering? I'm just
22 trying to figure out how significant that is in terms

1 of the process.

2 MR. VON LOHMANN: That is not something that
3 we've heard about. We don't disclose that information
4 on Search results. As Ms. Seidler read, we don't say
5 there who sent the notice. My understanding is that
6 Lumen also redacts personal information when they make
7 it available. So I haven't heard that from -- at
8 least on the Search side, from --

9 MS. TEMPLE CLAGGETT: What about on the
10 YouTube side? Like when you actually take down a
11 video and what pops up in terms of when the video is
12 taken down in terms of the information about the
13 sender? Is there a distinction between what you would
14 post publicly if it's a private sender or an
15 individual versus a corporation that's sending the
16 takedown notice?

17 MR. VON LOHMANN: Well, I mean, it's not
18 always easy to make that determination on the face of
19 a takedown notice. We do say -- we try to be
20 transparent on YouTube and say who the rightsholder
21 was who asserts the copyright that -- in fact, I think
22 as you heard from Mr. Miller, one important channel

1 for resolving the issues around false positives is to
2 provide a connection so that people can say, my
3 content got taken down by x or y and I can reach out
4 and say I don't think that -- and it can be worked
5 out.

6 So from our perspective, both from a
7 transparency point of view and from a communication
8 point of view, it's a good idea to say who took down
9 your content. I think you have a right to know that
10 and I think the world has a right to know that when
11 content is removed, who sent the notice. And as was
12 mentioned yesterday, rightsholders do not have to
13 identify themselves in takedown notices, unlike in
14 counter-notices, where in fact personal information is
15 mandatory.

16 For takedown notices, you can submit through
17 an agent. You can submit -- there's lots of ways you
18 can submit without identifying yourself as the
19 rightsholder. So -- I think that is a problem that
20 can be solved under the existing statute today.

21 MS. TEMPLE CLAGGETT: Thank you. Ms. Zedek?
22 And before I turn to the other side, I will say once

1 again we are moving at a little bit -- slowly, because
2 of the number of speakers.

3 So what I'm going to do is first go again to
4 people who haven't had an opportunity to say anything.
5 And then, if we have a little bit of time, which will
6 probably be not much, I will go to those who would
7 like to say something in addition to something they've
8 said already. So I'll go to Ms. Zedek.

9 MS. ZEDEK: Thank you. I'd like to respond
10 to a couple of things that were raised with respect to
11 false positives.

12 I want to clarify that many of us here who
13 are representing copyright holders, myself included,
14 care deeply about avoiding false positives. We care
15 about accommodating fair use, about free speech. In
16 fact, my employer is a content producer. They are not
17 in the business of antipiracy. They are in the
18 business of creating copyrighted content, which at its
19 core is an expression business for which speech is
20 important.

21 I hope that some of what Mr. Miller
22 described gives a sense of the ways in which

1 rightsholders leverage technology and have humans,
2 lawyers and technologists interact with that
3 technology in order to best avoid false positives and
4 accommodate things like fair use.

5 And then, in response to what Mr. von
6 Lohmann raised regarding that 83 percent of the Search
7 returns that they're -- or that to be potentially in
8 the future Google Search returns that they're
9 processing, I think it's unfair to label those as
10 false positives because that's something that's as
11 agreed between Google and rightsholders, that they're
12 willing to process those.

13 I think more importantly, rather than the
14 point Mr. von Lohmann raised about the perceived
15 discrepancy about how fast technological vendors
16 employed by rightsholders' crawlers can find
17 infringing content versus how quick Google can do
18 that, you know, lots of those technologies are very
19 fast. It can be important in addressing the gap
20 between when our notices are submitted to Google and
21 the time in which Google reacts to remove a search
22 return from the search results.

1 So I believe Google's submission quotes an
2 average of six hours. But in many instances, it may
3 be longer. For certain types of content, that lag can
4 be critical, especially with respect to live broadcast
5 content. So this is a way through a voluntary
6 agreement that we're able to address that kind of
7 thing rather than an instance of false positives and
8 overreaching by rightsholders.

9 I think with respect to quality versus
10 quantity, to me that number of notices that we send is
11 really a sign of a system that's not effective at
12 addressing rampant piracy. We also focus on quality
13 over quantity in terms of a focus on full-length
14 content and on a focus on content that's easily
15 accessible to consumers and most detrimental to our
16 businesses.

17 I strongly think that, you know, there are a
18 number of commercially available technologies out
19 there that don't require an internal investment of
20 millions of dollars. Hash filtering, watermarking,
21 content recognition technology, they've been used for
22 many years and they've been proven to be effective at

1 both identifying copyrighted content and also at
2 stemming the proliferation, the unmitigated
3 proliferation of re-uploads, of ongoing infringement
4 of full-length content.

5 So I think we need to figure out more ways
6 to work together and incentivize voluntary cooperation
7 so that it's not the rightsholder employing certain
8 technology on one side and the content service
9 providers employing technology to create efficiencies.
10 It's working together across industry to make the
11 whole system more effective and have greater impact.

12 MS. TEMPLE CLAGGETT: Thank you. I think
13 I'm going to start with Mr. Andrews. I don't think
14 you've had an opportunity to speak yet.

15 MR. ANDREWS: Thank you very much. So I'm
16 here from eBay. And a lot of what I've heard today
17 pits big companies versus small companies in terms of
18 perhaps what should be required of them if we were to
19 require something. But what I think really matters
20 here is the type of works that are at issue, how
21 they're being delivered and the efficiency of the
22 means to remove them.

1 eBay is not a small company. It has a \$27
2 billion market cap. And the content that we usually
3 remove in response to DMCA notices are individual
4 images of products. People create a listing to sell
5 something on eBay and they upload an image. And some
6 of those images have been taken from someone without
7 permission. They've just copied an image off the Web.
8 Those images are of really low value in terms of the
9 economic value of that image. It's not like a full-
10 length movie that someone might spend \$15 to see in a
11 theater. So the idea of being mandated by the
12 government to impose a technological solution that --
13 if that technological solution was costly -- would
14 vastly outweigh the benefit to anyone, either the
15 rights owner or us.

16 And so, I really think these are highly
17 fact-intensive inquiries. And generally, the
18 economically efficient solution will be arrived at
19 voluntarily. So I really think it's difficult to
20 imagine a scenario where a technological solution
21 could be mandated that would not be imposed on
22 situations where it would be inefficient.

1 MS. TEMPLE CLAGGETT: Thank you. Ms.

2 Keller?

3 MS. KELLER: Yeah. I want to interject sort
4 of some more discussion of ordinary Internet users and
5 citizens and their role in this conversation. I think
6 we know from information discussed here and
7 information that Annemarie Bridy and I included in our
8 submission from other studies, intermediaries take
9 down too much lawful content right now.

10 It just -- it happens, deliberately or not.
11 We know that building a filter that is inaccurate is
12 relatively cheap. We know that building a filter that
13 is more accurate is relatively expensive, which tells
14 us that a mandate to build filters that can be
15 complied with, with an inaccurate one is risky
16 business.

17 We also know that even the companies that
18 have an incentive to build very good filters such as
19 YouTube have other complicated incentives at play. So
20 it came out last fall that YouTube had agreed to
21 disregard counter-notices in some cases because of
22 agreements they had reached with rightsholders. You

1 know, there are commercial incentives that make the
2 interests of big tech companies not necessarily the
3 same as the interests of Internet users.

4 And so, I think as we move forward in this
5 conversation, whether it is, you know, a public USCO-
6 led conversation about filtering or a private
7 conversation about voluntary measures, it's really
8 important that there be people at the table who aren't
9 from the rightsholder side or the content side but who
10 are speaking for Internet users or trying to do so.

11 The other thing I would say is about the
12 role of human judgment in implementing filters. I
13 think many people have spoken about that. Generally,
14 technology companies have an advantage when it comes
15 to building duplicate detection technologies. And
16 because of that natural advantage, we tend to look at
17 them as the right ones to implement filtering systems.

18 But where they don't have an advantage is in
19 the human judgment element of identifying infringement
20 because, as has been discussed, the rightsholders now
21 what they have licensed. They know what their own
22 marketing departments have uploaded, or in theory they

1 do, and so forth.

2 And in addition, when the rightsholders look
3 at a duplicate that has been detected and decide
4 whether to make an accusation saying it infringes
5 copyright, they're the only actor in the system that
6 do that in an un-coerced way. They can choose to make
7 the accusation or not, with no great consequences, in
8 cases of grey areas or potential fair use. The
9 intermediaries, when they make that choice, they're
10 doing it in the shadow of statutory damages.

11 So asking the intermediaries to be the ones
12 bringing the element of human judgment to decide
13 whether a grey area is in fact infringing is putting
14 the decision in the wrong hands. So I think to the
15 extent we're discussing using automated duplicate
16 detection and then adding on a layer of human
17 judgment, the right human judgment isn't the judgment
18 that comes from technology companies.

19 A final thing, just to add to the Lumen
20 conversation, this is my impression based on many
21 years of handling notice-and-takedown in copyright and
22 other contexts.

1 I think that because the sort of checks that
2 Congress put in place such as the counter-notice
3 process and such as 512(f), because those haven't been
4 terribly effective, public transparency has actually
5 been a really important check on the kinds of bad
6 faith requests, you know, the kinds that I think no
7 one in this room are doing, but the kinds of bad faith
8 requests that silence political ads, that silence
9 criticism of politicians and so forth.

10 Public transparency allows the question to
11 be crowd-sourced of whether something has been removed
12 inappropriately and let sort of voluntary, I don't
13 know, internet people know what has happened and see
14 if something is going wrong. And without access to
15 the URLs to see what actually came down, that
16 mechanism can't work.

17 And so, as we think about the list of
18 procedural mechanisms that we can rely on to deter
19 over-removal, public transparency I think is very
20 important and perhaps we should consider transparency
21 being a project for the notice providers as well,
22 finding a way for them to feed that public review

1 possibility.

2 MS. TEMPLE CLAGGETT: Great. Thank you.

3 Oh, did you --

4 MS. CHARLESWORTH: I was just going to say,
5 do you think transparency is more important than sort
6 of removing ready access to an infringing link? I
7 mean, how do you strike that balance?

8 Because I think that the concern is that
9 you're just one additional click away and you can
10 still have a fair amount of transparency by redacting
11 a bit of the link so you could at least see the other
12 information. So why -- where is the balance there in
13 terms of trying to get rid of infringing content
14 pursuant to a takedown notice?

15 MS. KELLER: Yeah. I think that's a really
16 valid question and it is an empirical question. You
17 know, I think trying to figure out how much good the
18 Lumen Database is doing through scholarship or through
19 error correction, et cetera, versus how much bad it is
20 doing through piracy-seeking traffic actually coming
21 through their servers, that's an important empirical
22 question.

1 I know that Mr. Gratz wrote an amicus brief
2 on behalf of them in a previous case that was
3 basically a string cite of all the scholarship that
4 came out of it. So he may be a good person to speak
5 to that.

6 MS. CHARLESWORTH: Yeah. I mean, I think
7 there was a suggestion that maybe scholars who
8 approached Lumen might have more access to the links.
9 But that in terms --, in other words, there may be
10 some room for compromise here between the transparency
11 interest and just the -- you know, the people who are
12 just still looking for the infringing content. But
13 it's an interesting, interesting discussion.

14 MS. KELLER: It is.

15 MS. CHARLESWORTH: Thank you.

16 MS. TEMPLE CLAGGETT: Thank you. I think
17 the next person who hasn't actually spoken yet is Mr.
18 Marks, I believe.

19 MR. MARKS: Yeah. Thank you very much. One
20 of the things that's striking to me about this session
21 is I think you hear a lot more consensus around the
22 table in this session than you did in the sessions

1 from yesterday.

2 So I think everyone at the table agrees that
3 there's a lot of potential in technology. I've found
4 myself very much agreeing with Mr. Gratz that
5 technology is changing, and a number of people said
6 this so rapidly, that the notion of a government
7 mandate for a particular type of technology may end up
8 not really being the best way.

9 I think there is a role for government to
10 encourage rightsholders and OSPs and everybody in the
11 system to get together and try to develop
12 technologies. But I think I very much agree it's such
13 a changing -- there are proprietary technologies.
14 There are technologies like Mr. Sedlik's group had
15 developed that are coalition-based technologies. And
16 we should really encourage the growth of those.

17 MS. CHARLESWORTH: Oh, I'm sorry. I'm going
18 to interrupt. What -- so what -- the million-dollar
19 question is how to get everyone in the room to do
20 that.

21 MR. MARKS: So it's --

22 MS. CHARLESWORTH: That's the question. And

1 I think it's not so much mandating a specific
2 technology but the question is what incentives can
3 government provide to encourage the sides to come
4 together and develop workable technologies to help
5 solve some of the problems we've heard about for the
6 last couple days.

7 MR. MARKS: Yeah. It's a good question. I
8 wish I had the answer. I don't know whether it's
9 convening --

10 MS. CHARLESWORTH: It is the question.

11 MR. MARKS: I think -- I think -- you know,
12 part of it sometimes makes me think that one
13 suggestion about having -- convening, you know,
14 conferences or workshops that are sort of off the
15 record where people feel they can perhaps throw out
16 ideas or say things that they know won't necessarily
17 be subject to a public transcript, so --

18 MS. CHARLESWORTH: You don't want us there?
19 We'll just put you all in a room with a little wine
20 and cheese and, you know --

21 MR. MARKS: Right, right. But so, for
22 example, you know, there has been certain cooperation

1 with Google. I disagree with Fred that the rising
2 number of notices means that the system is working. I
3 think the rising number of notices actually means the
4 system is not working that well in terms of preventing
5 an access to full copies of infringing works.

6 So it's not that this is some phenomenal kum
7 bay yah moment. But I do -- I was at Warner Brothers.
8 And we did work together on lots of different issues
9 involving both technologies and certain measures that
10 Google could take, for example, in its advertising
11 program. So I don't know. Maybe it's not the
12 government. Maybe it's a think tank.

13 But I think there is real possibility here.
14 And I think when you listen to people around the room,
15 I mean, to Mr. Roslof, for example, you know, I think
16 that's right. If you've got even something that's so
17 popular as Wikipedia and there are very few instances
18 of infringement and those infringements are handled
19 well and handled by volunteers and they have a very
20 low volume of DMCA notices.

21 I don't think they should necessarily be
22 burdened with filtering, you know, and a notice-and-

1 stay-down system. I might feel differently about
2 Search, you know? I think part of the issue here is
3 we need to get beyond technology that makes notice
4 sending more efficient. I think we should look at
5 technology in a whole variety of ways beyond just
6 notice-and-takedown.

7 Technology, for example -- and I'm going to
8 use the words that, you know, were a horror five years
9 ago, but technology has actually been employed in
10 Europe for site blocking.

11 You know, I agree with Mr. Lyons (sic) that
12 most BitTorrent sites are a hundred percent
13 infringing. There have been technologies employed by
14 ISPs across Europe to block access to certain wholly
15 infringing websites. That benefits large creators,
16 small creators. There's no different because
17 PirateBay is infringing the rights of large and small
18 creators. So there are solutions out there.

19 You know, we just have to kind of get beyond
20 the rhetoric and be able to work together. And I
21 think voluntary is the way to go. And site blocking,
22 for example, in Europe, it's not voluntary. Site

1 blocking -- a court first has to adjudicate that a
2 site is fundamentally infringing.

3 I mean, Mr. Riley may not agree with that
4 because I think he's saying that the premium should be
5 on access to all sorts of information. But I think a
6 lot of us feel that illegal infringing content that's
7 full-length is not a question of information. It's a
8 question of illegal activity. So that's --

9 MS. TEMPLE CLAGGETT: Thank you. One final
10 quick follow-up question in terms of just encouraging
11 I suppose the development of certain technology. And
12 that is just do you have any opinions as to why the
13 standard technical measures provisions haven't been
14 utilized enough under the existing DMCA to be
15 effective in that realm or ways that that provision
16 could be something that is something that it becomes
17 part of that process without even having to change --

18 MR. MARKS: Yeah. I think where more of the
19 standard technical measures frankly have been
20 implemented in the way that section -- well, whatever
21 section that is that defines them, 512, has really
22 been in areas more in digital rights management.

1 For example, encryption of DVDs or
2 encryption of Blu-rays where in fact those
3 technologies were developed across industry groups and
4 are made available on non-discriminatory terms and you
5 kind of needed to do it because you can't have, you
6 know, one system for a disc that's for a Toshiba
7 player that's different from a Panasonic player.

8 But for whatever reason, in the kind of
9 notice-and-takedown or anti-piracy copyright
10 protection context online, it just hasn't worked that
11 way, I think possibly because there is such a variety
12 of platforms and players and different types of sites
13 and technology. You know, when the DMCA was passed,
14 there wasn't even peer-to-peer technology. So I think
15 the context just changes so rapidly that it's made it
16 more difficult.

17 MS. TEMPLE CLAGGETT: Thank you. I think
18 our last speaker is Mr. Perkins. He's the last person
19 who has not had an opportunity to speak and I don't
20 think we're going to have time to go back around
21 unfortunately. So Mr. Perkins?

22 MR. PERKINS: Thank you. So I'll just hit

1 on a few points from the discussion and weigh in.
2 First, it's definitely -- it's not a binary, tech
3 versus humans. You know, all technology is created by
4 humans. It's deployed by humans. There's human
5 elements in every technology we have and I hope it
6 stays that way. And I think in a lot of the empirical
7 instances where technologies have been deployed in
8 this area, again, there've always been elements of
9 human interaction and review. And I described
10 yesterday some of the ways we use human review in
11 conjunction with our notice-sending. I think what Mr.
12 Miller described well fits.

13 Second, I want to pick up on a point about
14 identification versus action. A lot of these
15 technologies are good at identifying. But then, what
16 do you do with that identification. Again, it's a set
17 of human rules -- so the technology can help you
18 automate that and I do think that any identifying
19 technology can have a very sound set of rules that
20 allows for an instant action to say block or take down
21 content that's clearly infringing.

22 But in all of those cases, there are human

1 elements and rules that you can calibrate and you can
2 work with a technology to set up a very reasonable
3 system. I agree with what Ms. Zedek says. We work
4 very hard to ensure that there is fair use thought of
5 in these ecosystems. We care deeply about it. But we
6 also want to protect our rights and we want to prevent
7 long-form and we do want to prevent shorter-form
8 infringements. A five-minute comedy sketch from a
9 show is very important to us. And somebody can't just
10 repost it and run advertising against it to their
11 benefit.

12 I'd also like to point out that there are
13 false negatives. We've talked a lot about false
14 positives. But I want to point out that a lot of
15 these technologies often do miss infringement. And on
16 a lot of platforms that do put forth these matching
17 technologies, they don't always catch everything.
18 There's still a cost of manual review that must take
19 place that the rightsholders perform to find things
20 that the technology misses. So there's a calibration
21 between avoiding false positives that I agree rarely
22 happen versus false negatives to make sure that

1 there's the right balance.

2 I would also then come back to a question
3 Ms. Isbell asked Mr. Miller and I'm happy to chime in
4 here in terms of the number of notices. From NBC
5 Universal, we sent about 6 million notices to download
6 and hosting sites. We sent about 5.5 million to
7 search engines. And we sent about 6 million to P2P
8 ecosystems.

9 So our ratio is very different from what
10 Warner Brothers testified and I want to explain that
11 really a lot of that comes down to cost and strategy,
12 the number of titles that any one rightsholder would
13 be looking to protect at any given time. It'll come
14 down to vendor performance and different technologies.
15 So there's a lot of choices that rightsholders, even
16 large ones that have some resources to go to work
17 here, have to make to face a lot of different
18 infringement that we see.

19 And I guess I'd end with sort of chiming in
20 to Mr. Marks there that even though the number of
21 notices could be high or low or could vary or could
22 differ between two large media companies, and even if

1 they're all rising, it doesn't mean that piracy is
2 getting better. I think we have gotten efficient at
3 sending notices in some cases and sometimes the
4 targets are very, very easy and we target them. But
5 just because the number of notices are up doesn't mean
6 the problem is being solved.

7 And so, I do think that technology needs to
8 be part of this solution and I think humans have to be
9 involved and I think voluntary measures are also part.
10 So I think we're all looking forward to session six.
11 Thanks.

12 MS. TEMPLE CLAGGETT: Thank you. With that,
13 I'll thank all of the panelists for session five. As
14 I said, we're running a little late. So we're going
15 to cut off the break just a bit. We'll ask that you
16 return at 11:10, so have kind of about a 10-, 12-
17 minute break and then we'll start session six at
18 11:10. Thanks.

19 (Recess from 10:58 a.m. to 11:10 a.m.)

20 SESSION 6: Voluntary Measures and Industry Agreements

21

22 MS. ISBELL: So once again, not

1 surprisingly, we're running a little late. We're
2 going to try to make up the time by shortening the
3 lunch break just a tiny bit. So we're going to go
4 with this session until 12:30. We heard earlier today
5 that this was actually the session that people were
6 looking forward to.

7 In looking at the comments and from the
8 discussions at the New York roundtable a couple of
9 weeks ago, it definitely seems like voluntary measures
10 is potentially one bright spot for addressing some of
11 the concerns that both creators and OSPs have when it
12 comes to the working of 512.

13 Not surprisingly, there is some disagreement
14 still, especially in the comments. It seems like
15 particularly smaller creators have some concerns about
16 voluntary measures, about access to them and their
17 ability to be in the room when these decisions are
18 reached.

19 But to begin the session, I'm going to try
20 something that I failed at in New York. But I really
21 want to try it again this time, which is, I want the
22 first question to focus on what voluntary measures

1 that you're aware of have worked and specifically what
2 are the elements or characteristics of those measures
3 that have been successful and that could possibly be
4 replicated for other types of voluntary measures?

5 After that, we definitely will have a
6 question about what voluntary measures don't work,
7 what are some of the limitations of the existing ones.
8 But at least for the first question, let's try to be a
9 little positive, maybe finding, you know, some things
10 that could potentially work.

11 But once again, to start with, we're going
12 to go around the room and have everyone just introduce
13 themselves and who they represent. So since we
14 started over here last time, we'll start with Mr.
15 Stiles.

16 MR. STILES: Is this on? Okay. Thank you.
17 I'm T.J. Stiles. I'm an independent author.

18 MS. VITALE: Ruth Vitale, CEO of
19 CreativeFuture, advocacy organization for the creative
20 industries.

21 MR. VON LOHMANN: Fred von Lohmann, legal
22 director for copyright at Google.

1 MR. O'CONNOR: Sean O'Connor, law professor,
2 University of Washington in Seattle.

3 MR. MICHAUD: Michael Michaud, Channel
4 Awesome.

5 MR. SEDLIK: Jeff Sedlik, president and CEO
6 of the PLUS Coalition.

7 MR. MASNICK: Mike Masnick, from Techdirt
8 and the Copia Institute.

9 MR. RODRIGUEZ: Tony Rodriguez, CTO with
10 Digimarc.

11 MR. HARTLINE: Devlin Hartline, Center for
12 the Protection of IP.

13 MS. URBAN: Jennifer Urban, University of
14 California-Berkeley.

15 MR. MURPHY: Tom Murphy, Content Creators
16 Coalition.

17 MR. MILLER: Gabe Miller, vice president of
18 content protection at Paramount Pictures.

19 MR. MCNELIS: Brian McNelis, SVP, Lakeshore
20 Records.

21 MR. MARKS: Dean Marks, Motion Picture
22 Association of America.

1 MR. KUPFERSCHMID: Keith Kupferschmid, CEO
2 of the Copyright Alliance.

3 MR. GREEN: Dave Green, assistant general
4 counsel at Microsoft.

5 MR. SIEGEL: Ira Siegel, counsel for
6 Copyright Enforcement Group.

7 MR. FEERST: Alex Feerst, corporate counsel
8 at Medium.

9 MR. ANDREWS: I'm Scott Andrews. I'm a
10 lawyer for eBay.

11 MS. ISBELL: Okay. So once again, the first
12 question is: Are there particular voluntary measures
13 that have worked to help address some of these
14 concerns, and if so, what are those characteristics
15 that we can learn from to try to replicate them in the
16 future? I'll start with Ms. Vitale.

17 MS. VITALE: So one of our major initiatives
18 at CreativeFuture is the Follow The Money campaign,
19 which is something that I think much of the
20 industries, on both sides, have talked about for a
21 while.

22 So we're working with the advertising

1 community on voluntary steps that they can take to
2 stop the flow of money to pirate sites. The
3 partnership is with the Trustworthy Accountability
4 Group, which was formed by the ANA, the 4As and the
5 IAB to -- and they have several initiatives which is,
6 you know, clickware. But one of them is stopping the
7 flow of money to pirate sites.

8 Over the past several months, my leadership
9 committee at CreativeFuture, we've written to the
10 major brands, letting them know when their ads are
11 appearing on these pirate sites. We work with a third
12 party vendor who does screen captures. We send an
13 entire packet to them. We basically say, hey, the bad
14 news is that your ads are on the site. The good news
15 is there's something that you can do about it and we'd
16 like to work with you to do that.

17 We are in partnership with GroupM. The
18 chairman is John Montgomery. It's the largest media
19 billing service in the world. They, in tandem with
20 us, send the letters to the advertising agency of
21 record. Then, we work with the advertiser and the
22 advertising agency to get those ads off sites. We ask

1 them to sign the TAG pledge, which is to keep their
2 ads off the site. And then, more than 20 major global
3 brands, including Amex, Colgate-Palmolive, Walmart
4 have taken the antipiracy pledge. And included in the
5 brand and agencies were several that we contacted and
6 we will do that throughout this year.

7 Now, we're making progress. But it's just a
8 starting point. And so, we need more advertisers and
9 brands to step up and take that pledge. And I know
10 that there are -- you know -- there are people that
11 argue that these efforts deny the inherent right of
12 Web operators to pirate. But I think that we can all
13 recognize that responsible parties don't want to be
14 associated with copyright infringement sites.

15 MS. TEMPLE CLAGGETT: Just a quick follow-up
16 question in terms of you mentioned some of the
17 partners that have participated. How do you encourage
18 or do you have kind of a process that kind of reaches
19 out to others to encourage them to join the
20 partnership?

21 MS. VITALE: Yes.

22 MS. TEMPLE CLAGGETT: And what are concerns,

1 if any, from those that you've heard who have not yet
2 signed up to participate?

3 MS. VITALE: It's interesting because
4 generally we get a call right away saying, goodness,
5 this is a little bit alarming. Often they don't know.
6 And then, what we do is put them in touch with the
7 Trustworthy Accountability Group itself so that they
8 can walk them through it because what we want to be is
9 the intermediary. And you know, it's not our program.
10 It's TAG's.

11 I think, some of them don't want to take the
12 pledge because it's just extra work. Mr. von Lohmann
13 and I were talking about this the other day. And so,
14 we need people to urge them. You know, we're doing
15 like a four-phase campaign where we will send them the
16 letter, send them the packet, follow up with the
17 advertising agency, generally get them on the phone,
18 introduce them to TAG and I don't want to do a public
19 shaming campaign because I don't really think that's
20 in the best interest of anybody. So I'm trying to
21 stop from going there.

22 MS. CHARLESWORTH: I was going to ask how

1 the pirate sites were identified.

2 MS. VITALE: How are they identified?

3 Through -- well, we use Pathmatics, which is a third
4 party digital advertising assurance provider. And
5 they go to the pirate -- they look on those sites
6 where it's a majority of copyright infringement. So
7 there are ones that you know. It's Putlocker. You
8 know, it's a lot of the major pirate sites.

9 So we don't -- we don't do it ourselves
10 because obviously -- and you know, often they'll say
11 to us would you give us a list. Advertisers or
12 advertising agencies will say give us a list of pirate
13 sites and that's not our job. What you need to do is
14 if you want to continue, you should employ a third
15 party digital assurance advertising provider, which is
16 what they're called, DAAPs. We didn't name them. And
17 those are the people that monitor the Web for those
18 pirate sites and where ads are showing up.

19 MS. CHARLESWORTH: So there are third party
20 vendors is what you're saying --

21 MS. VITALE: Yes.

22 MS. CHARLESWORTH: -- who will identify

1 these sites and then supply that data to interested
2 parties?

3 MS. VITALE: Yes, yes.

4 MS. ISBELL: Okay. Mr. von Lohmann?

5 MR. VON LOHMANN: So let me start a theme
6 that I hope continues throughout this panel by
7 agreeing wholeheartedly with Ms. Vitale. We are also
8 huge fans of the follow the money approach, as one
9 voluntary measure that has both been successful and
10 effective. So for example, Google has been centrally
11 involved in a lot of the TAG efforts and other
12 efforts. We worked with the IPEC a couple of years
13 ago to put together an ad networks industry-wide best
14 practice. Microsoft, Yahoo, AOL all were also
15 involved in that effort. I think there is broad
16 agreement in the ad networking sector that we don't
17 want our ads on these bad sites.

18 To the extent it was suggested yesterday
19 that Google Ads are supporting these pirate sites,
20 that's flatly false. We have put together research
21 that we did in conjunction with PRS for Music in the
22 UK that demonstrated pretty clearly that these rogue

1 sites are not getting their ads from first tier ad
2 networks like Google's or Microsoft's when they were
3 in that business or Yahoo or AOL or the like.

4 So we have already taken enormous steps to
5 get those guys off of our ad platforms. We do most of
6 that work proactively. We don't wait for notices. We
7 actually police the network, kick these sites off and
8 we are now working to spread that gospel to the rest
9 of the industry. We need to get the rest of the ad
10 networks on board. We need to make sure advertisers
11 understand and brand owners understand it. So
12 wholehearted agreement on that score.

13 Let me also mention just really briefly
14 another measure that we think has worked quite well
15 and that is the DMCA demotion signal in Search. So
16 that has proven to be very scalable. Rightsholders
17 don't need to go to court to get site blocking orders.
18 There's none of that. We look at the data we already
19 receive in notice-and-takedown through Search and we
20 use that data in order to apply a demotion signal to
21 sites for which we get a very large number of notices
22 that are valid.

1 And that has actually worked quite well to
2 essentially take a lot of these rogue sites that
3 everyone's talking about out of search results. It's
4 very effective. Basically you're never going to see
5 those sites in results unless the user has literally
6 typed the name of the site into the query, at which
7 point we know the user already knows the name of the
8 site and we're not going to stop them from getting
9 there. They're going to get there either with or
10 without our assistance.

11 We pulled the numbers just this past month.
12 We see an average of an 89 percent drop in traffic for
13 sites that are subject to this demotion signal. So
14 that's another sign that it's been quite effective.

15 And finally, I just want to say this is
16 every bit as effective as whole site removal would be.
17 These sites are essentially not appearing unless users
18 already know to look for them before they ever got to
19 Search. We think the difference between the demotion
20 signal, again, based on the data we get from the DMCA
21 notices, and removing the whole site, from an
22 effectiveness point of view, there's no difference

1 there.

2 We do however think it's extremely important
3 to send the message that we don't believe removing
4 whole sites from Search is the right approach for
5 domestic law violations. This is not because we like
6 pirate sites; quite the contrary, this is because
7 Google, like large online service providers in the
8 United States generally, are facing increasing demands
9 in other countries to censor our products and services
10 for a whole host of domestic law violations that we
11 think are overbroad.

12 And if we were to remove whole sites from
13 Search on the basis of allegations of infringement,
14 such that it's not in the index at all, that sets a
15 precedent that other countries will also embrace.
16 They will say our extremism law is a law we care a lot
17 about. Our law against defaming the king is a law we
18 care very much about. Our laws on defamation, for
19 which truth is not even a defense, are laws we care
20 very much about. And we don't want to set that
21 precedent.

22 We created a voluntary measure here with the

1 demotion signal that is effective without crossing the
2 line of setting a censorship precedent.

3 MS. TEMPLE CLAGGETT: I did have a follow-up
4 question. This is -- I think you are on the next
5 panel. So this might be more appropriate for that.
6 But you mentioned a significant concern with some of
7 the measures that are going on overseas in terms of
8 actually blocking access. And you mentioned a concern
9 about blocking access in response to an allegation of
10 infringement.

11 What about blocking access when there is
12 kind of an adjudication, like a website has been
13 adjudicated to be an infringing website, like the
14 Pirate Bay? Is that -- does that raise the same type
15 of concerns that you just mentioned or different ones?

16 MR. VON LOHMANN: I'm not aware of any site
17 that has been adjudicated to be an infringer that is
18 not already subject to the DMCA demotion signal. So
19 essentially that job is already done.

20 MS. TEMPLE CLAGGETT: Thank you.

21 MS. ISBELL: And --

22 MS. CHARLESWORTH: I had a question too.

1 Going back to something you said earlier about the
2 advertising program, what persuaded you and Google --
3 I don't know if it was you personally -- to sit down
4 with the IPEC and work out that process? Like what
5 were the factors that brought people into the room,
6 including you?

7 MR. VON LOHMANN: I don't think we needed
8 any persuading. Frankly, we have said since SOPA that
9 we support legislation that would have addressed the
10 payments and the ads, the follow the money issue.
11 We've been a consistent supporter of a follow-the-
12 money approach because we think it's effective.

13 These sites are largely commercial sites.
14 They are in it for the money. As long as there's
15 money to be made, they're going to keep popping up.
16 They're going to create new domains and they're going
17 to invade legitimate platforms. They're just going to
18 keep popping up. And that, from our point of view,
19 why] you want to actually focus on the effective
20 measures.

21 And we've thought consistently following the
22 money is the most effective way to essentially pull

1 the plug on the bottom of the ocean, because otherwise
2 you're just trying to bail the ocean out. And whether
3 you're doing it with a teaspoon or a gallon jug, it's
4 still the ocean. To drain the ocean, you need to
5 change the economics and that's why we've -- you know,
6 we didn't need any persuading. We've been
7 wholeheartedly in support of that as the most
8 effective way to address this.

9 MS. TEMPLE CLAGGETT: And then I guess just
10 one quick follow-up on that. In terms of, again, the
11 voluntary panel, you had mentioned that you think that
12 [follow the money] is the most effective way and that
13 you had previously supported legislation on that
14 particular point, not on the kind of access point. Is
15 that something that Google continues to support,
16 actual legislation on kind of a follow-the-money
17 approach?

18 MR. VON LOHMANN: Well, we had supported the
19 legislation that was floated at the time by Chairman
20 Issa. There is, to my knowledge, no legislation
21 currently on the table. So there's nothing for us to
22 support or not support at this point. But we didn't

1 wait around. We launched our efforts immediately from
2 that point forward to try to address this through
3 voluntary measures, through best practices, not only
4 our own practices but also setting best practices for
5 the industry as a whole.

6 So from our perspective, I think we've made
7 enormous progress at a time where, with all due
8 respect, Congress has perhaps not shown enormous
9 ability to make progress on a variety of fronts. So I
10 think this is another great example of how voluntary
11 measures can move the ball forward without the need
12 [for legislation] -- you know, if you were talking
13 about legislation, everyone would be busy defending to
14 make sure that nothing about that legislation would
15 damage their existing business. And you would be
16 having a war about that.

17 Rather than do that, much better to actually
18 get out there, come up with standards that people can
19 live with and actually make progress. So that's what
20 we've been doing and that's what I think we'll keep
21 doing.

22 MS. CHARLESWORTH: I was just going to ask -

1 - I'm sorry --

2 MS. ISBELL: Can I ask a follow-up please?

3 I just -- I want to go back to the IPEC discussion

4 really quick. Is that a role that you think

5 government can play in this area or is it better to

6 have the individual interest holders come together

7 sort of outside the purview of the government?

8 MR. VON LOHMANN: So I don't think there's a

9 one-size-fits-all answer to that question, right? To

10 use the two examples I mentioned, for the follow-the-

11 money process, I think the IPEC's involvement was

12 helpful in a convening function. For the DMCA

13 demotion signal, we didn't wait for that and I don't

14 think that would have been terribly useful. That was

15 something we were able to do that, you know, I don't

16 think adding a convening would have changed that.

17 So it really depends. And this is I think

18 the virtue of the voluntary measures and you've heard

19 this yesterday. There are nearly a hundred thousand

20 entities with registered copyright agents. They span

21 every conceivable kind of service at every conveyable

22 size. Different technologies work for some in the

1 right context. And to find that, it is almost bespoke
2 in a lot of cases.

3 And you heard from Wikimedia. They have a
4 system that works well for them. It doesn't require
5 filtering. It doesn't require technology. It
6 requires smart, motivated volunteers. That's great.
7 I don't think government would have helped them or
8 made their system any better than it is already.

9 So I think we have to look at each context
10 and say does this work for this set of service
11 providers. And that's where voluntary measures are
12 good. And this frankly is why I think the standard
13 technical measures provision in 512 has been a failure
14 because it is a mandate. It is a one-size-fits-all
15 mandate for every service -- all the hundred thousand
16 copyright agents that 512(i) would be binding on. And
17 I think that's a model that is not going to help us.

18 MS. CHARLESWORTH: Okay. A couple of things
19 I was interested in hearing. I'm sorry to pick on
20 you, but you raised the IPEC process and that may be
21 sort of one of the best models we have in terms of
22 incentivizing cooperative behavior.

1 What was that process like? Can you
2 describe how long it took? Who -- like how many
3 players there were? Was there leadership in the room
4 or was it really just sitting down and kind of
5 schmoozing? Were you there? I assume you were.

6 MR. VON LOHMANN: I was there for some of
7 it.

8 MS. CHARLESWORTH: You were. Okay.

9 MR. VON LOHMANN: I was there for some of
10 it. I think there are a number of features of that
11 that I think made it work well. I think it did bring
12 together a number of the different leading actors in
13 the ad network space. I think it was helpful to have
14 all of us together to discuss what we were doing, what
15 was working, what made sense going forward.

16 What we did not do is invite all of the
17 content owners in at the beginning, which I think
18 could potentially have turned it into a lot of
19 accusations and, you know, would have made it, I
20 think, more adversarial. And so, we were able to make
21 a lot of progress by working together on the ad
22 network side on figuring out what was working, what

1 challenges we face and what was working.

2 And I think Victoria Espinel, who was at
3 IPEC at the time, did a fantastic job facilitating
4 that process. Now, it did take a while, don't get me
5 wrong. That is the price of doing it that way.

6 Voluntary measures that are unilaterally undertaken
7 are generally faster because we don't have to get
8 consensus with a larger group.

9 But I think in the case of the ad networks
10 best practices, our whole goal was to set a standard
11 for the industry rather than just acting ourselves
12 because, as I said earlier, we had already largely
13 solved this problem among ourselves. We were trying
14 to make sure other ad networks understood that this
15 was an important problem and what they should be doing
16 on their platforms.

17 MS. CHARLESWORTH: So Ms. Espinel, it sounds
18 like she facilitated the process and the first part of
19 the process was not with content owners and then you
20 brought them in to listen to your proposal? Is that
21 an accurate description?

22 MR. VON LOHMANN: There was a -- yes, a

1 period of consultation essentially that took place.

2 MS. CHARLESWORTH: Okay.

3 MR. VON LOHMANN: But I think the other --

4 I'm not in a position to comment on these directly. I
5 wasn't involved. But there was a similar process with
6 payment processors as well that took place. And
7 again, I don't -- I can't speak to that. I wasn't
8 involved. But it might be worth inquiring with people
9 what worked well or didn't work well there.

10 MS. CHARLESWORTH: And going back to sort of
11 the question I asked earlier, what do you think -- I
12 think I asked Mr. Marks this. What do you think would
13 get people in the room to discuss some of the
14 technical measures or technological solutions that
15 might be possible -- and recognizing that there might
16 be different solutions for different members or
17 players in the marketplace. What would you recommend
18 based on your experience in terms of incentivizing
19 people to sit down and talk about them?

20 MR. VON LOHMANN: Well, as I mentioned
21 yesterday, it's not clear to me that that's necessary
22 at this point. We have situations, and you have in

1 the comments numerous examples of services that are
2 already employing advanced technologies to address
3 this including take-down, stay-down, filtering
4 mechanisms. And that's already taking place.

5 You know, as I mentioned yesterday, in
6 addition, of course, to YouTube, Facebook, Tumblr,
7 Twitch, SoundCloud, Daily Motion, Scribd, are just a
8 few of the service providers who, in their comments
9 describe the measures that they've undertaken. So I
10 think a lot of this is happening already.

11 I'm not seeing a huge failure on the part of
12 the leading service providers to address this
13 aggressively with technology. We are doing that as an
14 industry. Now, there are certainly sites that are,
15 you know, the sort of bad guys that people have been
16 talking about.

17 But I don't think you should lump the
18 Googles and Microsofts and other -- and most of the
19 DMCA Classic providers -- that's not the problem. So
20 if you're talking about rogue cyberlockers overseas, I
21 don't think there is a convening function that's going
22 to get them to the table because they're overseas and,

1 you know, there's a different enforcement challenge
2 there.

3 And I endorse what Dave Green said. We
4 should work together on that. What might actually be,
5 as a voluntary measure, a very valuable convening
6 effort is to get us all to sit down together with
7 government, with law enforcement, with the State
8 Department and talk about how can we bring enforcement
9 resources to bear against these sites that are not
10 worried about the DMCA. They're not paying attention
11 to notice-and-takedown and repeat infringer policies.
12 That's for sure. So that may be a place where a
13 convening could be very helpful.

14 I mean, remember, when the Megaupload
15 prosecution took place, the entire cyberlocker
16 industry changed that next week. That is something
17 that no amount of DMCA reform is going to accomplish.

18 MR. SEDLIK: So we spent a lot of time
19 talking about the bad actors. But we also -- we have
20 to understand that that's a very, very small
21 percentage of the users of the Web environment, on the
22 Internet. And we need to have voluntary measures for

1 technological solutions that help people who want to
2 do the right thing to do the right thing or people who
3 don't know -- they don't understand what's the right
4 thing and what's not, to understand it.

5 And technology can help with that. And
6 that's a good example of what PLUS is doing. We're
7 making information available to people who have access
8 to visual artworks on the Web to be able to make the
9 right decision, people and systems as well. And it's
10 entirely voluntary and people want to be in the room.
11 And the way that we got people to be interested in the
12 room is we had a rule from the very start.

13 You have to leave all of your baggage at the
14 door. So we have people like the museums and the
15 libraries and the photographers and people who have --
16 let's say stakeholder groups who have very diverse and
17 opposing and conflicting views. It would be an
18 understatement to say that. But they've been at each
19 other's throats on certain issues, like orphan works
20 and fair use and other things like that.

21 But when you create an environment where
22 it's neutral territory, where you're not going to talk

1 about value or enforcement or fair use, for that
2 matter, and you're just going to talk about one thing,
3 that's identifying works and making -- and identifying
4 rightsholders and making that information available,
5 the threat's removed and everybody comes in the door.
6 And it's worked very, very well for us.

7 When we started, we had 1,500 organizations
8 and companies volunteer to be part of the process from
9 34 countries within the first few months, very -- you
10 know, I anticipated it was going to be much more
11 difficult than it was. Certainly the work is
12 difficult.

13 But getting people to cooperate and agree to
14 come in the door was no problem once we said we're not
15 going to talk about this, this, this or this. We're
16 just going to focus on this nonthreatening aspect of
17 identifying works and making them -- making that
18 information available on a voluntary basis.

19 MS. ISBELL: Ms. Urban?

20 MS. URBAN: Thank you. I've talked already
21 quite a bit, I think, about the fact that we
22 recommended some best practices drawn from what we

1 were able to learn. So I won't say more about that.

2 But just refer to the report. But to say that the

3 process for understanding those best practices, which

4 I'm sure there are more and I'm sure people have other

5 ideas, harkens back to something we talked about on

6 the last panel and I've heard here again, which is,

7 you know, getting people into a room or getting people

8 able to sort of talk past the kinds of things they

9 feel beholden to say publicly.

10 So we've found that the political

11 sensitivities around these issues were so heightened -

12 - and they're appropriately heightened. These are

13 important issues with major ramifications for

14 everyone. They were so heightened that both

15 rightsholders and online service providers were

16 comfortable doing in-depth interviews with us so long

17 as we didn't identify them and we aggregated the

18 information. One way to have conversations about

19 detail is to have meetings that involve that kind of

20 thing, like Chatham House Rule, reporting out in that

21 kind of way.

22 As far as voluntary measures for this

1 discussion, if we get to it, I'd like to talk a little
2 bit about education measures and a couple of other
3 things and perhaps government role.

4 But before that, I feel obligated to correct
5 the record on -- it's now twice that there have been
6 characterizations of our work that put it into a
7 particular light, that it is goal-oriented and for one
8 side or another or one party or another. And I want
9 to speak to that because I think it's important to
10 correct the record. What Jonathan Taplin said about
11 me being -- I think it was a soft asset of Google, is
12 absolutely not true. However, the issue -- and he did
13 tell me beforehand he hadn't read the study.

14 But the issue that he kind of implicitly
15 raises I think is really important for all of us
16 trying to understand what's going on in this system
17 and to figure out how to do good research to develop
18 the sort of best way forward. And that is it is
19 always the right question and an important question to
20 find out from a researcher who has funded their study,
21 what are the parameters of the study, what are their
22 methodologies. If you have questions, ask more and

1 they should disclose all of those things.

2 So for the record, our study was funded by
3 Google and by the Sloan Foundation. And we also got
4 in-kind help from Opus Data, which is a movie industry
5 data analytics company that has the kind of massive
6 database that would allow us to manipulate the data.
7 No funder directed our approach in any way. Nobody
8 reviewed any methods, any data, any results or
9 reporting before public release.

10 And I say that because that is really
11 important, that none of this -- none of these kind of
12 reviews or influence happens. And fortunately, my
13 institution, and others' academic institutions I
14 suspect, protect us in that way. That should be
15 expected of everyone who does research in this space
16 and we should recognize that any kind of research is
17 going to also be limited by the data that's available.

18 So again, I would make an appeal to as many
19 OSPs and as many rightsholders who would be willing to
20 give data for research. We asked every single entity
21 we interviewed and no one else felt comfortable yet
22 giving data. So please do that. And when you do it,

1 please be willing to do it with without strings
2 attached so that people can -- that people can study
3 it and offer information that is going to hopefully
4 help us move forward.

5 MS. ISBELL: Mr. Miller?

6 MR. MILLER: Thanks. So two points. The
7 first one, just talking about correcting the record,
8 and going back to, Ms. Isbell, your question last
9 panel which will tie into my second point for this
10 panel, regarding the percentages of our particular --
11 if you remember, you asked me about Warner Brothers
12 and where we stand.

13 Again, I don't really know over time. But
14 over the last 12 months, just that timeframe, we
15 actually sent about a little over two-thirds of our
16 notices to Search, about the other third is P2P and
17 OSP and predominantly in that subset it was P2P but
18 that excludes -- that's only U.S. P2P notices. I say
19 that not only because you asked the question and I
20 wanted to give you the best answer I could sitting
21 here today but also because it -- now to your question
22 about this panel and to my second point -- you know,

1 there is a significant amount of information deficit
2 or failure among the participants in this ecosystem.

3 And we can't solve all of that. But we can
4 try to solve some of it. I mean, a lot of what we're
5 doing here today and yesterday I think is part of that
6 process where we get to learn kind of where people are
7 coming from, perhaps their figures, perhaps, you know,
8 their perspectives, what have you.

9 And in some of our voluntary initiatives
10 that have been successful, one in particular with
11 payment processors and part of the follow-the-money
12 strategy that Ms. Vitale and Mr. von Lohmann have
13 already mentioned, you know, we reached out to some of
14 the major payment processors primarily in connection
15 with cyberlockers, which used to be a much -- you
16 know, some of the major payment processors were
17 heavily involved or at least involved in that
18 ecosystem.

19 And we reached out to them and helped
20 develop with them jointly by providing information
21 about who these sites were, about providing what kinds
22 of characteristics are attendant to a cyberlocker,

1 things that they may not know about and starting that
2 dialogue and ultimately it led to several -- three of
3 the majors, PayPal, Visa and MasterCard -- major
4 payment processors developing standards or best
5 practices for their business partners to use to try to
6 identify potentially high risk sites and then employ
7 those going forward.

8 And of course, again, I should also mention,
9 this is not just a strategy and a -- this is not just
10 something that benefits us, right? This is a rising
11 tide that lifts all ships. And I think it's, again --
12 providing the information, we can't do it in every
13 context. But to the extent that we can, I think we
14 should feel comfortable doing that because it does
15 correct for an information deficit and that is, to
16 answer your question expressly, that is something that
17 I think we have found to be a key component of
18 successful voluntary sort of strategies.

19 MS. ISBELL: Okay. Just a quick programming
20 note. There is going to be a session at the end of
21 the day for open mic to discuss any of the issues that
22 have been raised here. And so, because these sessions

1 are so short, if you feel like you need to respond to
2 something that's not necessarily directed to this
3 particular panel, if you could hold it until the end
4 of the day and have your say during the open mic, I
5 think that would make this process go faster. And so,
6 with that, Mr. Marks?

7 MR. MARKS: Thank you. I think there is a
8 lot of potential for voluntary measures. I agree with
9 whoever -- I think it was Mr. von Lohmann who said
10 that not one size fits all. I think there's a whole
11 variety of voluntary measures. Some of them are
12 unilateral. Some of them are bilateral. Some of them
13 are in setting standards.

14 When we speak about "follow the money," Fred
15 and I have worked together, I think even long before
16 the IPEC proceedings were instituted, when I was at
17 Warner Brothers and he was still at Google and some of
18 the ads -- we were seeing ads for a lot of pirate DVD
19 sites that I think were coming up in -- I think it was
20 called Sponsored Links at that time. Maybe it's
21 AdWords now. I can't remember. But there was -- it
22 wasn't anything formal. It was really quite informal.

1 But we talked about that for, what, about a
2 year I think and kept -- we kept submitting examples.
3 He was -- you know, he said these submissions were
4 helpful because they were seeing recidivists who were
5 using different techniques to get back into their
6 advertising programs. So there can be a whole variety
7 of things. I think with demotion, that's been
8 something that Google's done really on a unilateral
9 basis. I don't think rightsholders have a lot of
10 visibility into, you know, which sites get demoted or
11 how many DMCA notices it takes to demote a site.

12 I think that's been an example more of a
13 unilateral voluntary measure as opposed to one that
14 was undertaken with -- you know, in kind of a
15 discussion and collaborative process. That doesn't
16 mean that it isn't workable. It's just a different
17 type.

18 I wanted to speak of one other type, because
19 I know I only have 30 seconds left, which is a trusted
20 notifier program. Google has some of those in its own
21 search processes. The trusted content --

22 MR. VON LOHMANN: Trusted copyright removal

1 program.

2 MR. MARKS: Trusted copyright removal

3 program --

4 MR. VON LOHMANN: TCRP.

5 MR. MARKS: Right, that Google wrote about.

6 We've undertaken one recently with some domain name

7 registries where both with donuts and we just

8 announced today a second one with Radix, which is a

9 registry that's based in India and Dubai where we

10 submit to a domain name registry after we have

11 undertaken to contact a registrar and a hosting

12 provider to try and get relief on, again, sites that

13 are devoted completely to copyright infringing long-

14 form content.

15 And when we don't get any remediation or any

16 real substantive response from the hosting provider

17 and registrar, sometimes we do, but most of the time

18 we don't, we can then elevate it to the registry and

19 the registry -- it's a completely voluntary

20 arrangement -- will then decide whether they want to

21 take action to try and not have that illegal website

22 operate under a domain name that they administer.

1 So that's another type that we're just on
2 the cusp of seeing. We hope it sets a standard. But
3 even if it doesn't, it's another -- you know, we're
4 trying to bilaterally roll that out. And we think,
5 you know, when sites are forced to change domain
6 names, they can lose traffic and it can lead to
7 confusion and diminished popularity. And so, you
8 know, there's not any voluntary measure that's going
9 to be a silver bullet. It's a whole combination of
10 them, from follow the money to these other sorts of
11 things like demotion and finding of domain names.

12 Sorry. Yes?

13 MS. CHARLESWORTH: On the demotion point,
14 I've heard or read perhaps in the comments mixed
15 reviews of that strategy from rightsholders. I was
16 wondering, do you have a point of view or does your
17 organization have a point of view in terms of whether
18 it's useful in strategy or effective?

19 MR. MARKS: Yeah. I think for -- I think
20 it's mixed at the moment. I think some sites, you
21 know, do get demoted. I've certainly seen things, for
22 example, where even -- and Fred, maybe this is

1 incorrect.

2 But I think even like when you were
3 searching for Kickass Torrents using the search term
4 Kickass torrents, if it had been demoted, it still
5 sometimes gets demoted off the first page and scam
6 sites are on the first page that pretend to be Kickass
7 Torrents. So I think in some senses it has. I think
8 there's been some frustration where, when on certain
9 types of search queries, when some of the major sites
10 are demoted, then less popular but rising pirate sites
11 come up and take their place very high up in search
12 results.

13 So I think it's mixed. I'm hoping that
14 there can be further collaboration to, you know,
15 improve demotion. But I think the results right now -
16 - I think it's still sort of early days. And part of
17 it is we don't know exactly which sites have
18 necessarily been demoted and what's the threshold for
19 notices for them to be demoted and those sorts of
20 things.

21 MS. CHARLESWORTH: I mean, have you made
22 efforts to have more of a dialogue about sort of the

1 methodology or --

2 MR. MARKS: I will say -- I will say --

3 MS. CHARLESWORTH: -- share your perspective
4 with I guess --

5 MR. MARKS: Personally at this point, I
6 don't think that's something we've actually talked
7 much about.

8 MR. VON LOHMANN: I'd just point out that
9 the popping up of other sites would be equally true
10 for whole site removal. So again, that's what we've
11 heard asked for and demotion signal delivers
12 essentially all of that benefit. It's not a silver
13 bullet. It's not a panacea for the whole problem. I
14 agree with Dean about that. But it's every bit as
15 good as the whole site removals that people have been
16 calling for.

17 MS. TEMPLE CLAGGETT: And what -- I guess to
18 just put a pin on that, the last point in terms of the
19 level of communication, is that something that you are
20 looking to increase in terms of cooperation on how
21 site demotion in the search context works, areas that
22 you're interested in potentially seeing to be improved

1 on a voluntary basis? Is that something that you guys
2 are attempting to start further collaboration and
3 conversation on?

4 MR. MARKS: Yes, I hope so. I mean, Google
5 is not the only search engine.

6 MS. TEMPLE CLAGGETT: Of course.

7 MR. MARKS: So there have been other
8 conversations with other search engines.

9 MS. TEMPLE CLAGGETT: We'll go down the
10 line.

11 MR. MARKS: So I think there's, you know,
12 potentially more exchange of information and
13 willingness to look at other signals. But I'm the
14 eternal optimist for voluntary solutions. And so, I
15 hope there will be -- there will be greater
16 collaboration and more communication. But I hope Mr.
17 Green will speak about some of these things as well.

18 MS. ISBELL: And one last question --

19 MR. MARKS: Sure.

20 MS. ISBELL: Just sort of from your view,
21 having participated in some of these voluntary
22 initiatives, are there ways to facilitate those types

1 of communications and to make it easier for the
2 parties to get in the same room and get on the same
3 page?

4 MR. MARKS: I'm so glad you asked that
5 because that was one of the things I had written down.
6 With the payment processors -- and I really don't mean
7 this to diminish our gratitude for the voluntary
8 cooperation with the payment processors that we have
9 achieved. But I think when there was that Megaupload
10 criminal indictment and PayPal was named as an
11 indicted co-conspirator, I think that kind of shook up
12 the payment process industry a little bit to say maybe
13 we should do something about cyberlockers.

14 So I think Senator Leahy had written a
15 letter at one point to payment processors asking about
16 cyberlockers. So I think, yes, there's a role for
17 government to encourage I think people to get together
18 and to see what they can work out voluntarily. I
19 think sometimes those signals from government can be
20 quite helpful.

21 MS. ISBELL: Mr. Green?

22 MR. GREEN: Well, I told you yesterday I was

1 excited -- most excited about this panel and I am most
2 excited about this panel. It's been the one where
3 we've actually had the most consensus and we've
4 covered, you know, important ground. Sorry about
5 that, my apologies. So excited. So excited.

6 Let me answer your question by addressing it
7 in this way. I want to talk about the behaviors on
8 both sides that I think have proven to be effective at
9 both encouraging the discussion and actually reaching
10 results that can be demonstrated to be effective.
11 When there is a mandated system, we optimize for
12 policy solutions, regardless of whether they're
13 effective.

14 When there's a voluntary situation, the
15 parties are inherently incented to only do those
16 things that will actually work. And I want to use the
17 example that we've had over the last 18 months with
18 the Motion Picture Association and the film studios in
19 particular because I think the behaviors that they've
20 exhibited and that they've caused us to exhibit are
21 exemplars of how to approach this process.

22 Let me be clear. I think the film studios

1 have demonstrated a real critical important issue
2 about how they are -- how piracy is impacting them
3 that is distinctly different than other industries.
4 So not only does one size not fit all for ISPs, one
5 size does not fit all for the various rightsholder
6 constituencies. How they experience piracy and the
7 sites that cause them pain are distinctly different
8 than in the music industry and that we've heard from
9 the photo industry and others.

10 So let's talk about our experience with the
11 film industry. We had initial meetings and we went in
12 on a listening session at the encouragement of our
13 general counsel and the general counsel of Viacom and
14 others, film studios who were noting this challenge in
15 piracy and noting some of the futility of the
16 discourse that was going on. In the context of that
17 listening tour, we became somewhat frustrated because
18 we heard different versions and different solutions
19 that didn't necessarily mesh with each other.

20 Those solutions were also very different
21 than what we had heard from colleagues in the music
22 industry and other industries. And so, when we went

1 back to talk to our engineers about how to solve the
2 problem of the role that search plays with respect to
3 piracy, we had lots of suggestions but no data to back
4 up which of those suggestions would be effective and
5 how.

6 The MPAA played a critical and important
7 role. They basically played the role of consensus --
8 parties that maintain consensus amongst the disparate
9 approaches and perspectives in the film industry. And
10 they didn't -- the most important thing is they
11 educated the search engines about the pain they were
12 experiencing and the unique business mechanisms that
13 were causing that pain.

14 The motion picture industry has a very
15 distinct problem that's caused by -- in part is a
16 symptom of their important business mechanism and
17 their business structure about how films are released
18 and when legitimate content is available. We
19 understand that because we license content from the
20 film industry and the last place we want to send
21 people to is an illegitimate site. We'd prefer to
22 send them to our platforms because we pay a

1 significant amount of money.

2 If you'll allow me a little bit more time,
3 so the behaviors that they exhibited is they left
4 their policy discussions sand baggage at the door and
5 they actually educated us on the unique harms that are
6 suffered by the motion picture industry. They
7 certainly had their thoughts and impressions about
8 what might be effective. But more critically, they
9 left those assumptions at the door.

10 The most effective conversations began
11 probably two or three meetings into it when our
12 engineers started to talk to their engineers. Yes,
13 they brought their technical people to a discussion
14 about voluntary measures. That's crazy. But that was
15 the most -- that's when we had gotten past that
16 baggage.

17 Similarly, they exhibited the important
18 behavior that I think is best expressed by Crosby,
19 Stills, Nash and Young: "When everybody's talking and
20 no one's listening, how can we decide?" And so, they
21 listened. They listened to how search works. They
22 listened to the challenges and the complexities of

1 tweaking an algorithm to impact piracy without having
2 that algorithm impact the substantial and substantive
3 legitimate conduct that's out there. We call these
4 things false positives, which are used in different
5 terms here.

6 What we mean is they produce an impact that
7 does not target piracy but that has a negative impact
8 on search in general. And they listened. They
9 listened to not just the function of what happens when
10 we take content out and when we remove illicit, you
11 know, actors and what have you.

12 But they learned that to focus on the
13 challenges, not to remove all pirated content, we
14 actually came to the consensus that the most important
15 thing we could do was not to focus on the 1 or 2
16 percent of searches that were targeted and focused on
17 -- you know, with a pirated intent, but to actually
18 focus on the bulk of legitimate activity and not to
19 guide users with an innocent intent who make up the
20 bulk of people who search for movie titles, to elicit
21 content.

22 How to do that? We focus on the first page

1 of results and we focus on the first page of results
2 because that's where 99 percent of the folks stay.
3 Less than 1 or 2 percent of searchers go to page two,
4 page three, page four. So while we could spend a lot
5 of time accomplishing the policy objective, the
6 political objective of removing content from all
7 pages, it wouldn't be effective as opposed to focusing
8 our energies on the first page.

9 Part of the problem of solving the first
10 page problem is not just removing content and demoting
11 content. That's effective, but only at some level.
12 You've got to replace that content with authoritative,
13 quality results from legitimate sites. Some of that
14 the search engine has an influence over.

15 And so, we -- and I've seen this practiced
16 by Google and others, we do place a substantial amount
17 out of real estate places where people can obtain
18 legitimate content. We place movie times. We place
19 locations with theaters where folks can find
20 legitimate content.

21 But we ask the movie industry -- and I think
22 they are taking pains to listen and figure out how to

1 implement on their own --to not just think about
2 search from a piracy perspective, but think about
3 search from the perspective that every other entity
4 who wants their page on the first page or the top 10
5 in search results thinks and how to optimize the 114
6 or 120 or however many sites that contain legitimate
7 content so they are optimized, that they are using
8 optimization techniques and other search engine
9 practices to appear on the first page.

10 That's a discussion that is about pragmatic,
11 data-driven solutions. We're not there in solving the
12 piracy problem. But we've made some absolutely
13 critical first steps. And we've done so because the
14 behaviors of both sides occur out of a political
15 regime. We leave our policy baggage at home and we're
16 invested in reaching solutions that actually make a
17 difference.

18 MS. CHARLESWORTH: Have you measured any of
19 the result of your implementation of -- it sounds like
20 you've implemented a demotion policy out of these
21 discussions or is that -- or is it still being
22 implemented?

1 MR. GREEN: It's an evolving process because
2 I think, as Fred and others have explained, demotion
3 is just -- it's a measure to address the problem that
4 exists at the time demotion is implemented. And
5 piracy shifts even more dynamically than other types
6 of innovation. There's an incentive for these pirates
7 to shift -- quickly shift their tactics when solutions
8 like TAG and others impact their efforts. So it is an
9 ongoing dialogue. It is not something that occurs
10 once and stops occurring. It is necessarily an
11 ongoing dialogue.

12 In the UK, we are part of a roundtable
13 discussion. There is an entity called Ofcom that is
14 in the process of measuring our results.
15 Unfortunately, they're using notices sent to Google to
16 measure whether Bing was effective in removing pirated
17 results.

18 MS. CHARLESWORTH: Maybe you need a new
19 methodology.

20 MR. GREEN: So we are working with them on a
21 more effective methodology.

22 MS. CHARLESWORTH: I'm no scientist, but it

1 sounds like --

2 MR. GREEN: But what I would say is that we
3 are making progress. We're finding out what works.
4 More importantly, we're finding out what doesn't work
5 and we're removing those obstacles about where our
6 next focus is. And this is all occurring because, you
7 know, the folks in the motion picture industry, aside
8 from the real policy issues that I think are valid and
9 appropriate, they've sent the people who are invested
10 and interested in actually achieving effective
11 results.

12 MS. CHARLESWORTH: So the other question I
13 have, because listening to this story and very high
14 level people came together from very large entities,
15 how -- like independent filmmakers, how do they -- how
16 do they benefit from, or not -- I mean, how do we
17 include them in the benefit of, say, a demotion
18 policy?

19 MR. GREEN: So I have followed Rebecca
20 Tushnet and others who have blogs specifically about
21 what occurred in New York and have obviously kept an
22 open ear here. Jeff Sedlik and I had an interesting

1 discussion over dinner about the challenges in the
2 photo industry where I've got 10 years of experience
3 around antipiracy and resolving things in my former
4 role as assistant general counsel of Corbis.

5 For the large rightsholders, for the folks
6 who have the resources to come together, I think that
7 512 and the voluntary measures are proving to be
8 effective at addressing not all aspects of piracy, but
9 those in which the players in the DMCA ecosystem, who
10 have good faith intent to abide by the DMCA can
11 actually do things effectively.

12 We have opportunities, and I think Keith
13 raised some excellent points, I think Jeff raised some
14 excellent points, to ensure that those benefits that
15 are created by the resources that are -- you know,
16 that the larger companies have, flow to the smaller
17 rightsholders.

18 Whether that's through coalitions or
19 cooperative ventures, whether that's through
20 government support or encouragement of those efforts,
21 whether that's through innovation, even at a small
22 level, to come up with ways to make it easy to report

1 notice-and-takedown, to make it easy to report, you
2 know, a single work to multiple ISPs without having to
3 send notices multiple times, we have room and there
4 should be appetite for that kind of innovation that
5 could occur.

6 And I think the challenge is there's a lot
7 to accomplish. 512 gives us some incentive to do
8 that. It's really time for all of us to come together
9 and put our best foot forward. I actually think one
10 of the best things that could occur, and we've talked
11 about this at varying levels, would actually be to
12 have a voluntary measure summit attended primarily by
13 engineers and folks that are invested and have a
14 pragmatic role in the tech system to share information
15 and talk about some of the measures and things that
16 engineers can talk about in a way that policy people
17 are incapable.

18 MS. CHARLESWORTH: Thank you.

19 MS. ISBELL: Okay. Mr. Siegel?

20 MR. SIEGEL: Hi. As I mentioned yesterday,
21 I represent CEG, which in turn represents independent
22 film studios. And your question is what voluntary

1 measures are working. And so I won't get into what's
2 not working.

3 But what is -- but we have to have a context
4 and you've already heard numerous people say the big
5 chunk of infringements are the peer-to-peer file
6 sharing infringements. Warner Brothers, Paramount,
7 they're all saying that's where it is. By the way,
8 Mr. Stiles, years ago I ran a test on books to see if
9 those were being pirated. They are, peer-to-peer.

10 MR. STILES: I know.

11 MR. SIEGEL: But to put that in context, by
12 the way, about seven or eight years ago, there was a
13 book -- please give me a little bit more time. Seven
14 or eight years ago there was a book I needed and I
15 couldn't find it anywhere. It was from the 1800s and
16 I found it on a torrent site. So a book from the
17 1800s, so BitTorrent has some good uses. But 99
18 percent of it is infringement and we've had
19 confirmation of that here today.

20 You've also heard Mr. von Lohmann say the
21 best way to deal with this is to get the rights owner
22 in touch with the alleged infringer to get to the

1 infringement source. If we can get there, we can
2 solve a lot of the infringement issues. So here's
3 what works. And for years -- for years, both in
4 Canada and the U.S., there have been many ISPs that
5 have been forwarding our notices to their subscribers.

6 In Canada, they made that mandatory. And
7 that has been working whenever there's a swarm that
8 starts to build up on an infringing movie or other
9 property. When those notices go out, those swarms
10 stop growing. So that is what works. If we can make
11 the -- we can adopt the Canadian system where we make
12 the ISPs forward all the notices to their subscribers.
13 I think much more is necessary. But that is a start.

14 MS. ISBELL: Mr. Andrews?

15 MR. ANDREWS: Thank you. So I wanted to
16 talk a little bit about unilateral measures. eBay has
17 been very successful in this area. I haven't looked
18 at the most recent figures, but in previous years, we
19 have by far removed more infringing content on our own
20 than we have removed in response to notice-and-
21 takedown requests. So most of the success happens on
22 a unilateral level.

1 But we couldn't do that without the
2 cooperation we've formed with the rightsholders,
3 including several sitting around the table today. We
4 have a team of people who go out and meet with them
5 and find out how to identify infringing material. We
6 bring their people into our customer service centers
7 to train our people on how to identify infringing
8 material, on how to identify repeat infringers.

9 So we work really cooperatively to optimize
10 our unilateral efforts. We've moved from a regime
11 where, 10, even 15 years ago, rights owners were
12 trying to shut eBay down because it was disrupting
13 their distribution networks, to a point where now they
14 rarely will sue us. They will come to us and know
15 that they can solve their problems with infringers
16 through us.

17 And as far as whether that's replicable and
18 what's replicable through government intervention or
19 cooperation or facilitation, the one example I might
20 point you to is the Memorandum of Understanding that
21 the European Commission facilitated on the trademark
22 front, where, to this day, the rights owners and the

1 online platforms are cooperating with a substantial
2 assistance of the Office for Harmony in the Market,
3 which acts as a data dump and a data analyst to help
4 facilitate KPIs and other parts of the effort to
5 cooperate.

6 MS. ISBELL: Okay. Mr. Stiles, I know you
7 put your placard up for the last question. But I'm
8 going to ask my second question. You can either
9 answer the first or the second.

10 MR. STILES: Well, I can kind of do a
11 mixture of both actually.

12 MS. ISBELL: Well --

13 MR. STILES: Oh, go ahead.

14 MS. ISBELL: -- let me ask my second
15 question --

16 MR. STILES: Yeah.

17 MS. ISBELL: And then you're the next
18 person. And so, the second question is now that we've
19 actually sort of laid a foundation of what is working
20 in the voluntary measure space, I want to talk about
21 what's not working and hopefully look for solutions.
22 Are there aspects of voluntary measures that don't

1 work but could be improved? So you can answer either
2 the first question, the second question or both, Mr.
3 Stiles.

4 MR. STILES: Yeah, I'd actually like to do a
5 mix of both. And again, keeping in mind that I'm not
6 a copyright lawyer and I have to spend most of my time
7 trying to stay alive rather than following everything.
8 Speaking specifically in terms of the issues facing
9 individual creators and rightsholders, and of course
10 very specifically in terms of authors, the nature of
11 the book industry is such that publishers are our
12 business partners.

13 Thank you very much. I'm naturally loud
14 anyway. So we retain our rights and how many
15 resources the publishers put into, you know, piracy
16 enforcement, sending out takedown notices, all these
17 other issues varies radically from publisher to
18 publisher. So even -- even when we're published --
19 even when my publisher takes part in automated or
20 large-scale anti-piracy measures, still I find
21 constantly pirated sites.

22 Like, for example, just this morning, I

1 found a YouTube video that advertised the location of
2 my book on a pirate site, for example. Now, I want to
3 say just a couple of things. One is that in this --
4 voluntary measures are great. I'm very encouraged by
5 a lot of this, including TAG. And I'm glad that
6 Google, for example, sees -- is engaging in its
7 demotion efforts.

8 The problem for individual authors is -- and
9 creative rightsholders - is that, again, we don't have
10 the time or money to participate and our rights are so
11 insignificant on the economic scale, even though
12 they're very significant on the cultural scale, that
13 you know, we feel like we're not being heard. Now,
14 the natural process for dealing with this is the
15 federal government, which is -- creates intellectual
16 property.

17 Without federal -- without the government,
18 there is no intellectual property. And so, the
19 problem is that we're very leery of having a federal
20 agency engage in a hardcore enforcement because we're
21 individual Internet users ourselves. We don't want to
22 go too far and we're worried about regulatory capture.

1 If you could just give me another minute?

2 But I think that one solution might be to
3 give us a voice is to have a dedicated ombudsman,
4 someone whose job it is within the Copyright Office to
5 represent the interests of individual creators who
6 can't be at the table and that someone whose job it
7 is, is a specific dedicated person to speak up and
8 say, well, these issues are this and this, someone who
9 meets regularly with organizations like the Authors
10 Guild, that I'm on the board of, that takes part in
11 industry association meetings, these kind of steps.

12 When it comes to regulation, I think that,
13 from my experience as a historian, I think that
14 regulation is both essential and enforcement is
15 essential but also it has to be nimble because
16 circumstances change. And we want to maintain -- we
17 want freedom of use by individual users of the
18 Internet and we know sharing takes place and people
19 just don't know sometimes. The individual authors
20 don't know. That's why we have -- what the rules are.
21 They don't know copyright law. Individual users who
22 are just sharing don't know copyright law.

1 So we need something beyond ourselves and
2 just our industry association or our authors
3 associations, that are very poorly funded, to play a
4 role in advocacy but also in education, both for
5 authors, so that, you know, we know what truly is a
6 violation and what we should be aware of, and also
7 users.

8 There must be a much bigger role for
9 education in terms of copyright for individual users
10 as well who, again, can't be expected to know
11 copyright law. And I think that having it -- from our
12 perspective, having a dedicated person inside the
13 Copyright Office who actually speaks for us would be
14 critical. I think it would be a huge factor.

15 MS. ISBELL: Okay. Thank you. Mr.
16 O'Connor?

17 MR. O'CONNOR: Great. Thanks. So I think a
18 major issue that's going on is one-size-fits-all can't
19 work. I think that's a consensus around the table
20 here today. I think that there can be a taxonomy,
21 though, subdividing the entire digital media
22 ecosystem.

1 I think what the fundamental problem right
2 now is that we have a discussion where people are
3 talking past each other. Here's a solution. Well,
4 that doesn't work, say for Search or another kind of
5 OSP. The spectrum is basically one-size-fits-all over
6 here. The other pole, I think Professor Urban called
7 it really nicely "bespoke." But it can't all just be
8 bespoke solutions.

9 So if you create a taxonomy that gets
10 different kinds of content industry and also different
11 kind of service providers, then you can take each one
12 and do this kind of method that Mr. Green is talking
13 about, get the relevant people in the room, the
14 technology people. Come up with -- now, I'm going to
15 say standard technical measures for that particular
16 subdivision area.

17 And that brings me to my next point, which I
18 don't think anything in the definition of STM actually
19 makes it so it has to be one across the digital media
20 ecosystem. I think it's written in the plural. And
21 so, you could have one as long as there's consensus
22 among that subdivision, that then you can have an STM

1 for that. The nice thing about bringing in an STM is
2 then you have in (ii) (b) that it has to be available
3 on reasonable and nondiscriminatory terms or RAND
4 terms. That helps solve your problem for the small
5 content and the small providers who can't afford the
6 expensive systems that, you know, Google has so
7 generously funded. But you know, they need to get
8 access to something. So you can have it available on
9 RAND.

10 I think that we should look to the SEP,
11 standard essential patents practice that's happened
12 outside of copyright on the technical side and know
13 that that has worked fairly well, voluntary parties
14 come together. Now, it's both a blessing and a curse
15 when your patents become the SEPs because, one the one
16 hand, you win because your standard now is the
17 standard. Your patents are. Everyone has to license
18 them.

19 On the downside, you have to license them on
20 RAND terms. So you can't maybe charge the top value
21 you wanted to. That process works. And I think,
22 again, Mr. Green has the right idea. Let's start

1 getting folks together. Again, I would just tweak it
2 by saying subcategory by subcategory and find ways to
3 move ahead on this.

4 MS. ISBELL: Okay. Thank you. Mr. Sedlik?

5 MR. SEDLIK: Thank you. I mean, we're all
6 here talking about 512 today because some people and
7 companies choose to upload infringing content to
8 innocent OSPs. And we haven't spent a lot of time
9 talking about the accountability of those individuals.

10 And one of the issues that happens with --
11 at least for independent artists who don't have
12 resources like some of the bigger companies to enforce
13 their rights -- is that the independent artist never
14 finds out who the infringing uploader was because
15 they're cloaked. So you file a DMCA notice. It gets
16 taken down. And you don't have the ability to take
17 action against or even to enter into a discussion with
18 the infringing uploader, who then just uploads it
19 again somewhere else. And it's kind of a variation on
20 the whack-a-mole issue.

21 But this inability to determine who the
22 infringing uploader is, is crippling to the

1 rightsholder. So it would be fantastic if we had some
2 kind of voluntary measure to uncloak the infringing
3 uploaders as part of the process. And a lot of them
4 don't reply to contest the takedown notice because
5 they don't want to be uncloaked and then they're just
6 back and doing it again.

7 So if they are identified, they're
8 accountable and we can try and take the burden off of
9 the OSP. There could even be part of the EULA at
10 these OSPs that allows the OSP to take certain actions
11 or to require fee or what have you from repeat
12 infringers who are constantly uploading this content.

13 MS. ISBELL: Thank you. Mr. Masnick?

14 MR. MASNICK: Thank you. I'm actually going
15 to disagree with many of the tech companies who spoke
16 already on this issue today about voluntary measures.
17 I worry a lot that voluntary measures that are solely
18 between rightsholders and big platforms leave the
19 public out and that in fact the lack of any mention of
20 the public today has been quite worrisome to me.

21 With voluntary measures, there's no
22 mechanism to vote on it. The public has no way to

1 weigh in and their interests are often not very well
2 served by these. For example, earlier today, earlier
3 on this panel it was mentioned a list that GroupM puts
4 out to be blocked. The original version of that list
5 included the Internet Archive, who was here yesterday
6 talking about some of these things. It included a
7 bunch of blogs that discussed music. It included 50
8 Cents' own website, his personal website.

9 So I worry about these things that seem like
10 good ideas as voluntary but don't actually take into
11 account what happens. And in some cases, obviously
12 they're voluntary. But they're becoming de facto
13 regulations in some sense. A lot of people sort of
14 keep pointing back to Content ID as something that
15 other sites should live up to despite not having \$60
16 million to spend on it.

17 You know, the purpose of copyright is
18 supposed to be about promoting the progress of
19 science. The intent is to benefit the public and we
20 should be concerned about that when that's not being
21 mentioned in a lot of these discussions. On top of
22 that, you know, we're living in a golden age of

1 content right now and much of it is because of the
2 availability of a wide variety of platforms that take
3 different approaches to these issues.

4 That experimentation actually created a new
5 generation of artists, often using amazing new
6 business models that didn't exist a decade ago. And
7 when we have voluntary measures, we should be worried
8 about some of those being blocked. We should worry
9 about collusion. And I know that I worry quite a bit
10 about limiting innovation and especially about killing
11 off new business models. And innovation, including
12 business model innovation, frequently looks like
13 piracy in the early going.

14 But in the long run, allowing that
15 innovation to flow is where we get new business
16 models. Just as a reminder, the radio, the VCR, cable
17 TV, the DVR, the MP3 player and online video when they
18 all first came about were sort of decried as being
19 solely focused on piracy initially. And yet, every
20 one of those turned into major revenue streams. But
21 that was by allowing the experimentation and not
22 cutting it off by restrictions, voluntary or

1 otherwise.

2 MS. TEMPLE CLAGGETT: I had a quick question

3 --

4 MR. MASNICK: Sure.

5 MS. TEMPLE CLAGGETT: -- follow-up question

6 about incorporating the views of the public in any

7 voluntary measures, which I think is an important

8 concept. Sometimes it's interesting to try to even

9 figure out who speaks for the public --

10 MR. MASNICK: Absolutely.

11 MS. TEMPLE CLAGGETT: -- because various

12 different entities and representatives purport to

13 speak to the public. But you don't have someone who

14 says I am personally the public. So do you have any

15 suggestions then in terms of ways that the voice of

16 the public, so to speak, could be incorporated into

17 these voluntary --

18 MR. MASNICK: Sure. I mean, the more of

19 these things that are discussed publicly, that are in

20 open forums where the public can weigh in -- I mean, I

21 know earlier today, again, you know, just for example

22 with, you know, the setup where you guys are -- have

1 opened questions in these proceedings in particular,
2 someone accused the public of weighing in as being a
3 denial of service attack. You know, that seems
4 unfortunate, right? We want the public to weigh in.

5 Obviously, in some cases, there are
6 different methods, you know, and in that case, you
7 know, a system that was made to make it easier for the
8 public to weigh in I thought was very, very helpful.
9 And we should pay attention to that kind of thing and
10 not dismiss it out of hand, even if some of it is, as
11 a lot of people, you know, submitting a suggested
12 response, right. There was the ability to change it
13 and many people did.

14 And so, I think, you know, the more things
15 that could be done to allow those discussions to
16 happen in public -- obviously, when you're talking
17 about voluntary measures that aren't involving the
18 government, you know, some of those discussions are
19 going to happen initially, you know, between the
20 different players.

21 But as those are implemented, if they are
22 starting to become standard or if they're starting to

1 become de facto regulations, we have to be very
2 concerned about, you know, who's actually, you know,
3 in that room and who's making that decision because,
4 you know, there are solutions that are probably very
5 good for the tech platforms and very good for the
6 rightsholders but that don't -- that aren't good for
7 the public. And so, you know, I think there need to
8 be more mechanisms, at least for making those things
9 clear.

10 MS. CHARLESWORTH: So is your suggestion
11 that government should somehow play a role to ensure
12 that the public participates in those discussions? I
13 mean, what -- given that we can't really stop them
14 from taking place --

15 MR. MASNICK: Sure. I think my concern is
16 more in the other way, in that if the government is
17 sort of stepping in and pushing voluntary measures
18 that don't involve the public, that the end results of
19 that are going to be concerning. And that's my major
20 concern there.

21 MS. ISBELL: Okay. Thank you. Mr.
22 Rodriguez?

1 MR. RODRIGUEZ: So just a couple of quick
2 comments. So first off, I just want to comment on the
3 topic of taxonomies. And it was raised by Mr.
4 O'Connor and I'm a University of Washington alum, so
5 there you go. So just very quickly, absolutely, what
6 we've seen in 20 years of building these systems, many
7 of which are bespoke, is that there really is not a
8 one-size-fits-all.

9 And so, Mr. Green's comment about getting
10 engineers to the table and really leaving the baggage
11 at the door, every system that we've deployed,
12 unilateral, multilateral, that's been the case. And
13 so, I would just encourage that conversation to occur.
14 It might be something that maybe there is a role for
15 government in helping identify what those taxonomies
16 might be.

17 Whether it results in STM or not, in the
18 sense of what the implementation of the technology is,
19 is a whole other topic, but one that I think is
20 important and the taxonomy is going to be critical.
21 So I'd just throw that out based on experience over
22 the years.

1 The other point is that in many of these
2 systems, what we've seen is that for smaller entities,
3 there can't be a large startup cost. And so,
4 something that basically in these multilateral systems
5 that allow people to enter into the system, whether
6 it's a small content rightsholder or a small OSP,
7 something that doesn't require them to actually submit
8 all their content. I know that came up in the
9 previous session.

10 That's particularly true in what we've seen
11 in these multilateral systems when the content is
12 related to maybe a product release. We've seen this
13 time and time again. You'll have entities that have
14 imagery of unreleased products. And how do they
15 actually protect against those imagery being used
16 ahead of basically distributing the image to get the
17 fingerprint to actually create the filtering
18 mechanism. So how do you actually label the content
19 in such a way that I don't need to distribute it to
20 affect the protection. So something else I would just
21 throw out.

22 MS. ISBELL: Okay. Thank you. Ms. Urban?

1 MS. URBAN: Thank you. So rather than talk
2 about something that isn't currently working, I'll
3 talk about something that exists in sort of a patchy
4 way, I suppose, that came up through our work, which
5 would be the potential benefit of a variety of
6 educational practices.

7 So I absolutely second what Mr. Stiles said
8 about that, to help empower both senders to use the
9 notice-and-takedown process effectively and
10 appropriately and also to help targets to understand
11 both their rights and their responsibilities. I was
12 really struck by, again, we heard from OSPs, from
13 their point of view, how they saw notices coming back
14 and forth across the transom.

15 And then, we were able to look at some
16 notices by smaller senders who had a variety of
17 different kinds of confusion or issues with copyright
18 law. I was really surprised by Mr. Kupferschmid and
19 Copyright Alliance's study that their membership -- a
20 proportion of them, you know, don't use the DMCA in
21 part because they haven't heard of it. And that
22 really seems like an obvious place for educational

1 practices that could really help people make better
2 use of the system.

3 As to government's role, I think that's an
4 interesting question here because, again, you're going
5 to have a lot of different sectors. You're going to
6 have a lot of different taxonomies, as Professor
7 O'Connor said. However, it might be something that
8 the Copyright Office or another government entity
9 really could provide a good neutral space for.

10 The second thing I would say about it though
11 in thinking about the conversation sort of over the
12 last couple of days and more broadly is that I'm not
13 sure -- I mean, none of these -- none of the solutions
14 that we've been talking about at any part -- in any
15 part of the conversation obviously will solve all
16 problems in all places.

17 I'm not sure how well educational practices
18 or good educational materials will do for some
19 situations. For example, some of the senders we saw
20 in Study 3 really either misunderstood copyright law
21 at a very deep level or they simply had a dispute that
22 they really needed to be resolved or wanted to be

1 resolved and they were willing to use copyright law to
2 resolve it. For those kinds -- when it wasn't
3 appropriate.

4 For those kinds of situations, more
5 structural -- more structural solutions may be
6 something to think about. I'm thinking specifically
7 of the alternative dispute resolution or the small
8 claims idea or thinking about the balance between when
9 you're liable for sending an improper notice versus an
10 improper counter-notice to try to make sure that the
11 stakes and the -- the stakes are the appropriate level
12 for the dispute and the disputants have availability
13 of a system that helps them come together or get their
14 dispute resolved.

15 MS. ISBELL: Okay. Thank you. We're
16 rapidly approaching 12:30. But I definitely want to
17 get to the people over here who have not spoken yet.
18 So if you could really try to stick to the two
19 minutes, I would appreciate it. Mr. Murphy?

20 MR. MURPHY: You got it. So I want to thank
21 the Copyright Office for their deliberate and focused
22 attention on small creators, small independent film

1 creators and artists.

2 You asked the question of what doesn't work.

3 And sometimes following the money doesn't work because

4 for lots of these people there isn't a lot of money in

5 it in the first place. And these small amounts of

6 infringement, of thousands of dollars here or there,

7 can actually be a big difference for a lot of people.

8 I am encouraged to hear Mr. Green talk about

9 getting more industry people together about rising all

10 boats, that some of the standards that come from

11 having the large players in a room can actually

12 trickle down to the small players. And so, things

13 like, you know, your search listing optimization could

14 actually become a standard and best practice that

15 small and large people alike can actually adopt.

16 Just the concept of identification, you

17 know, how do you identify a work, how do you identify

18 the creator of that work. There have been lots of

19 attempts in a lot of different circles about how to do

20 that. And as much as I love the creators and music, I

21 also recognize the need for things like metadata

22 standards and about naming conventions and about, you

1 know, minimum required fields for submissions.

2 And so, I think while voluntary measures
3 should be the best place to do that, we also have gone
4 18 years and there's areas where they haven't been
5 adopted yet. And so, however we encourage the
6 industry to recognize how we can elevate everything
7 for small and large alike -- I'll just mention the
8 ISNI is a new Internet standard about identifying
9 individual creators and authors. Here have been other
10 standards that have come and went and I encourage more
11 dialogue and conversation and will do more later on
12 today.

13 MS. ISBELL: Thank you. Mr. McNelis?

14 MR. MCNELIS: Thank you. Just to echo a
15 couple of quick things that have been said from a
16 small creator, small business point of view, it's
17 really clear from all these conversations that the
18 DMCA is not a one-size-fits-all solution.

19 There are these different verticals and
20 taxonomies, which I think really requires more focus
21 and attention because the problems I'm having may not
22 be addressed through solutions for larger players or

1 other types of businesses like photographers. And
2 that's really important that we identify the different
3 problems for the different stakeholders and we
4 identify solutions for those different stakeholders.

5 To underline that, the DMCA as it exists
6 today is functionally nonexistent to my business.
7 There is no functional way for me to interface with
8 the DMCA that has a positive effect on my business or
9 affects the bottom line or allows me to use it in a
10 way that it was intended, or believe it was intended
11 by Congress to protect our works and help the benefit
12 of our ecosystem and our economy is a creative
13 company.

14 And the last thing I'd like to say is that I
15 think that the public should be involved in these
16 conversations and that we should encourage education
17 for good digital citizenship. One of the things that
18 I think we have right now is we have no economic
19 disincentive for digital citizens to act improperly.
20 Infringement is basically -- there is no real
21 consequence for being a bad actor in this ecosystem.
22 And if there's no consequence, we have stakeholders

1 that don't have any skin in the game.

2 So if we really want to have a truly
3 cooperative, voluntary ecosystem where all players are
4 represented, then everybody's got to have skin in the
5 game and there have to be either financial incentives
6 or disincentives so that everybody is on an equal
7 ground in looking at the solutions that apply to each
8 individual vertical of stakeholders and taxonomy.
9 Thank you.

10 MS. ISBELL: Okay. Thank you. We have one
11 more person who hasn't spoken yet. For everyone else,
12 I'm going to ask you to please consider signing up for
13 the open mic at the end of the day because we
14 definitely want to hear from you. So last word?

15 MR. KUPFERSCHMID: Okay. Oh, that doesn't
16 move any closer. So first of all, after Dave Green
17 spoke here, I wasn't sure whether to say amen or give
18 him a big kiss because everything he said -- I know,
19 he's sitting too close here -- everything you said was
20 just spot on and it was magnificent and it was
21 perfect.

22 To Mr. Stiles' point, he's right, as well as

1 Professor Urban, for calling us out on the carpet
2 here, is that, look, we need to do -- as a community,
3 both, you know, of copyright owners, of copyright
4 users, of the public, of everyone in between need to
5 do a better job on education. We absolutely do. And
6 the Copyright Alliance is equally at fault here. And
7 this fall, we're going to be rolling out a lot of
8 materials, a whole new website to educate copyright
9 owners, users, anyone who wants to come to our site to
10 get educated in terms of copyright.

11 A lot of this is difficult to do and we're a
12 small organization. And we could certainly use
13 assistance and help. And so, anybody who wants to
14 volunteer to help us, we're certainly amendable to
15 that. But in terms of education, one thing that I saw
16 in the comments -- and heard a little bit today, but
17 not much -- is the idea of education, but educating
18 not in all aspects of copyright but only certain
19 aspects, like fair use.

20 Okay, we saw a lot of that in the comments,
21 we need to educate people more on fair use, more on
22 fair use. Well no, we need to educate people on the

1 entire copyright law that affects them, not just on
2 fair use, exclusive rights and the DMCA and the whole
3 kit and caboodle. It's like if you were to teach
4 someone about driving, would you just say just teach
5 them about green lights, or would you teach them about
6 yellow rights and red lights? You'd teach them about
7 the whole thing hopefully.

8 And the last point I want to make here is
9 about -- more generally about voluntary measures. And
10 you know, we've heard a lot from people about the
11 voluntary measures in advertising and the payment
12 processors and a few other areas, including with the
13 trusted notifier program with registrars and
14 registries. And I think we just need more of that.
15 We need more discussion, especially with the
16 registries.

17 I think they're serving as a good model, the
18 two trusted notifier agreements that are in place and
19 would like to see more of that. But I think we need
20 more of that, more willingness to sit down, discuss
21 each other's goals, find a workable solution, away
22 from the spotlight and the grandstanders and try to

1 come up with these voluntary initiatives that work
2 best for everyone. And I know I didn't say that as
3 well as Dave Green here, but hopefully get the point
4 across. Thank you.

5 MS. FERTIG: Can I ask --

6 MS. TEMPLE CLAGGETT: Just one quick follow-
7 up question is just that we heard -- we've heard that
8 a lot in terms of more -- we need more of them
9 [voluntary agreements]. This is a good thing. But
10 the question is how do we encourage -- is there a role
11 for government to encourage more of them? How are
12 more -- how do you ensure that more of them actually
13 happen?

14 MR. KUPFERSCHMID: So I think Brian had a
15 good point about having skin in the game. And
16 sometimes I don't know how you do that. But we talked
17 a little bit about the payment processors earlier.
18 And one of the reasons the payment processors came to
19 the table, they realized it was in their best interest
20 to come to the table because they were getting people
21 who were using their credit cards and would get
22 pirated stuff that didn't know that they were ordering

1 pirated material. And they would say, you know, I
2 want to get my money back. And this was causing them
3 some difficulty too.

4 They also found out that there were a lot of
5 people using their -- this is more of a trademark
6 issue, but their logos that didn't really accept Visa
7 or MasterCard or whatever. So all of a sudden, once
8 they started looking into the problem, they realized
9 that it was in their best interest too and they had --
10 they had some skin in the game.

11 So to the extent that's possible, I
12 certainly think that's -- you know, that's the case.
13 And on the flipside of that, also looking at there are
14 some groups out there that -- you know, registrars
15 happen to be one of them, that are sort of promoting
16 or making it much more -- much easier to engage in
17 piracy -- for instance, these sort of privacy proxy
18 services that are out there. And we will -- we will,
19 you know, notify ICANN or something to try to get
20 information about, okay, who's behind the piracy, as I
21 think Jeff had mentioned, try to find out -- figure
22 who's behind this and try to talk to and figure out a

1 best solution to work with them.

2 And then, what'll happen is the registrar
3 will say, well, we have to turn over your information.
4 But we have this other service you can pay for which
5 will, you know, keep your identity secret. Would you
6 like to pay for that? And certainly they always do
7 and we just can't get the information. And that's a
8 problem. That's a problem.

9 MS. CHARLESWORTH: I think Ms. Fertig has a
10 -- oh --

11 MS. FERTIG: Yeah, just two quick follow-up
12 points. In New York, we heard a lot about educating
13 the uploaders and we haven't really heard a lot in
14 this discussion.

15 But to the extent, Mr. Kupferschmid, that
16 you were talking about educating the public more
17 broadly, not just about fair use but about all of the
18 different aspects of copyright, is that sort of --
19 educating the uploaders -- where you think that
20 education should be directed in order to have an
21 impact on stemming piracy or where do you see that
22 education focused?

1 MR. KUPFERSCHMID: Yeah. That's -- yeah, I
2 mean, that's correct, uploaders. But it doesn't need
3 to just be focused on uploaders. And frankly,
4 everyone -- we've heard today -- I mean, owners,
5 copyright owners, users, authors, creators of all
6 types, OSPs, you name it, across the board.

7 I don't think we should just focus on any
8 one particular entity to focus our educational efforts
9 here. A lot of this is also dependent -- look, we're
10 -- like I said, we're going to be unveiling a new
11 website in the fall that will attempt to do this. But
12 we have just limited reach. There are a lot of other
13 big companies and large organizations around the table
14 that have much, much greater reach than us.

15 And the ability for them to also educate
16 their users, the people that they have direct contact
17 with, is significantly better than anything we can do.
18 And that's why I call on not just us. You know, we're
19 going to step up. I'm hoping there are a lot of other
20 groups here and outside of this room that will step up
21 and attempt to educate everyone.

22 MS. FERTIG: And just a short follow-up to

1 that, in terms of giving all of the different players'
2 "skin in the game," to the extent that the users may
3 not have as much skin in the game -- I think we heard
4 that earlier -- would a more transparent repeat
5 infringer policy maybe give users more "skin in the
6 game" if they understood what the consequences were
7 and then to make the educational aspects of knowing
8 what they had rights to upload or not?

9 MR. KUPFERSCHMID: So that maybe a good
10 idea. Frankly, I don't know that I'm the right person
11 to answer that question, simply because I don't have
12 the direct relationship nor do I think most of my
13 members have direct relationships with the users
14 themselves.

15 Those are the OSPs and others who are
16 providing services will have direct relationships with
17 their users and they know better than anyone how they
18 educate their users and what they're doing and whether
19 their users know about this repeat infringer policy
20 and understand it and know what the law is in that
21 regard. So I think they're probably in a better place
22 to do that level of education.

1 MS. ISBELL: Okay. Great. We are going to
2 reconvene at 1:30. So you get just slightly under an
3 hour for lunch. Again, if you're interested in
4 speaking at the open mic, there's a sign-up sheet
5 outside. Please put your name down.

6

7 (Recess at 12:40 p.m. to 1:36 p.m.)

8 SESSION 7: Future of Section 512

9

10 MS. ISBELL: We'll start over here.

11 MR. FEERST: I'm Alex Feerst, from Medium.

12 MR. DELGADO: Deron Delgado, from the
13 American Association of Independent Music.

14 MR. DODA: Paul Doda, from Elsevier.

15 MS. GELLIS: Cathy Gellis. I'm an attorney
16 in private practice. I represent intermediary and
17 public free speech issues.

18 MR. GRATZ: Joe Gratz, partner at Durie
19 Tangri LLP, here in San Francisco.

20 MR. LAMEL: Joshua Lamel, at Re:Create.

21 MS. MCSHERRY: Corynne McSherry, legal
22 director, Electronic Frontier Foundation.

1 MR. RILEY: Chris Riley, head of public
2 policy with Mozilla.

3 MR. ROSENTHAL: Jay Rosenthal, partner at
4 the Mitchell Silberberg & Knupp, representing the
5 music community, A2IM and NMPA.

6 MR. SHEFFNER: Ben Sheffner, Vice President,
7 legal affairs, Motion Picture Association of America.

8 MR. TOURTELLOTTE: I'm Bob Tourtellotte.
9 I'm an independent feature film producer, owner of
10 FilmMcQueen LLC and I'm the former entertainment
11 editor for Reuters News.

12 MR. WORTH: I'm Stephen Worth, associate
13 general counsel with Amazon.

14 MR. CADY: My name is Eric Cady. I'm senior
15 counsel with the Independent Film and Television
16 Alliance.

17 MR. STILES: T.J. Stiles, an independent
18 author.

19 MR. MICHAUD: Michael Michaud, Channel
20 Awesome.

21 MR. O'CONNOR: Sean O'Connor, law professor,
22 University of Washington.

1 MR. VON LOHMANN: Fred von Lohmann, from
2 Google.

3 MR. ROSLOF: Charles Roslof, Wikimedia
4 Foundation.

5 MR. ROSENTHAL: Could we start without them?
6 No, I'm just kidding.

7 MS. ISBELL: Unfortunately, this is
8 Jacqueline's panel.

9 MR. ROSENTHAL: Yes, it is.

10 MS. ISBELL: So we kind of need her.

11 MS. CHARLESWORTH: Hello, and thank you for
12 getting back. We're sorry we're a little delayed. I
13 understand we already went around the room, which is a
14 good thing. This is the last panel before open mic.
15 So perhaps it will build somewhat on the prior panel.
16 We're interested in sort of hearing thoughts about the
17 future of this regime.

18 I think one thing to consider is: What will
19 this look like in 10 years, 20 years? Is this a
20 sustainable way to deal with the issues that we're
21 trying to address, the interests of service providers,
22 users and the public? I'm going to put out a broad, I

1 think two-part question, which is really just, I
2 think, if you can give me your top two ideas for how
3 to improve this -- people use the word ecosystem -- or
4 things for us to think about as we're writing our
5 recommendation, I think that might be very useful.

6 And in doing that, if you can also maybe
7 comment on how what you're proposing or considering
8 would impact the different players, large and small,
9 in this system. In other words, I'd like to hear from
10 larger players more about how smaller players might
11 benefit and maybe from smaller players how larger
12 players' efforts might be of interest to them. But I
13 think what we'd love to get from you is your best
14 thinking on ways to move forward from here. So I
15 think last time -- which way did we start?

16 MS. ISBELL: I think we started --

17 MS. CHARLESWORTH: All right. Did we start
18 -- I'm going to be really bold. I'm going to start in
19 the middle. This is -- we're giving the middle -- I'm
20 going to go up on the left and up on the right. How
21 does that sound? So that -- anyone who wants to
22 address that very ambitious question, maybe all of you

1 will, I hope. I guess I'll start with Mr. Rosenthal.

2 MR. ROSENTHAL: Okay. Thank you. First of
3 all, I think one of the observations that I have over
4 the last now four days that we've been doing this is
5 that there is a good amount of talking by each other
6 on the issue of what do you do for the smaller
7 copyright owners.

8 And certainly we have put forward a number
9 of different potential solutions, adopt to a greater
10 degree or a lesser degree a notice-and-stay-down
11 process, somehow shift the burden of policing the
12 Internet from the copyright owners to the OSPs and to
13 the users to a certain extent, improving red flag,
14 improving repeat infringer policies, dealing with
15 willful blindness, representative lists, adopting some
16 monitoring, adopting some filtering, all of that
17 because, as we started this whole process, we've been
18 saying that for many small copyright holders, they've
19 given up. And they don't use it anymore.

20 That's an incredibly compelling point. I
21 really have heard no real understanding from the other
22 side of the aisle here on what they're going to be

1 doing about that. In a sense, that the smaller guys
2 are kind of a little collateral damage. And it's
3 really sad to hear and in terms of moving forward, I
4 hope we can take this down a road where they do start
5 listening to the smaller copyright owners and
6 understanding that 512 just isn't working for them.
7 It may be working for some of the bigger guys.

8 But it's not working for them. And until
9 they start really listening to that, forums like this
10 and voluntary forums I don't think are going to be
11 that beneficial and helpful. And I would hate to see
12 this move more towards a political arena. But I think
13 it already has, to a certain extent. Major artists,
14 who are small copyright owners, have started to view
15 this as we're not going to get the kind of relief that
16 is necessary unless we take this to Capitol Hill, like
17 we have before on other issues, and they've already
18 started on that, especially the artists to a large
19 extent.

20 So I think that the first step in terms of a
21 positive measure would be listen. Listen to the
22 problems of the folks who aren't using the DMCA

1 anymore and somehow respond in a positive way other
2 than everything is working and just accept it and move
3 forward.

4 MS. CHARLESWORTH: And Mr. Rosenthal, and
5 when you say -- it sounds like you're advocating for -
6 - I think someone talked about a series of conferences
7 or some gatherings where there were multiple interests
8 represented.

9 MR. ROSENTHAL: Yeah.

10 MS. CHARLESWORTH: Do you have an idea or
11 proposed format for those? Should the government be
12 involved? Should it not be involved? What can be
13 done to encourage that development?

14 MR. ROSENTHAL: Yeah. Well, first, I'd love
15 for Fred to host one because then we can all get free
16 sushi. And I would buy into that. I would be
17 influenced by free sushi. But bottom line is that --

18 MR. VON LOHMANN: I wish I had free sushi.
19 I don't know. Maybe that was true in 2005. I don't
20 know.

21 MR. ROSENTHAL: Well, you need better rep,
22 Fred. You really do. But bottom line is, yeah, there

1 is a role for government. And you know, we've looked
2 at the Copyright Office as a real, you know, place for
3 some of the most thoughtful thinking on this. This
4 whole process we're going through is great. I think
5 the reply comments you're going to get are going to
6 focus more on each of the industries' particular
7 problems.

8 But when you get right down to it, if you're
9 not going to go beyond voluntary and facilitation of
10 helping us solve this problem, the only other avenue
11 left is political. So I think it might be that
12 Congress is where all of this gets played out and it's
13 going to be in a much more controversial and
14 adversarial way at that point. I am all for voluntary
15 measures.

16 But everything I've heard about voluntary so
17 far has been about the big companies and the big
18 companies. I have not heard anything, and still, even
19 some of the big companies, the big record labels have
20 major problems that we have to deal with on this. And
21 government can play a role. But unless there's going
22 to be a willingness at the other side of this to --

1 the other side of the aisle to recognize the problems
2 and not just keep saying that everything's fine, I'm
3 not sure how much government can do in this voluntary
4 world.

5 We need a little bit more power and a little
6 bit more emphasis on there's -- if you don't listen to
7 us, there's another ramification you're going to have.
8 And that's kind of where -- you know, it's like
9 government can only take it so far in this context.
10 But there are other elements of government and then
11 there's also litigation, and that would be the worst
12 of all, to try and solve these problems through
13 litigation because so far the courts have not really
14 given us the remedies that we're looking at.

15 We just have to have government recognize
16 that be a little forceful and get, you know, the folks
17 on the other side of this aisle to recognize the
18 problems, especially of small copyright owners and I
19 think we will get some kind of progress down the road.

20 MS. CHARLESWORTH: Thank you. Mr. Riley?

21 MR. RILEY: So you asked for two things, so
22 I'm going to do what I've done both of the previous

1 time I've talked and separate this into two separable
2 problems.

3 One is abuse of automated notices or abuse
4 of notices -- I misspoke, abuse of notices in a way
5 that infringes on fair use and restricts legitimate
6 expression rights and lack of meaningful disincentives
7 to file for political or anticompetitive intent. This
8 is the place where we engaged most substantively in
9 our comments and offered a couple of pieces of a
10 solution that would we think increase the penalties
11 associated with fraudulent filing, attaching perjury
12 to the substance of the notices filed and/or putting
13 statutory damages on it. Don't engage too much.

14 That was sort of the way that we put it into
15 our thinking. I think there are ways we could talk
16 about these and calibrate them so that they don't
17 impact the people who, for lack of a better word, are
18 good actors, the people who are making mistakes
19 inadvertently, not the -- like trying to separate out
20 the people who are making occasional mistakes from the
21 people who are engaging in this for political or
22 anticompetitive ways. I think that's one problem that

1 we can talk about and engage in substantively.

2 The second side of this, I hear the concerns
3 raised over insufficiency or non-scalability of the
4 sort of repeatability set of problems here. But I
5 continue to believe that the solutions I'm hearing
6 don't seem right. Using law to require technology to
7 block content is fraught with risk. It's easy for
8 tech to outpace any law that's put on the books here.
9 It's easy for tech to outpace tech using encryption or
10 other means to get around these.

11 Certainly open to more discussion of
12 voluntary measures. Other uses of automation
13 technology. But the core of our policy world view at
14 Mozilla is concerned with these kinds of mandates that
15 block information flow. It's the reason why we see a
16 lot of politics and a lot of drama over this issue.
17 And issues related to the blocking of content as they
18 have appeared in the past in contexts like SOPA, PIPA
19 and ACTA in Europe.

20 MS. CHARLESWORTH: Thank you. Ms. McSherry?

21 MS. MCSHERRY: Well, I'm going to agree with
22 everything that he just said, pretty much.

1 MS. CHARLESWORTH: Is that Mr. Rosenthal or

2 --

3 MS. MCSHERRY: Mr. Rosenthal, no. Mr.

4 Riley.

5 MS. CHARLESWORTH: You've got to be clear

6 for the record, Ms. McSherry.

7 MS. MCSHERRY: Of course. I apologize.

8 Everything that Mr. Riley just said and actually I'm

9 going to have to expressly disagree with some of what

10 Mr. Rosenthal said.

11 But let me start with a positive, which is I

12 would like to echo what I think we heard a little bit

13 yesterday which is I think it's important as you're

14 preparing your report and as we're thinking about

15 these issues that we are careful to separate between

16 what is a DMCA problem or in some ways related to the

17 safe harbors and what has really nothing to do with

18 the safe harbors at all and make sure that we aren't -

19 - you know, in our efforts to, you know, address

20 infringement, we aren't mixing those things up because

21 there's a lot of infringing activity that takes place

22 online and a lot of non-infringing activity that takes

1 place online that basically has nothing to do with the
2 safe harbors.

3 And so, let's make sure we differentiate
4 between those things in our analytical thinking. I
5 also -- I want to disagree that more filtering and
6 monitoring is a good way forward, whether that's via
7 legislation or voluntary measures. I don't have any
8 objection to having discussions. I think having
9 discussions is a good idea. But one of the things
10 that we see is that sometimes voluntary measures, I
11 worry what we'll have is, you know, more and more best
12 practices agreements and that kind of thing. And
13 effectively what we do is we create a system of
14 private law with very little due process and without
15 users in the room and without users in the room with
16 the ability to do anything about it.

17 Now, you asked in the last panel how do --
18 who should get involved, how can we get the public
19 involved. And so, I just sort of went off the top of
20 my head. Well, who would we need in the room to
21 actually be able to meaningfully participate to have -
22 - to come up with some ideas that would get things

1 moving forward? And it wouldn't be just EFF and it
2 wouldn't be just Public Knowledge and the traditional
3 consumer groups, though certainly they should be
4 there.

5 But also we need universities. We need the
6 libraries. We need the Authors Alliance, who has a
7 very different view about books from that of the
8 Authors Guild. We can use clinics to help represent
9 people. Lots of university clinics I think would be
10 willing to do that. And yes, please, please let's
11 bring in the engineers.

12 MS. CHARLESWORTH: Okay. Thank you. Just a
13 follow-up on that. So that's a nice vision of like a
14 very -- you know, a nice cross-section of people. Do
15 you have any thoughts on who might initiate such a
16 gathering or how we could encourage people to come to
17 a summit, if you will, about these issues?

18 MS. MCSHERRY: Well, I think continuing to
19 have roundtables like these is not the worst thing in
20 the world. I agree, by the way, that people need to
21 listen. People need to come willing to discard some
22 of their baggage. If you'll take fair use seriously,

1 I'll take your infringement seriously and we can have
2 a conversation.

3 And you know, but I think coming to the
4 table assuming that blacklists are a good idea, for
5 example, is going to be tough for a lot of people. So
6 it's not just the physical convening part but also
7 people being really willing to set aside some of their
8 assumptions as they walk in the door on both sides.

9 MS. CHARLESWORTH: Thank you, Ms. McSherry.

10 MS. TEMPLE CLAGGETT: I had a quick follow-
11 up actually as well on that. Just kind of following
12 up on what you had said earlier about being concerned
13 about voluntary initiatives --

14 MS. MCSHERRY: Yeah.

15 MS. TEMPLE CLAGGETT: Obviously there's also
16 a concern about legislation as well. So how do we
17 meet in the middle if you're concerned that voluntary
18 initiatives will be de facto law and you're concerned
19 about actual law.

20 MS. MCSHERRY: Right.

21 MS. TEMPLE CLAGGETT: What is the
22 appropriate solution in that sense? Is it a voluntary

1 solution that makes sure that it incorporates the
2 voice of the users and the public, as you've said, or
3 is it a mix of both? What are you suggesting?

4 MS. MCSHERRY: Well, so I agree that if we
5 get into legislation, it's going to be very
6 adversarial and there's going to be a lot of people
7 that I represent who are going to be very concerned
8 about what we're going to see. So there's no question
9 about that.

10 I think that what you can do is you can come
11 up with targeted solutions that are actually focused
12 on the problem at hand. So you try to limit the
13 collateral damage as much as possible or the
14 collateral effects as much as possible, just like you
15 would if you were trying to pass First Amendment
16 scrutiny, for example.

17 So you come up with narrow, targeted
18 solutions. And then you have the ability and the
19 willingness to tweak them as needed. So for example,
20 with Content ID, when Content ID first launched, EFF
21 had a lot of concerns about it. It turns out a lot of
22 those concerns were right. It was often abused. It's

1 still abused, but a little bit less now.

2 And part of it is because Google's been
3 willing to do some tweaks to make it a little bit more
4 user friendly and because people like my organization
5 have been willing to work with users to help them
6 understand how it works. So there can be -- you know,
7 it's just like you can't mandate a tech solution.

8 But you can come up with interim solutions
9 that you're willing to revisit as problems emerge.
10 And you need to have that flexibility though because
11 blanket things like just Internet blacklists, they
12 just don't work. They're always going to sweep up
13 more than they should.

14 MS. CHARLESWORTH: Mr. Lamel?

15 MR. LAMEL: Thank you. Instead of proposing
16 two solutions, which I think there's going to be a lot
17 of good solutions that's proposed around this table,
18 including those by my colleagues, what I want to do is
19 just kind of make some observations that I think
20 should guide how you approach these solutions and how
21 you approach things moving forward.

22 On the first point, on who could host this

1 or who could be a convener, I think it's important
2 that the conveners of this are seen as representing
3 all the different sides of the issue as well, that if
4 a convener is seen as biased or otherwise, that's a
5 problem. I am happy to step forward and offer up
6 Re:Create as a convener with folks from other parts of
7 the ecosystem that are around this table, if that will
8 help.

9 So I'm happy to volunteer to do that. We
10 represent I think three-quarters of the groups that
11 Corynne listed on her list, including EFF, as part of
12 our coalition. So we could really help bring the
13 public as well as some folks in the tech industry to
14 the table and the libraries.

15 So just some things. I think what are some
16 observations? Number one, if the goal is a hundred
17 percent ending all piracy, we're all going to fail.
18 It's just -- we've heard about the whack-a-mole.
19 We're never -- short of literally just shutting down
20 the Internet, we're never going to get there and I
21 don't think that's something that anybody around this
22 table wants at all.

1 Number two, we need more studies and data.

2 I think it's been clear, whether we agree with
3 methodologies or other things, that, you know, the
4 work that people like Jennifer Urban are doing and the
5 study that came out is informing us and helping make
6 things better. So I want to encourage that. I'm
7 going to talk a little faster now.

8 Number three, let's stop calling each other
9 names. How am I supposed to sit around a table and
10 come to an agreement with people who've referred to me
11 as a slave owner and a Nazi? Think about that from
12 the perspective when you do that. Just stop.

13 Number four, we need more computer
14 scientists and engineers talking and we need more
15 computer scientists and engineers involved in the
16 process, especially when we get into tech and how tech
17 can fix things.

18 Number five, on the education front, fair
19 use education being included and consistently imposed.
20 And we heard comments to the contrary. It's why the
21 fair use advocacy community, including myself, have
22 such a distrust of educational initiatives. Do you

1 mind if I continue or --

2 MS. CHARLESWORTH: Yeah. Yes, go on.

3 MR. LAMEL: Thank you.

4 MS. CHARLESWORTH: I don't mind.

5 MR. LAMEL: I want to respect time.

6 MS. CHARLESWORTH: Yeah. Well --

7 MR. LAMEL: And there's a difference between
8 education and threats. Real education that's balanced
9 that talks about what is and what is not piracy, what
10 is and what is not inappropriate, I think you'll see
11 people from our side support that and work with MPAA
12 and RIAA and the small guys and the small labels. And
13 I think we could actually put together a really cool
14 educational initiative.

15 But if the idea of even including the words
16 fair use in it are not at the table as a condition for
17 the conversation, it's not going to happen. And I'll
18 end, I think -- and I just lost my notes, thanks to --

19 MS. CHARLESWORTH: I don't think I heard
20 that. I think --

21 MR. LAMEL: From experience in the past,
22 though, when we've heard those -- I didn't hear that

1 today though. But I'm just saying that that is in the
2 past, when we've come to have these conversations,
3 that has happened. And it is part of what broke down
4 the USPTO roundtables, frankly. And Corynne could
5 probably talk to that since she was there better than
6 I could. I want to say let's focus on the 99 percent,
7 not the 1 percent.

8 I think the Lumen rabbit hole we went down
9 is a perfect example of focusing on availability
10 rather than where the problems actually happen. I
11 think Mr. Green made some fantastic points about first
12 page versus fifth page and actually understanding
13 actual user behavior and how it leads to piracy and
14 the things that are actually causing people to pirate
15 stuff online is really important.

16 And let's focus on that as opposed to every
17 single place that everything is available because in
18 some cases, it's just -- it's not -- just because it's
19 available doesn't mean it's necessarily the problem.
20 And I think, you know -- I think that open mind talks
21 that Mark talked about and how those talks came in
22 with an open mind, I want to congratulate everybody

1 who participated in those because I do think those led
2 to some solutions that were focused on where 99
3 percent of the problem is.

4 Final two points, number one -- number one,
5 as long as we act as if there's only one type of
6 creator or dismiss the idea that there are lots of
7 different creators, we're completely missing things.
8 Every single so-called creative group around this
9 table -- and I think they have wonderful creators who
10 are doing wonderful things and I have immense respect
11 for everybody in the creative community -- doesn't
12 represent any of the YouTube stars I talked about
13 yesterday or any of the kind of new creative community
14 that's emerging.

15 I think -- I don't think it's intentional or
16 ill-willed. I actually want to note -- I'm not going
17 to -- I'm not attributing any purpose in that. But at
18 times, if we don't think about those people, we don't
19 include those people in this process or we act like
20 they don't exist, I think that's problematic. And at
21 times, it comes off as a little, for lack of a better
22 term, get off my lawn-y and that's' tough.

1 And then, finally, I want to bring up what I
2 thought was Mike Masnick's really strong point about
3 government involving itself in voluntary agreements.
4 If government is going to step in and encourage or
5 pressure voluntary agreements and the public isn't
6 included in those voluntary agreements, it has much
7 more problematic optics than if the private groups
8 just get together and work on it on their own. And I
9 would -- I encourage voluntary agreements. Some
10 people around this table don't love voluntary
11 agreements.

12 I encourage voluntary agreements. I think
13 they can be a good thing. I just think it's important
14 that they happen organically and people get together
15 and that the government is not seen as trying to be
16 involved. And if government is seen as pressuring or
17 I think in some cases making it not voluntary,
18 voluntary agreements, they're doomed to fail when it
19 comes to the public view of them. So that's --

20 MS. CHARLESWORTH: Thank you, Mr. Lamel.
21 Mr. Gratz?

22 MR. GRATZ: Thank you. So here are my top

1 two ideas, to respond to the question. My --

2 MS. CHARLESWORTH: He had like 20, so --

3 MR. GRATZ: Right. I'm going to try to keep
4 it to two, though they may have subparts.

5 MS. CHARLESWORTH: I knew you'd figure out a
6 way around the rule.

7 MR. GRATZ: The first, and I think this has
8 really come out of the discussion we've all had, we
9 need to gather as a community. We need to gather
10 better data and then we need to believe the data. We
11 need to listen to the data. The best data we have
12 right now coming in here is the Urban study. And
13 we've seen that sort of listened to by some and
14 treated dismissively by others.

15 I think we need to figure out what the best
16 data we have is and listen to it. And if the best
17 data we have has shortcomings, get better data. And
18 that data should come from real, verifiable,
19 scientific data gathering, including determinations
20 that are sometimes hard to do in scientific data
21 gathering, like which of these notices were about
22 something that was really fair use. It's hard to do,

1 but it's doable -- surveys, et cetera. And we need to
2 get more data not just from recipients but from
3 senders.

4 How are we going to do that? The people in
5 this room are going to do that, right? What we need
6 is large-scale senders to start submitting to the
7 Lumen Database, more OSPs submitting to the Lumen
8 Database or everybody create something that's not a
9 Lumen Database where we can gather all of the data.
10 But we need to gather the data and then we need to
11 listen to it. What Automattic has found is that 10
12 percent of notices that are well-formed are unfounded.

13 Whether that -- whether that sort of plays
14 out across the whole ecosystem or whether that's
15 something specific to blogs, I want to find out and I
16 think we need to know and how that changes. And also,
17 if senders of notices give up, if senders of notices
18 have what the reasons are why small creators, if
19 they're deciding not to submit valid notices against
20 real infringements, well let's see, then, what we can
21 do about it because that's something that we need to
22 remedy, if that's happening.

1 We need to figure out if it's happening and
2 then remedy it. The second item is that we need to
3 take abuse seriously. We need to recognize that
4 512(f) has no teeth, something I know better than
5 anyone since I've litigated three 512(f) cases, which,
6 you know, is three of the six that have ever been
7 litigated, none of which has ever ended in any money
8 going to any client.

9 I think we probably need statutory damages
10 and I think we probably need at some point the idea
11 that a bond will be posted by repeat abusers. And we
12 need to encourage appropriate response to abuse to
13 have an opportunity for OSPs to keep the safe harbor
14 or at least to have a statutory damage remitted in
15 situations where material that is both subjectively
16 and objectively but reasonably believed to be fair use
17 is left up and not taken down in response to an
18 abusive notice.

19 MS. CHARLESWORTH: Okay. A couple -- a
20 couple of follow-ups. I'll start with the more -- the
21 512(f) point. Would you say the same for counter-
22 notifications? I know there hasn't been as much

1 discussion.

2 But certainly some of the comments indicated
3 that counter-notifications too may be mistaken,
4 abusive, not well-founded. Do you think if there's
5 sort of -- some sort of enhancement of penalties or
6 whatever, which presumably would have to be a
7 statutory change, that it should go in both
8 directions?

9 MR. GRATZ: The statute is currently
10 symmetrical and it should stay that way.

11 MS. CHARLESWORTH: Okay. And my second
12 question is on the data, which is a really interesting
13 point, I think one of the concerns about any study is,
14 as I think Professor Urban actually said, who's
15 funding it, how's it -- how do we get -- first of all,
16 how would we fund a study that -- and how would we
17 ensure that it was viewed as a neutral, you know, not
18 -- I mean, who would conduct the study or how would we
19 go about doing that?

20 I mean, you seem to think that it could be
21 done by people in the room. And obviously the people
22 in the room, some of them at least, have access to a

1 lot of the important data and hopefully would be
2 motivated to contribute it. But, what's the
3 methodology that would yield a study that really
4 people, would maybe feel comfortable with all the way
5 around the room?

6 MR. GRATZ: So I think on the funding point,
7 obviously the first thing that leaps to mind is
8 greater appropriations to the Copyright Office for the
9 purpose of funding studies like that.

10 MS. CHARLESWORTH: Well --

11 MR. GRATZ: In terms of -- and there are
12 lots of other ways that I think the government can be
13 involved in research lots of areas and whether it's
14 through -- whether it's through other arms of the
15 legislative branch or however. There are I think
16 models for government funding of studies. There are
17 also models for private funding of studies that are
18 widely regarded as sort of, you know, neutral.

19 And I think one of the things that may need
20 to happen is the first set of voluntary agreements may
21 need to be about how you study the question and what -
22 - and what to measure, how to measure it and how to

1 interpret those results. I think those are things on
2 which reasonable people can differ. But I think they
3 are things on which reasonable people are likely
4 ultimately to reach consensus or at least to reach
5 multiple consensuses that can all be reported out.

6 MS. CHARLESWORTH: Okay. Thank you. Good?
7 Okay, Ms. Gellis?

8 MS. GELLIS: Thank you. I'm going to
9 respond in the vein of things to think about and
10 encourage that in thinking about any of the questions
11 that were raised over the course of this study, to
12 tease out all the underlying assumptions and the
13 implied definitions to terms that we may not have
14 defined out loud or publicly.

15 And to amplify this idea of data, some of it
16 is we've heard people express the notion that they are
17 being harmed under the current situation, particularly
18 copyright owners. I think it's important to test
19 those assumptions. The mere existence of a literal
20 copy does not necessarily follow that there's either -
21 - that first of all it's either an infringing copy,
22 but even in a literal infringing copy, it doesn't

1 necessarily follow that there is harm for that copy or
2 that overall there is being harm to the creative
3 industries as a whole.

4 We should check that claim, especially if
5 we're thinking of putting any sort of extra pressures
6 on the current regime as we have it in a way that
7 would either encourage more depletion of other
8 people's ability to express themselves or pressures on
9 the intermediaries. We hear a lot of the sky is
10 falling.

11 But I think Mr. Masnick's study about the
12 sky is rising is a really important lesson to take,
13 that this -- things are different than they used to be
14 when creative works were just isolated into physical
15 works and there was an implicit scarcity.

16 Now, we actually have the ability to
17 encourage further expression and the public's ability
18 to consume works. And that's a really important thing
19 to not lose sight of. It fulfills the role and
20 purpose of the Copyright Act.

21 So when we hear from people pressuring
22 change, I think it's very important to consider is

1 that change actually needed or is it accidentally
2 going to be something that will pull us back from what
3 copyright is supposed to be doing in the first place.

4 I can continue, but I think I'm out of time. But --

5 MS. CHARLESWORTH: Thank you. Thank you,
6 Ms. Gellis. Maybe we'll, have time to go around more
7 than once. We'll see how we do. Mr. Doda?

8 MR. DODA: Thank you. So my comments will
9 be mostly relevant to 512(c) sites and I might have an
10 idea or two, but I also will focus on the part of your
11 question that asked how what we propose might affect
12 multiple stakeholders.

13 And so, I think the Holy Grail is notice-
14 and-stay-down and I want to temper that by saying
15 appropriately limited and appropriately calibrated. I
16 think notice-and-stay-down would help smaller
17 professional creators who would certainly benefit from
18 that. We've heard that they don't have access, and
19 even if they do, they can't handle the re-upload
20 problem. I can't see how service providers wouldn't
21 benefit from lower volume as well, notwithstanding
22 their capacity. I think YouTube creators can still

1 thrive, right? They shouldn't be subject to takedowns
2 and they can thrive independently.

3 MS. TEMPLE CLAGGETT: Not to interrupt, but
4 I do actually have a quick follow-up question because
5 we've heard a lot about notice-and-stay-down and I
6 think different people mean different things when they
7 reference notice-and-stay-down. And so, if you could
8 just explain when you say that the solution is notice-
9 and-stay-down, what exactly are you meaning?

10 MR. DODA: Sure. So I think I welcome the
11 discussion on the voluntary initiatives. There are 10
12 or so mentioned in the last few days. I think what
13 hasn't been mentioned are the UGC principles and I
14 think there is ideas in there that are appropriately
15 limiting and fair. I think in fact even EFF mentioned
16 in their submission the UGC principles.

17 So I'm talking about works previously taken
18 down by valid takedown notices. I'm talking about
19 sufficient matches being the standard so that fair use
20 is protected. I'm talking about notice to users so
21 that abuses can be called out. I'm talking about room
22 for technical improvements over time and flexibility

1 on that score.

2 And I'm talking about in fact foregoing
3 infringement claims against good-faith adopters of
4 measures, right, and I think that's obviously
5 important because of the issue around lack of
6 incentives. When we talk about moving towards
7 standard technical measures, I think, you know, the
8 idea of a summit of some sort -- a combination of Dave
9 Green's idea and Professor O'Connor's ideas -- to get
10 at that problem of there isn't one size that fits all
11 -- I think is fantastic. I can't say it any better.
12 I'm not ready to kiss or hug anyone yet. But I can't
13 say that any better than you've said it. And I think
14 that also addresses the problem that's been mentioned
15 several times about a single tool mandate being
16 inappropriate. I think, you know, it's perfectly
17 appropriate to get back to the statute and to
18 recognize that under the statute, it is plural. It's
19 standard measures. There are protections in there.

20 And when you get to the issue of crippling a
21 startup, you know, 512(i)(2)(c) says that the measure
22 should not impose substantial cost or substantially

1 burden a system, right? So I think you get at, within
2 the language of the statute already, a way to make
3 sure that whatever measures are created are
4 appropriately not crippling startups and small
5 creative companies. I think my time is up.

6 MS. CHARLESWORTH: Okay. Thank you, Mr.
7 Doda. Mr. Delgado?

8 MR. DELGADO: Hi. Excuse me. So I
9 represent -- I run a small label and also represent a
10 digital distribution company, about 900 labels. And I
11 brought up an anecdote yesterday on yesterday's panel
12 that I'd like to bring up again just to kind of
13 address some of my fellow panelists. We had an album
14 that came out and within 10 days of it being on
15 iTunes, we had 72,000 illegal download links and zero
16 counterclaims.

17 So you know, in terms of Mr. Lamel saying
18 the 99 to 1 percent, let's focus on that, we're
19 focusing on a hundred percent and it's still not
20 working. And then, you know, we had just had a
21 release last night at midnight. Within two hours, we
22 had 25 separate illegal links and only attributed to

1 three different hosts. Two of the hosts actually have
2 a DMCA thing on their website to submit. But you
3 know, that's 25 different users.

4 So in terms of Ms. McSherry's how do you do
5 a blacklist, well, if there was a blacklist for at
6 least the users -- once they have it, they've already
7 received it, why do they need to have all these other
8 ones. And then, also to address Mr. Lamel's why give
9 up -- because I've already spent, you know, a lot of
10 money for a small label and I'm still going to have to
11 go back when I leave this to address all the links
12 that came up again.

13 So it's just -- it's a never-ending task
14 when I could be signing artists or marketing an album.
15 Instead, I'm spending the same clicking lists and a
16 whitelist and all that. So I think my last point is,
17 you know, definitely advocate for the notice-and-stay-
18 down, at least in terms of if a host is caught with
19 it, let's keep it off, and also as well as an easy way
20 for smaller labels to actually submit a takedown in
21 terms of like a global site.

22 I think, you know, a lot of labels that I

1 represent, they Google it and don't have a clear
2 answer of where to go and how to do it. So I think
3 that needs to be a little more clear as well.

4 MS. CHARLESWORTH: So on that point, is your
5 suggestion for a standardized form that would be
6 submitted to some sort of central clearinghouse or
7 what is your vision in that regard?

8 MR. DELGADO: At least just the information
9 out there a little bit more available. There's 12
10 different steps and multipole different ways to do it.
11 There's no real easy way to get that information. I
12 mean, we do it through our own. We have a protective
13 locker service that we use that does it. But outside
14 of that, I find it very challenging to just submit a
15 simple takedown for all these sites on my own. So
16 having a little bit more clear, streamlined process
17 would definitely be beneficial.

18 MS. CHARLESWORTH: Okay. Thank you. Mr.
19 Feerst? Oh, your card is not up? Okay. Mr. --
20 sorry, I was going this way -- Mr. Sheffner?

21 MR. SHEFFNER: (Off mic, inaudible)

22 MS. CHARLESWORTH: What did you say?

1 MR. SHEFFNER: As you may know if you've had
2 a chance to look at our comments, they are focused on
3 voluntary initiatives. We are not calling for
4 legislative change at this time. And so, the question
5 I think to think about is, okay, what can you do or
6 say in your report that you're going to issue to
7 encourage successful voluntary initiatives?

8 I think this goes back a little bit to the
9 last panel and I know Ms. Temple Claggett was asking
10 several, you know, legitimate and very important
11 questions about, okay, well, what do we do to actually
12 encourage people to engage in successful voluntary
13 initiatives. And people respond to incentives.

14 And the way I like to think about it is
15 people engage in these voluntary initiatives if that
16 is better than the alternative, from their
17 perspective, of not engaging in voluntary
18 alternatives. So what are -- or voluntary
19 initiatives.

20 So what are those bad alternatives that
21 people are thinking about? There's a variety of them.
22 There's litigation. They may fear that -- or they may

1 think that they can avoid litigation by instead, you
2 know, demonstrating themselves to be good actors who
3 engage in voluntary initiatives. They may be scared
4 about change in legislation and think, you know what,
5 if I go ahead and engage in voluntary initiatives,
6 this will show Congress that we're trying to solve the
7 problem and we don't need them to step in.

8 They may be concerned about PR or they think
9 they'll have positive PR from engaging in the
10 voluntary initiatives. There are commercial
11 imperatives. They think that this will help them in
12 the marketplace if they engage in these voluntary
13 initiatives. And then, there's politics. They don't
14 want politicians saying bad things about them.

15 So again, coming back to what can the
16 Copyright Office report do? It can't solve all these
17 problems. It can't -- you can't yourself engage in
18 litigation. But one thing I think that you can do
19 because you're a respected voice on how the Copyright
20 Act should be interpreted. We spent a lot of time in
21 our 71, single-spaced pages explaining what we think
22 the courts got right and what we think the courts got

1 wrong. And we elaborated on that in the panel
2 yesterday.

3 So the one thing of the two that you asked
4 about, what the Copyright Office can do, is I think
5 give guidance to the courts on how section 512 should
6 be properly interpreted. We listed some of the areas
7 where we think the courts are getting it right, like
8 repeat infringer, also where we think they've gotten
9 it wrong, like the knowledge standards.

10 Our hope is that the Copyright Office will
11 write a report that will essentially tell courts what
12 they're getting right, what they're getting wrong and
13 that that will have a spillover effect into the courts
14 which will cite as persuasive authority what the
15 Copyright Office has to say in that report.

16 And again, that will be the background
17 against which various players in the ecosystem,
18 whether it's copyright owners or intermediaries or
19 others, determine whether they want to stand their
20 ground and sort of do as little as possible or whether
21 they want to take more proactive voluntary measures
22 that, you know, avoid the worse outcome of having to

1 go to court.

2 MS. CHARLESWORTH: So not to diminish our
3 great power and persuasiveness with the judicial
4 system, I think I asked a version of this in New York.
5 How likely do you think it is that courts will, say,
6 reinterpret some of the major provisions that at least
7 in the Second and Ninth Circuit have been -- you know,
8 have come out a certain way and seems to be -- I don't
9 want to say settled law, but certainly leading -- the
10 leading case law? How likely do you think it is that
11 courts will change their minds?

12 MR. SHEFFNER: Well, courts don't easily
13 change their mind, as you know. Our legal system is
14 built on precedent. But those are only two circuits
15 of, what, thirteen. And you know, some of -- a lot of
16 these issues -- there's actually relatively little
17 case law. I mean, you know, we -- getting back to the
18 knowledge standard, I mean, we talk about the Veoh
19 case in the Ninth Circuit and we talk about the
20 YouTube case in the Second Circuit. There's not a
21 whole lot of other case law interpreting it. There's
22 a few other cases. And in the other circuits, there's

1 an even greater dearth of case law.

2 So you know what, someday these issues are
3 going to bubble up all the way to the Supreme Court.
4 And the other circuits and maybe even someday the
5 Supreme Court are going to look at what the Copyright
6 Office had to say about the proper way to interpret
7 the knowledge standard, the actual knowledge standard,
8 the red flag knowledge standard, the representative
9 list standard, et cetera.

10 MS. CHARLESWORTH: Okay. Thank you. Mr.
11 Tourtellotte? Did I pronounce that correctly?

12 MR. TOURTELLOTTE: You got it. Very good.
13 I'm very impressed by that. It's rare that it
14 happens. So congratulations.

15 MS. CHARLESWORTH: Well, I studied your sign
16 for a while before I called on you.

17 MR. TOURTELLOTTE: Thank you. Well, thank
18 you very much for having me here, first of all. I
19 represent men and women who work out of their home
20 garage to make movies. I'm probably the lowest of the
21 lowest rung. I am collateral damage to a lot of
22 people in the room.

1 My wife and I have made two movies. The
2 second movie, what I'm here to talk about today, is
3 Crazy Bitches and I'd like to give you some data. So
4 I think that's going to be an important thing for me
5 to be able to do. Crazy Bitches launched on Friday,
6 February the 13th, a year ago in February. In our
7 first 10 days, we underwent 268,500 illegal downloads.
8 In 16 months, we've done 7,874 legal ones. So that
9 means that 97.2 percent of our audience has been
10 piracy and 2 percent has been legal. We lost our
11 shirts. It's common, all too common unfortunately.
12 In the music business, all too common.

13 To Mr. Delgado's point, after about three
14 months we ran out of money. We couldn't fight
15 anymore. My wife started on a Saturday doing her own
16 personal takedown notices, sent out 75 -- thank you
17 very much -- sent out 75. We got a call from a
18 takedown service -- we got actually several -- saying
19 you guys are getting killed. Do you know what's
20 happening to you? We had no idea. Hired the takedown
21 service. It's not terribly expensive, \$230 a month.
22 But after five months, if you're not making money, you

1 can't pay the takedown service.

2 So you just go out of business. And that's
3 actually what happens on a very small, local level of
4 mom-and-pop moviemaking. And if those mom and pops or
5 even young people even starting on YouTube aren't
6 given a pathway to profitability, they will go out of
7 business. They'll go wait tables and that kind of
8 thing. I want to say in terms of what to do, I've
9 heard several good suggestions -- the voluntary
10 getting together, kind of works and all that.

11 But I rely on the government to enforce
12 laws. I rely on the government to provide a framework
13 via copyright to protect me. And so, yeah, I think
14 voluntary sort of works and I think you guys are
15 getting together and that's all really good. But it's
16 up to government to provide that framework to get
17 these people together to talk.

18 You do have to invite little people to the
19 room. You do have to invite members of IFTA to the
20 room because you will have a situation in which the
21 cache of cool, which is what I like to say, will go
22 against that voluntary agreement because they haven't

1 been allowed in.

2 So I would say two things. 512 doesn't
3 work. Takedowns don't work. Safe harbor doesn't work
4 because tech companies, with all due respect, hide
5 behind it. And if you're a little mom-and-pop and
6 you're sitting in your garage and you're looking at
7 all these illegal downloads and you email Google, it
8 takes two or three days to get a response.

9 It takes about three or four times to get a
10 person. And then, once you get a person, it takes
11 maybe three or four times to get them to believe you
12 that a title like Crazy Bitches is a female
13 empowerment movie, aimed at young women about body
14 shaming and physical and verbal abuse. You can't get
15 them to watch the 90-minute movie. But you've got to
16 tell them that.

17 Well, across that two or three weeks, you
18 suffer 10,028 downloads or something. Your movie's
19 gone. One of the myths about electronic sales
20 transactions -- I'll be finished in 15 minutes -- not
21 15 minutes, 15 seconds -- one of the myths about
22 electronic sales transactions is that you have this

1 length of time that you can bring them in, this sort
2 of new world of movie and online digital storefront is
3 longer than the box office. But that's not true.

4 Actually it takes place all in about the
5 first month, all because you've gone out and promoted
6 it and advertised it. And when that promotion and
7 advertising dries up, Mr. Delgado is right. You've
8 just got nothing left. You can't get people to buy
9 your album because you're competing with a lot of
10 other people. Same way in the movie business.

11 So I would encourage you that 512 is broken.
12 It doesn't work for little people and I'm not smart
13 enough to tell you what the solutions are. I'm not a
14 technologist. I tell stories. I've made my living
15 telling stories. That's what I do. On February 13th,
16 that was stolen from me and I want it stopped, please.
17 And I'm finished. Thank you very much.

18 MS. CHARLESWORTH: Well, thank you. I just
19 had a question. So I think you alluded to this. Did
20 you invest in your own -- did you finance your own
21 film? how -- can you --

22 MR. TOURTELLOTTE: Yeah. So yeah, so -- and

1 I'm -- you know, part of the -- and I'll answer that
2 question yes. Part of the problem with coming up with
3 empirical data, especially from people like me, is you
4 don't really want to tell them what your business plan
5 is. But I'll be more than happy to tell you.

6 I lost about \$250,000. We raised about
7 \$60,000. If you take our illegal downloads of
8 268,500, which by the way is a very conservative
9 estimate based on 300 downloads per URL, which we can
10 find 12,000 downloads on some URLs. But if you take
11 that, if I had just done 33 percent conversion, I
12 would have made everybody's money back. If I would
13 have done 10 percent conversion, I would have made my
14 investors' initial investment back and I would be able
15 to shout to the world that we got our investors' money
16 back.

17 And then, when I walked into any other pitch
18 meeting for Crazy Bitches 2, I'd be able to say -- the
19 first question is did you make the investors' money
20 back. And I'd be able to say, yes, and we'd be off
21 and running on the next one. But that's not the case.
22 And it's not the case because it was stolen from us,

1 not because we didn't have a market. We had a market.
2 We just hit the wrong people at the wrong time or
3 something. We still can't even figure it out.

4 And Ms. Fertig asked a question about
5 uploaders in the last session. A great thing to do
6 would be the educate the uploaders because you've got
7 to go back about 16 to 18 months when we were asking
8 our distributor what to do. And they really kind of
9 had no offers of information. And we were just sort
10 of left out on our own.

11 In fact, we didn't know what to do. And you
12 say, well, why didn't you educate yourself. And I've
13 got to tell you, you know, I spent 20 years at Reuters
14 covering media business and I wrote nice stories for
15 you guys and I wrote great stories for you guys. I
16 wrote on both sides of that fence. I am just right in
17 the middle. Even with 20 years' experience, I didn't
18 know what to do.

19 So I think information on the uploaders and
20 the downloaders, voluntary people getting together,
21 the industries working together -- tech has to realize
22 -- tech used to say we're the David in a room of

1 Goliaths. And tech has to realize that they're the
2 Goliath now. It's not the MPAA. Maybe it's a level
3 playing field now. Not sure. But it changes every
4 day.

5 And I'm so thankful that a little guy like
6 me could sit in a room with you and share my
7 experience. I have plenty more data and I'll share
8 data with anybody all day long. And I'm completely
9 open about what happened to us. Thank you very much.

10 MS. CHARLESWORTH: Okay. Thank you. And I
11 don't -- I can't remember if you submitted written
12 comments. But there will be another opportunity for
13 written comments if you want to contribute more
14 information to the study.

15 MR. TOURTELLOTTE: Thank you.

16 MS. CHARLESWORTH: Mr. Worth?

17 MR. WORTH: Thank you. So I think that at
18 least with respect to reputable DSPs and hopefully at
19 least most people in the room consider Amazon to be a
20 reputable DSP, the balance that's currently in place
21 with the DMCA works I believe and I don't believe that
22 significant changes to 512 are required. But that

1 said, I do think that we are talking past each other
2 to a certain extent. There are problems with the
3 current landscape. Piracy is a problem. But I think
4 those problems are actually bigger than section 512.

5 So first, like I just said, there's a
6 problem with piracy sites. I think there's especially
7 a problem and I'd love to see more data on this, but
8 especially a problem with offshore piracy sites. But
9 in my view, the DMCA already doesn't protect these
10 piracy sites from infringement claims. So changing
11 the DMCA to tighten the rules or create a
12 takedown/stay-down regime I'm afraid simply won't
13 solve that problem. Rather, it will have the effect
14 of stifling innovation at the companies like Amazon
15 that are already complying with the DMCA.

16 So you know, you asked for answers. I don't
17 know what the answer is for stopping these sites. But
18 I think the focus should be again on stopping piracy
19 and solving that problem rather than simply pushing
20 for reform.

21 Second, I think we need to fix the problem
22 of notices that are used improperly to attack others'

1 works maliciously. So with Kindle Direct publishing,
2 authors routinely try to climb to the top spot in
3 their category or the top of their browse note, as
4 Amazon would call it, by issuing bogus notices against
5 higher ranking titles. And this for us actually
6 accounts for more than half of the takedown notices
7 that we receive.

8 The DMCA does provide a mechanism. We've
9 talked a lot about it over the last couple of days in
10 terms of counter-notices. But the timing seems to be
11 a problem because those books start to lose momentum.
12 And once they lose momentum and start to slide down
13 the scale, their opportunity -- their moment is lost.
14 So I think small claims might be an option. But
15 again, I'm concerned about the potential timing impact
16 on these guys.

17 So you know, to close, Amazon certainly
18 wants the DMCA to allow for investment and innovation
19 by OSPs. We want it to allow for free speech. We
20 want it to allow proper compensation to creators. But
21 we don't want it changed to simply open the floodgates
22 for litigation against companies that are already

1 complying.

2 MS. CHARLESWORTH: Mr. Cady?

3 MR. CADY: Thank you. Well, the theme of
4 our current panel is the future. And I think it's
5 important to recognize that the Internet does provide
6 an opportunity for expanded distribution and new
7 revenue streams. But more importantly, I think it's
8 important to recognize that the Internet is the
9 biggest threat to the independent film and television
10 industry, largely because section 512 is functionally
11 nonexistent for IFTA-member companies to enforce their
12 rights online.

13 For example, in preparing our written
14 remarks in this current proceeding, I heard
15 anecdotally from one of our member companies that they
16 felt victorious on a large title when they achieved a
17 90 percent takedown rate. And that sounded great.
18 But they added the further perspective that the 90
19 percent efficiency could mean that there might only be
20 10,000 infringing copies online. That's a massive
21 problem and a legislative solution is needed,
22 specifically one that would entail a notice, takedown

1 and stay-down mechanism. Thank you.

2 MS. CHARLESWORTH: Okay. Thank you. Mr.
3 Stiles?

4 MR. STILES: Intellectual property is never
5 dependent upon scarcity. It exists because copyright
6 law creates a market by regulating the rules, setting
7 the rules of access. Because of that, we have been
8 able to navigate the changing technology. So with
9 each new technology, as we heard listed in the
10 previous session, what's happened is that we've
11 established a market in that new technology.

12 So as a result, instead of -- as Ms.
13 McSherry suggested yesterday, that some artists will
14 just fail and go away, we've added new artists. So
15 musicians didn't disappear because of radio or because
16 of recording. Rather, we added on new artists and new
17 layers of industry, et cetera. The rise of YouTube
18 and the new business models that exist are wonderful.
19 That doesn't mean that everything else is extinct.
20 Rather, we have to pay attention to the fact that
21 since government regulation and enforcement has always
22 created the intellectual property market, we have to

1 ask whether those rules are working now and they
2 clearly are not.

3 So I fully acknowledge the -- you know,
4 we're all individual Internet users as well. We all
5 share things. I completely acknowledge and respect
6 the rights of individual users and we need to protect
7 those. And certainly innovation is great. But
8 because of the degradation of the value of my work in
9 digital form, I've actually been prevented from
10 innovating in new ways with digital e-books because
11 I've been -- the market has suffered so that people
12 feel that e-books have to be worth much less than a
13 regular book whereas the effort of creating a new,
14 more transformative e-book, it's impossible in the
15 marketplace. That's an indirect but very clear result
16 of piracy.

17 So when it comes to individual small
18 creators like myself, one, we have to relieve the
19 burden in time that it takes to police the entire
20 Internet. You've heard more stories than I need to
21 provide about how it's broken for the individual
22 creator. Two, we have to maintain the cultural

1 compact, the social compact of intellectual property
2 markets.

3 And that has to be a broad-based plan of
4 intelligent, not heavy handed enforcement, but real
5 enforcement and not by individuals who are taking time
6 away from creation. And we also have to have
7 education and other efforts. It has to be a broad-
8 based effort which has to be led by the federal
9 government. That's my answer. Thank you.

10 MS. CHARLESWORTH: Thank you, Mr. Stiles.
11 Did -- oh, I thought you were -- Mr. Michaud?

12 MR. MICHAUD: I'm going to echo Mr. McNelis'
13 comments about how the YouTube creator community is
14 underrepresented here. But I'm not going to say it's
15 by choice of the panel. From talking to many
16 creators, both big and small, I've heard a lot about
17 how they're terrified of what can happen for speaking
18 out, what's going on, with people who create
19 legitimate content.

20 MS. CHARLESWORTH: Can you move a little
21 closer to your mic?

22 MR. MICHAUD: A little closer?

1 MS. CHARLESWORTH: Yeah. It's not picking
2 you up quite as much.

3 MR. MICHAUD: Good?

4 MS. CHARLESWORTH: Yeah. Thank you.

5 MR. MICHAUD: They're fearful for
6 retribution. They're fearful of getting more claims
7 when their content is in the right. I realize what we
8 do represents a very small subset. But this subset is
9 growing rapidly every day. People have turned
10 creating videos online from a hobby into a business.
11 And right now, we are being attacked by people who use
12 the DMCA takedowns in malicious ways. There are
13 takedowns being issued for criticism, for commentary.
14 There are takedowns being issued when the
15 person issuing it knows they're going to inflict harm
16 on the individual or company. There are fake law
17 firms being CC'ed in these counter-takedown notices.
18 These law firms don't exist. People make up law firms
19 to threaten people even further, to scare them about
20 lawsuits.

21 There need to be penalties for false claims.
22 It's plain and simple. And public education also is a

1 must. I mean, we were off YouTube from 2008 to 2013
2 because there was no way to really file a counter in
3 the early days. In that time period, we had 400
4 million views stolen from us by people who uploaded
5 our content who thought they were doing good. They
6 thought they were helping us by keeping us on YouTube
7 and keeping our content in the limelight.

8 But in essence, we lost 400 million views.
9 If you factor those views in with what we have now,
10 we'd be a billion-viewed channel and we'd be one of
11 the top 500 channels ever on YouTube.

12 MS. CHARLESWORTH: Are most -- I think we
13 may have talked about this yesterday. Are most of the
14 claims coming through Content ID for you or are they
15 DMCA section 512 notices?

16 MR. MICHAUD: A lot more going on the DMCA's,
17 but we have talked to others about what have happened
18 and there are other threats. I'm not going to go into
19 Content ID. That's a whole other story.

20 But with the DMCA takedowns, we've had four
21 in the past year, one on YouTube and three through
22 Google Search. All four were invalid. All four were

1 fought and we won on all of them. I mean, one of
2 them, it's so outrageous, it was an adult
3 entertainment company that thought a review of the
4 Cinderella movie from 2015 was the same as one of
5 their series. I'm not joking. I can give you the
6 link to the Lumen Database or to the Chilling Effects
7 site and you can see that takedown.

8 MS. CHARLESWORTH: Okay. Thank you, Mr.
9 Michaud. Mr. O'Connor?

10 MR. O'CONNOR: Thanks. So two things. One
11 is, you know, on the empirical research side, I do
12 think we need to do a lot more, as Mr. Gratz said.
13 I'd go a little further on that and say that one thing
14 that could happen -- and again, hoping you get more
15 appropriations, but you could also look at the way the
16 FDA does stuff for drug approval in that it's private
17 sponsor-funded. But the protocol has to be approved
18 by the FDA.

19 I don't know if that makes sense. I can
20 talk about it more offline to that. So it's a way of
21 you kind of monitoring to make sure the research
22 protocols seem adequate and whatnot, at the same time

1 as not having to then have the government actually pay
2 for the study.

3 Second big point, and this one will probably
4 be more provocative but -- and it provides a segue I
5 think for next week's 1201 and 1202. I really think
6 that we need to get much more serious, like Mr.
7 Rodriguez was saying, about copyright management
8 information.

9 I think rather than just relying on -- as
10 well as Content ID and Audible Magic and things can do
11 and sort of post hoc trying to find things, instead,
12 his notion saying about vehicle identification
13 numbers, if you look at the worldwide banking system,
14 if you look at UCC titles for all sorts of sale of
15 goods, you know, most other things in the commercial
16 world have a title attached to them.

17 And if that title then -- and we look under
18 the provisions of 1202 -- and thank you about
19 copyright management information, not getting it
20 stripped out -- but what it should have within it is
21 creative commons-type notification in it, machine
22 readable that can say what the person wants to have

1 happen to it. This is not just something I'm arguing
2 for the big players.

3 But it's also for the YouTube creators
4 because everyone -- as I think Mr. Rodriguez was
5 saying -- on most cameras and things now, they
6 actually do put some information in. it wouldn't be
7 too hard to make sure that that information is in
8 there. The biggest challenge is he was saying if it
9 gets stripped out and has to be put back in.

10 I also acknowledge that any Web-based
11 companies, it's all about reducing friction. If the
12 process of keeping that metadata in there slows down
13 the loading of the page, I understand that a lot of
14 companies wouldn't want that to happen. But there has
15 to be a way to solve that technologically.

16 MS. CHARLESWORTH: Thank you, Mr. O'Connor.
17 Mr. von Lohmann?

18 MR. VON LOHMANN: So I have two ideas for
19 you. Before we get there, let me just say there is
20 one point on which there has been a lot of agreement.
21 And when you ask what does the future look like, I
22 think it's really important to come back to a point

1 that's been made over and over again, which is the
2 vast majority of online service providers, they are
3 living in what Professor Urban has called DMCA
4 Classic.

5 The statute is working for them and it is,
6 by all accounts, also working for rightsholders with
7 respect to them. If they are only receiving a few
8 dozen, a few hundred takedowns a year and they're
9 complying with them quickly, I think that suggests the
10 DMCA is working well. And that is the vast majority
11 of service providers out there and that will still be
12 the vast majority five years from now because, as
13 someone aptly put it, the Internet of 1998 is still
14 with us. It has not gone away.

15 So you know, someone has mentioned that tech
16 companies are now Goliath. It's not the first time
17 someone has called Google Goliath. That's fine. All
18 I'm saying is let's not in the cause of trying to
19 address large-scale platforms like Google break the
20 DMCA's success with respect to the vast majority of
21 other service providers.

22 So two ideas. One, big tools for small

1 players. I said this to Sandra Aistars during the PTO
2 process. I think Keith Kupferschmid is onto
3 something, as her successor at Copyright Alliance. We
4 need to figure out how to help smaller creators use
5 the same tools that RIAA and NBC and a lot of these
6 folks have because Mr. Delgado shouldn't be spending
7 hours sending takedown notices 75 at a time. That's
8 crazy. That's not what Universal Music Group does.
9 You shouldn't have to do that.

10 We can solve that problem. I think we can
11 do a lot better. We need to find ways to aggregate
12 that demand, to provide that service. As I said, we
13 can't have -- and we don't want to have every
14 individual have to operate the gears of a complicated
15 takedown system. The good news is there are experts
16 who can do that. We need to help put those tools in
17 the hands of smaller creators.

18 Mr. Rosenthal is just wrong when he suggests
19 that large players ignore small creators. A lot of
20 the voluntary measures we have undertaken -- DMCA
21 demotion, follow the money -- all that stuff helps
22 small creators. It takes the bad sites out of the

1 equation. That helps small and large creators alike.

2 Second idea, this is just agreeing with
3 something you've already heard. We need more and
4 better data. I think one place we could really make
5 progress is for the Copyright Office to convene some
6 sort of voluntary effort to talk about the data, to
7 talk about what do we know about piracy, what do we
8 know about the trends, why are users choosing it,
9 which users for which kind of content.

10 You know, Mr. Green I think was very smart
11 when he suggested you need to define what success
12 means. And Microsoft has done that. They've said we
13 have a benchmark of success. When we send takedown
14 notices, how does that increase the amount of time
15 that a regular user faces when trying to get a pirated
16 copy. That's an interesting metric. I'd love to see
17 more data from them, from others. What's the
18 definition of success, how do we measure it? That's a
19 place where I think we could all learn a great deal of
20 value.

21 MS. CHARLESWORTH: Mr. Roslof?

22 MR. ROSLOF: I have three points, but the

1 first one's very short. Point zero is to just --

2 MS. CHARLESWORTH: Cheating.

3 MR. ROSLOF: Yeah. Well, maybe the
4 technologists in the room will appreciate that.

5 MR. VON LOHMANN: Always start at zero.

6 MR. ROSLOF: Suggestion zero is to just
7 leave the system alone. From our -- in our experience
8 at least, it may have its problems but it is generally
9 working well and has worked well to create an online
10 environment that encourages creativity, innovation and
11 the public's ability to share and access knowledge.
12 And we don't want to jeopardize that by changing the
13 current system.

14 Suggestion one is to evaluate alleged
15 problems with the system in light of the fundamental
16 purpose of copyright. The purpose of copyright is to
17 ensure that the public is able to enjoy new creative
18 works. The means of achieving that purpose is to
19 grant limited monopolies to creators to incentivize
20 them to create new works.

21 Copyright infringement then, in light of
22 that purpose, is not inherently a problem that needs

1 solving wherever it exists. It is only a problem to
2 the extent it undermines the public's ability to enjoy
3 new works and the incentives for authors to create
4 those works. We can't answer the question of whether
5 infringement is having -- is having that effect though
6 just by listening to anecdotes of any individual
7 creators or the stories of any individual entities.

8 We need a more rigorous study of the entire
9 system, as has been suggested by many people here, by
10 the scholars -- I think by people like the scholars at
11 universities and the public servants at the Copyright
12 Office who are in I think the best position to look at
13 the entire system from as neutral as possible a point
14 of view.

15 And then, as several people have also
16 recommended, we can craft solutions to those problems
17 that are tailored to the specific problems that we
18 recognize. And lastly, I want to second Mr. Riley's
19 suggestions from earlier for creating actual
20 repercussions for people who send -- repeatedly send
21 fraudulent and invalid notices.

22 I think if we can have repeat infringer

1 policies to keep people from uploading files that they
2 shouldn't upload, we can have repeat abuser policies
3 to keep people from trying to take down content that
4 they shouldn't be taking down.

5 MS. CHARLESWORTH: So I take your point. I
6 think the point's been echoed by many that it would be
7 very helpful to have better data about what's going on
8 here. But that said, we have heard numerous
9 anecdotes, both in New York and here about individual
10 creators, including in this session, who simply cannot
11 get financing -- and if you read the comments, there
12 are more of them -- cannot get financing to make a
13 movie, an independent film.

14 And I'm wondering in light of the purpose of
15 copyright, I mean, what do you have to say to that, if
16 someone can't recoup enough of an investment to earn a
17 living as an independent filmmaker because they aren't
18 able to navigate this system successfully enough to
19 remove infringing content?

20 MR. ROSLOF: I have a lot of sympathy for
21 any individual creator who is having a difficult time
22 making the works that they want to make. But I think

1 we need to -- if we're talking about how to craft
2 policy, we need to look at the system as a whole and
3 we need to look -- okay, sort of globally in the
4 entire like world of people who are creating works,
5 are they able to create the works they want to make
6 and not -- we can't rely on individual anecdotes and
7 individual stories in order to craft that policy.

8 MS. TEMPLE CLAGGETT: And I guess I have a
9 follow-up question about that, on the point of
10 crafting policy, based on empirical data, on the
11 infringement side, are you saying in order to make
12 sure that whatever policy you develop adequately
13 addresses the problem or are you suggesting that
14 infringement itself might not be a problem? I'm just
15 trying to --

16 MR. ROSLOF: I'm saying that it needs to
17 adequately address the problem because copyright is a
18 balance between the public's ability to access works
19 and creators need to be able to like survive making
20 their works. We need to make sure that we fully
21 understand where the infringement is actually a
22 problem so we could target any solutions to that and

1 not upset the balance.

2 MS. CHARLESWORTH: Okay. I'm going to go I
3 guess back to the middle. Mr. Rosenthal, I see your
4 sign is up. We'll just continue this conversation,
5 which I am finding interesting and enlightening.

6 MR. ROSENTHAL: Yeah. First of all, you
7 know, quickly on the fair use thing, I don't know of
8 any artist who doesn't recognize fair use except maybe
9 Weird Al Yankovic. He never got it, you know? But
10 besides that, they all understand and all artists are
11 using YouTube. And I think that, yes, we have to find
12 common ground because of that. We can have a
13 conversation.

14 But I want to talk to Fred for a second.
15 You know, I never said that Google can't -- that
16 Google is the problem and they can't fix it. I said
17 that the DMCA is broken and that's the problem. But
18 if you think that you can fix it, forget about them
19 for a second, okay, I'm talking to you.

20 If Google thinks they're so smart that they
21 can fix it, then fix it. It's dire. We have people
22 not using the DMCA at all. You have guys on this

1 panel who are being harmed because the law isn't
2 fixing it and dealing with their property rights in
3 the right way. Let's hear the solution. Let's do it.
4 Can we do it this weekend?

5 MR. VON LOHMANN: We are doing far more than
6 the law requires, as you know. Already, we are doing
7 a great deal, far beyond what the statute requires.

8 MR. ROSENTHAL: And I say the law is
9 inadequate.

10 MR. VON LOHMANN: Well, that's fine --

11 MR. ROSENTHAL: So if you think you can do
12 it --

13 MS. CHARLESWORTH: One at a time, one at a
14 time, one at a time.

15 MR. VON LOHMANN: We're way beyond the law.

16 MR. ROSENTHAL: I understand. But the point
17 is that obviously if you can come up with a solution,
18 let's just do the solution. Let's not wait for the
19 law to be changed in a way. We're talking and we're
20 asking you to recognize a serious problem and all
21 we're getting back is everything is fine and the law
22 requires us to do this and we do it. We just have to

1 get a little more serious about the problems that are
2 impacting smaller artists.

3 Otherwise, we're going to have to go
4 someplace else for a remedy. And that's kind of where
5 it's at right now. And that's going to be political
6 and litigation and not voluntary and not trying to
7 work it out in this wonderful, you know, deal that we
8 have with the Copyright Office where they're trying to
9 facilitate a solution right there.

10 That's the message, is go to it. If we can
11 do it this weekend, do it this weekend. I don't care.
12 But we've got to fix it at one point or another. And
13 I hope you can do it.

14 MR. VON LOHMANN: We've been doing it for
15 years, Jay.

16 MR. ROSENTHAL: Then just -- then accelerate
17 because we've got problems that need to be dealt with
18 now. And until you recognize those problems, for the
19 smaller guys, that it's serious, put the money into
20 it. Put the effort into it. And I think all small
21 copyright owners would be willing to talk with you and
22 work it out with you in a way. Just somebody get it

1 done. That's my point.

2 MS. CHARLESWORTH: Okay. Deep breath. Mr.
3 Nash, I don't think we've heard from you yet. Can you
4 introduce yourself for the record and whom you
5 represent?

6 MR. NASH: I would be happy to do so. I'm
7 Michael Nash. I'm the Executive Vice President of
8 Digital Strategy for Universal Music Group. I
9 apologize for being late. San Francisco being the
10 home of the Grateful Dead, the "Long Strange Trip"
11 lyric comes to mind for the experience that I had on
12 the tarmac at LAX being held on the ground for a long
13 time on my way to San Francisco. But thanks for
14 allowing me to make my remarks here and join mid-
15 session.

16 I think that the value that I can provide is
17 a little bit of context with respect to the
18 marketplace. Forgive me for being a little scripted.
19 I'll be emphatic and I hope I'll be efficient in using
20 my time. I thought it was really important to be here
21 today to discuss this topic because it really affects
22 the health of the entire digital music ecosystem. I'm

1 not a lawyer. I'm not a lobbyist. I'm not a policy
2 expert. I couldn't go toe to toe with a lot of the
3 intelligence and expertise in the room around some of
4 the technicalities.

5 But I have been working for more than 20
6 years in the digital media marketplace. And I can
7 tell you without equivocation that the DMCA safe
8 harbor has profoundly affected the value of music and
9 it has been a negative dynamic and a negative
10 implication in just about every single rate
11 negotiation that my company conducts with major
12 digital music services.

13 I want to highlight three main points.
14 First of all, the music industry embraces technology
15 as being instrumental to its evolution. But second,
16 512 is completely outdated and you've heard that theme
17 articulated very well in a number of the comments.
18 And it's being exploited in a way that's completely
19 different from its original intent. And what that
20 leads to is a need to change 512 for the health of the
21 entire digital music ecosystem so that we can continue
22 to make vital contributions to culture and to the

1 broader media economy by operating in a more dynamic
2 and competitive marketplace.

3 In terms of the embrace of technology, let
4 me simply say that the music industry of 2016 is not
5 the music industry of 1998. We've licensed over 400
6 different music services that utilize a wide scope of
7 different business models and employ technology in a
8 variety of different ways around the world. So I
9 think that's pretty clear evidence that we understand
10 that we need to enable technology so that we can
11 support our artists. And there's no segment of the
12 ecosystem that invests more in artists and music than
13 the record labels. They're investing over \$4 billion
14 a year.

15 But the problem with 512 being badly
16 outdated, I think in a nutshell, there is no way that
17 20 years ago you could have anticipated platforms
18 would enable user uploads of 400 hours, 500 hours of
19 content a minute. The rate of technological change
20 has completely outstripped any expectation that even
21 the most competent lawmaker could have had a couple of
22 decades ago to try to understand what the implications

1 would be of creating safe harbor.

2 What happens with safe harbor -- and I know
3 I'm almost running out of time here and I'll get right
4 to the point -- is first of all the burden falls on
5 the copyright holders to go through the process to
6 deal with the infringement that's enabled by
7 technologists that are exploiting and enabling it.
8 That completely distorts the negotiations. You're in
9 a Hobson's choice situation.

10 You can play global whack-a-mole and you can
11 invest millions of dollars, as my company does, in
12 trying to police online infringement. What you find
13 is it's next to impossible. And so, the preferred
14 outcome is to accept completely below market rates to
15 enter into a license relationship because that's the
16 best thing that's possible in a context where the safe
17 harbor, through 512, has completely cast a shadow over
18 the entire landscape.

19 So to bring this to a point of determination
20 from the standpoint of context, there is then a knock-
21 on effect. Any licensed music service is saying to a
22 company like mine, we can't afford to pay the market

1 rates because the largest sector of consumption, which
2 is all of this ad-supported, on-demand music that's
3 being enabled by huge platforms like YouTube, we can't
4 compete against them when they're not paying a market
5 rate. So how can you expect us to pay a market rate?

6 So we then look at the choice between
7 economics and a competitive landscape. And there's no
8 way that fair rates and fair competition can coexist.
9 That was clearly not the intent of the lawmakers in
10 establishing the DMCA. I think that there are some
11 things that can materially change with respect to
12 modifications to 512. The impact of safe harbor.

13 Technological measures have got to be
14 employed to properly identify content. And I think to
15 other comments that have been made already, the scale
16 of the solution has to match the scale of the problem.
17 Technology that enables 400, 500 hours of content to
18 be uploaded a minute, that kind of technological
19 capability has got to be applied to managing the
20 implications of that kind of content uploading to
21 secure the rights of the content creators so that
22 economy can be established around that creativity and

1 so that companies like mine can continue to invest in
2 the future of artists.

3 MS. CHARLESWORTH: Thank you very much.
4 We're glad you made it from the tarmac.

5 MR. NASH: Good to be here.

6 MS. CHARLESWORTH: Ms. McSherry?

7 MS. MCSHERRY: So first I would like to say
8 -- am I on -- yeah - how much I'm enjoying being name-
9 checked here, not always accurately. But I'll leave
10 that. Two points. One is I heard someone say that we
11 need big tools for small creators. I don't
12 necessarily disagree with that. But I also think we
13 need big tools for users.

14 I think several of us have said that we need
15 accountability. I'm not prepared to concede that
16 512(f) is toothless because I'm still in litigation
17 involving 512(f) and fighting the good fight. But
18 nevertheless, we need accountability. We need due
19 process. Secondly --

20 MS. CHARLESWORTH: I'm sorry. So are you
21 joining the other voices that are suggesting there
22 should be greater penalties for misrepresentation in

1 notices? Is that -- or --

2 MS. MCSHERRY: Or we can stick with the
3 penalties we have and we need the courts to confirm my
4 reading of what the penalties are. But short of that,
5 if that doesn't happen, then what we need is
6 clarification on that issue.

7 MS. CHARLESWORTH: Do you think a small
8 claims process or a less expensive dispute resolution
9 process might help resolve some of these issues and
10 allow more people to actually dispute notices?

11 MS. MCSHERRY: It's worth considering. I
12 mean, I have some concerns about small claims and
13 who's going to run it and will they be able to
14 adequately understand fair use. But I think if it's
15 clear enough that it -- you know, that's the kind of
16 thing that could be amenable to a streamlined process
17 that wouldn't require, I don't know, eight years of
18 litigation like the one I'm in right now.

19 MS. CHARLESWORTH: Well, and do you share
20 Mr. Gratz's view that it should be a symmetrical
21 system for counter-notifications as well?

22 MS. MCSHERRY: Yeah.

1 MS. CHARLESWORTH: Okay.

2 MS. MCSHERRY: I think it's fine for there
3 to be parity.

4 MS. CHARLESWORTH: Thank you.

5 MS. MCSHERRY: Sure. My second point is
6 this. And I'm actually talking to small creators
7 here. When you talk about notice-and-stay-down, I
8 think you should think very carefully and be careful
9 about what you're wishing for.

10 Notice-and-stay-down, as I understand it, to
11 the extent that it's something -- that it's a coherent
12 concept -- is going to be very, very expensive to put
13 in place. And what that means is that we're going to
14 end up where just a few service providers that can
15 afford to follow that policy, right, can actually do
16 it.

17 What that means is you entrench the Googles
18 of the world to be the platform upon which you're all
19 going to rely, to the extent that you're a YouTube
20 creator or other independent creator. You're going to
21 have fewer and fewer platforms upon which to post your
22 content because there's going to be fewer and fewer

1 platforms that can comply with a notice-and-stay-down
2 regime.

3 Again, not totally clear to me what that
4 regime is, but I suspect it's going to be very, very
5 expensive to put in place. So I would just say to the
6 small creators of the world, be careful what you wish
7 for.

8 MS. CHARLESWORTH: Okay. On that somber-ish
9 note --

10 MS. MCSHERRY: Sorry.

11 MS. CHARLESWORTH: -- Mr. Lamel?

12 MR. LAMEL: Thank you. I just -- you know,
13 we've heard a lot about notice-and-stay-down. We
14 talked about it a lot in our comments. But just based
15 on some of the data that's been given here -- some of
16 the data that's been given here, first of all, Mr.
17 Worth just brought up that over -- that 50 percent or
18 over -- I don't know if he had over as a modifier --
19 of the notices that they receive are attempting to
20 knock higher ranked items down on the list.

21 That's terrifying for me. That's the first
22 time I've heard that come from Amazon. And if we go

1 to a notice-and-stay-down, system, that's like handing
2 a machine gun to those notices, right, because it's
3 going to stay-down. And that's it. You know, they're
4 going to have a problem. And so, I'm not saying that,
5 you know, voluntary measures that implement notice-
6 and-stay-downs like what's going on in YouTube can't
7 work.

8 But I think we need to be -- to have some
9 sort of mandated notice-and-stay-down system when you
10 have issues like 50 percent fraudulent, it sounds like
11 from Mr. Worth, when you have Mr. Michaud talking
12 about what he has dealt with. I'm going to hearken
13 back to New York, where I was in the audience, where
14 Ms. Boop, for lack of a better -- I don't know what
15 her actual -- I can't remember what her actual name is
16 --

17 MS. CHARLESWORTH: Becky Boop.

18 MR. LAMEL: -- talked about what she lives
19 with and the online harassment she receives in terms
20 of her takedown notices, the anticompetitive nature of
21 the takedown notices that she receives, both when she
22 receives a takedown notice or she receives a complaint

1 under Google's Content ID system.

2 I just think, you know, we're treading into
3 a place that scares me as a user and scares me from
4 the perspective of, you know, allowing copyright law
5 to be used as a harassing tool to prevent a lot of
6 legitimate speech. And I don't think -- I really
7 don't think anyone, including the creators around this
8 table -- I think the creators around this table would
9 be scared of that.

10 And I just -- I don't know what the answer
11 is, right? I don't know what the answer is to find
12 that in-between. I've been racking my brain about it.
13 But you know, stay-down is very dangerous.

14 MS. CHARLESWORTH: Okay. Thank you. Mr.
15 Gratz?

16 MR. GRATZ: Very briefly, I heard the
17 suggestion -- I think it was from Mr. Sheffner -- that
18 we need to find a way to tell the courts they got it
19 wrong. That is, we need to find a way to take the
20 Second and Ninth Circuit interpretations of 512(c) and
21 reach a different result either in other courts or by
22 regulatory action or in Congress.

1 And what I want to make sure we all
2 understand is that there's a huge amount of reliance
3 on both the text of 512 and especially 512(c) as it
4 exists now and on the way that the courts have
5 interpreted 512 and especially 512(c) since its
6 inception.

7 There are within one mile of this courthouse
8 literally dozens of businesses that either wouldn't
9 exist or would exist in very different form were it
10 not for the protections of section 512 and the
11 protections of section 512 that they are relying on,
12 that they have set up their businesses around are the
13 protections in the way that -- in the way that the
14 courts have I think correctly interpreted it. That's
15 not to say that every one of these businesses is
16 skating on the edge of section 512.

17 Indeed, as we've seen, businesses that skate
18 right on the edge of 512 fall over the edge a lot and
19 they aren't around anymore, businesses like
20 Grooveshark. But there are a lot of businesses that
21 are on -- that are not near the edge, that are on the
22 skating rink. And that rink needs to stay -- needs to

1 stay where it is for those businesses to sort of be
2 able to rely on the law staying where it is.

3 That's why we have a system of precedent and
4 for companies to be able to rely on authoritative
5 interpretations of the law from courts of appeals.

6 MS. CHARLESWORTH: Yeah. So, I mean, one of
7 the themes we've heard a little bit about is, you
8 know, creators are small businesses themselves. And
9 they're finding that it's not easy to rely on 512. Do
10 you have any thoughts you want to share on that side
11 of the equation?

12 MR. GRATZ: Absolutely. I mean, I think
13 that creators -- creators rely -- there are many
14 creators who themselves rely on 512.

15 MS. CHARLESWORTH: That's true. But there
16 are creators who are -- I mean, who find it difficult
17 to navigate the takedown system. And we've heard some
18 examples -- so I mean, who are also small businesses.
19 I mean, we've heard that repeatedly.

20 So I was just wondering, -- I understand
21 that there are creators and small businesses and
22 larger businesses who rely on 512 to sustain

1 successful businesses. But what about those who are
2 saying, well, it's not really a viable system for them
3 and it's not -- it's hurting their businesses or in
4 some cases I think we've heard, destroying or
5 undermining their livelihoods.

6 MR. GRATZ: To the extent the current -- the
7 current notice-and-takedown sort of practical on-the-
8 ground process is not working for some set of
9 stakeholders, either on the sender or the recipient
10 side, that's something that can and should be
11 addressed but does not -- I think does not require
12 either legislative, regulatory or particularly large-
13 scale voluntary action.

14 I think what it needs -- what it requires is
15 identifying specifically what the problem -- if it's
16 confusing and confusing forms, difficulty of sending
17 legitimate notices in bulk to a single site about lots
18 of URLs that have been identified, but what the
19 particular problems are for particular small creators.
20 And dealing with them in a sort of -- within the
21 current statutory scheme because I think it's doable
22 and I think there is -- with the exception of bad

1 actors who aren't in this room, right, there's no one
2 who wants a small creator to be spending all their
3 time sending out takedown notices.

4 You know, I've had this experience myself
5 with friends and colleagues who I've helped, you know,
6 get material down offline. And it can be -- it can be
7 annoying. It's not as annoying for me as someone who
8 has to spend a lot more of their time doing it. There
9 are things we can do I think to make it less annoying,
10 to streamline the process without increasing abuse and
11 certainly without changing the bedrock rules on which
12 the industry is built.

13 MS. CHARLESWORTH: Okay. Thank you. Ms.
14 Gellis?

15 MS. GELLIS: Thank you. Mr. Roslof made a
16 couple of key points that I wanted to echo. The first
17 one that he mentioned is the importance of using data
18 and not anecdotes. But nonetheless, I'd like to go
19 with an anecdote.

20 And the statement I want to make is that I'm
21 a small creator. I write and I sing songs. There's
22 never going to be a record label that is going to call

1 me up and give me a deal and put out my record. I'm
2 never going to be able to profit that way. But thanks
3 to the DMCA safe harbors, there are platforms like
4 YouTube and others out there that I can put my music
5 on and my expression can be heard and can be
6 monetized.

7 Even if I put my music out there and I only
8 make one penny, that is one penny more than I ever
9 would have made in a world where safe harbors weren't
10 adequately protected like they were with the DMCA.
11 And that's the important takeaway that I was trying to
12 describe in my earlier comments to this panel. Can
13 artists make a living in this new world? Absolutely,
14 yes. And there's data to support that.

15 But to the extent that the answer is no,
16 it's important not to forget that the answer was never
17 -- there was never a guarantee for an artist that they
18 would be able to make a living, particularly when they
19 were dependent on middlemen like record labels or
20 studios to give them the opportunity to potentially
21 get their creative works out there. There was no
22 guarantee you would ever get your record deal.

1 What's happened now is we've been able to
2 democratize that ability of people to -- these
3 platforms have made new markets. They've made new
4 opportunities. Now there is a chance for people to be
5 heard in a way they couldn't have before. When we do
6 our measurements -- and I believe this is essentially
7 what Mr. Roslof was saying -- when we look -- this is
8 an ecosystem. And there is -- there is markets and
9 there's money and there's opportunity.

10 And when we look at the question of harm, we
11 need to look at it on a wider scale to figure out the
12 sky is rising of the majority of people and for the
13 public as a whole. And that's the point I want to
14 leave you with.

15 MS. CHARLESWORTH: Yeah. So and I take your
16 point that certainly the internet has opened up a
17 platform to people who, as you say yourself, wouldn't
18 otherwise be able to share their work with the public
19 or publish it. I think the question though that keeps
20 surfacing is that there are certain kinds of creation
21 that require an investment, greater investment --
22 making a film, making -- you know, even an independent

1 film, but a big film, big projects.

2 And I think one of the concerns that's being
3 raised -- and I'm wondering if you have any thoughts
4 on this aspect of the question -- is that the process
5 is having a negative impact on the ability to make
6 those investments in art that actually requires more
7 than sort of an individual creator and an individual
8 creator's resources.

9 MS. GELLIS: That's a question that needs --
10 I believe there's at least anecdotal evidence to
11 suggest that on the whole there is not a problem here.
12 But by all means, we should have more than anecdotal
13 evidence to -- if we think certain types of content
14 are different than others and we want a policy made
15 around different types of content, I'm not
16 recommending it necessarily, but if that's a question
17 being considered, we need some good evidence so we can
18 be honest and transparent about the policy we would be
19 building around that particular instance. We're
20 guessing --

21 MS. TEMPLE CLAGGETT: I'm sorry. Not to
22 interrupt, but I just had a follow-up. When you said

1 it's not a problem, are you saying piracy as a whole
2 is not a problem? I'm just kind of trying to -- what
3 are you saying is not the problem?

4 MS. GELLIS: Oh, I believe it was the
5 question of whether it is impossible to make a movie
6 and profit. And I believe it is not impossible to
7 make a movie and profit. But I believe that if that -
8 - if we -- if there is a suspicion that there is a
9 policy concern, we need data backing that up, data
10 that is -- as I believe Mr. Gratz was saying -- that
11 is auditable, testable, methodologically repeatable,
12 something that complies to some form of scientific
13 method so we're not just guessing and building policy
14 around guesses.

15 I think that's critical, especially if we're
16 going to talk about changing the status quo in any way
17 because right now, at least small independent artists
18 like me and others, can at least be heard and can at
19 least have the chance to profit from these new
20 platforms, which are critical businesses and economic
21 engines unto themselves. They are an economic energy
22 and they have their own intellectual property and they

1 also deserve to have some protection under the law as
2 well.

3 MS. CHARLESWORTH: Okay. As usual, we're
4 running late. So -- there were fewer cards up over
5 here the last time I looked over here. But you guys -
6 -- so what I'm going to suggest -- I think -- has
7 everyone who has their card has spoken at least once,
8 right? So I'm going to suggest that we -- oh, I'm
9 sorry.

10 MS. TEMPLE CLAGGETT: Yeah, Mr. Feerst.

11 MS. CHARLESWORTH: Oh, Mr. Feerst. So why
12 don't you take a moment and then we'll go very
13 quickly, like 30-second kind of lightning round
14 through the rest of the cards that are up now?

15 MR. FEERST: Okay. I'll be brief, things
16 that I think you've already heard and will probably
17 hear again in the next few minutes. I think the main
18 point I want to say is that like the smaller creators,
19 don't make smaller platforms like Medium collateral
20 damage. Consider us too.

21 Don't let the name fool you. We are a small
22 company. We have people who write things. It's not

1 just cat videos. People have written things about
2 their children and how they fool them into thinking
3 dinosaurs exist and wound up with a book deal and a
4 movie deal. They've written posts about words that
5 can't be translated into English; that turned into a
6 bestseller in about a year.

7 There's a 19-year-old intern who did that.
8 There was a fellow who came out of rehab and wrote a
9 memoir about it on Medium and now has a book deal and
10 a television deal. So this is a small platform on
11 which small creators create. And that's part of the
12 potential collateral damage.

13 For us, the idea of people asking for bigger
14 sticks that are not more precise or more accurate
15 sticks is very scary. We will get caught up in that.
16 We don't have the resources to create filtering
17 technology capable of scanning long-form writing and
18 understanding whether it is fair use. That is an
19 interesting thing that may exist someday. But I don't
20 think that the techno utopians in the crowd on either
21 side here are right that that exists now and we
22 certainly don't have the money to build it. So I

1 think things like takedown/stay-down affect us in ways
2 that are potentially unforeseen or unforeseeable.

3 Two other brief points. One is like I said
4 yesterday about red flag knowledge, we would like to
5 do more than we are expected to, both to take down
6 harassment and other forms of unethical content,
7 including infringement. But red flag knowledge and
8 especially an expansion of it would perversely cause
9 us to do the opposite, not because we don't want to be
10 nice people but because of the incentive it creates.

11 So this is a case where the larger stick
12 does not become a carrot. I don't see how the
13 conversation can't be balanced by the relative success
14 in some ways of CD230 and having people take voluntary
15 measures. And I ask that the harmonization of these
16 two statutes, which are what small platforms like us
17 operate under, be taken into account. It should be
18 considered that these are the things that small
19 Internet companies think about together when we try to
20 affirmatively think about the content on our site.

21 And finally, I would just also suggest that
22 -- and this was said -- that something meaningful that

1 deters bad takedowns would be super helpful. It could
2 be symmetrical. It should be fair. It shouldn't be
3 draconian. But something meaningful about signing
4 your name to something that takes something off the
5 Internet extra-judicially.

6 It's one of the main things I spend my time
7 on. It is something that folks get into fights about.
8 People parody each other and they get into dueling
9 criticism, commentary and parody wars and that is
10 something that creates all sorts of problems for
11 people like us. And so, like the small creators, we
12 are a small platform enabling them and we'd like to be
13 able to continue operating under the existing statute.

14 MS. CHARLESWORTH: Thank you, Mr. Feerst.
15 Okay. We'll go very quickly down here and then here
16 and then we'll take a break and have our open mic.
17 Mr. Tourtellotte?

18 MR. TOURTELLOTTE: Thank you. I just had
19 three things that I wanted to address. You know, I've
20 heard a couple of people say no changes to 512. And I
21 just don't -- it's a rhetorical question. But how can
22 a person sit through any of these sessions and not

1 think changes are needed somehow, some way, somewhere?

2 I just don't know.

3 It seems to point to this sort of

4 complacency among big tech that everything's okay.

5 And I would just simply say everything is not okay.

6 One gentleman was asked about people like me. He

7 said, I can sympathize with them.

8 I want everybody to know I don't want your

9 sympathy. I do want your empathy. I do want you to

10 understand people like me. That's all I really want.

11 Don't feel sorry for me. I took a business risk. I

12 was a businessman. I got into the business and we

13 just didn't make it. We didn't make it because of

14 theft and that's wrong. But we took a risk. I don't

15 want sympathy. I do want empathy. I want people to

16 understand me.

17 And then, I hear sort of this talk about,

18 you know, rising new media and rising skies and the

19 fact that, you know, these new business models are

20 being created. And that's right. I mean, we chose a

21 new business model to put our movie out on. I embrace

22 new business models. I think YouTubers are great. We

1 hired YouTubers to promote our movie. I think that's
2 a great thing.

3 But I don't want people to think that the
4 rise of new media is okay as long as the fall of new
5 media -- or old media is taking place. That is not
6 okay. Old media, copyright, big companies, whether
7 it's tech companies, whether it's motion picture
8 companies or Google companies have done a great deal
9 to be the backbone and be a distribution outlet for
10 people who have a voice. And I would just like to say
11 that we shouldn't promote new media at the expense of
12 old. I think it's as simple as that.

13 MS. CHARLESWORTH: Thank you very much. Mr.
14 Stiles?

15 MR. STILES: Well, I just want to reiterate,
16 one, this is not a zero sum game. This is very much
17 along the lines of what he said. There is absolutely
18 no reason why the markets for -- existing markets that
19 actually exist where we have an audience that's
20 willing to pay, that we can't maintain that right now
21 if we modify 512 or change the rules properly. Second
22 thing is -- and then also encourage the creation of

1 new markets and new media and new artists.

2 A second thing is that, again, a lot of the
3 problems we've heard, both from mistaken or abusive
4 takedown notices, which of course I tend to think of
5 as being exaggerated, and also the problems of the
6 complete toothlessness of takedown notices. Again, it
7 suggests to me the need for professional enforcement
8 or at least a strong professional role from an outside
9 disinterested force which is the Copyright Office or
10 the federal government.

11 Instead of having individuals who know
12 nothing but are full of passions trying to enforce the
13 law on each other or use it against each other, we
14 really need a professional judicial oversight or
15 administrative oversight or enforcement of some kind.
16 Thank you.

17 MS. CHARLESWORTH: Thank you. Mr. Michaud?

18 MR. MICHAUD: To follow up on a question you
19 asked about how people can create movies these days
20 without having major investment, it's already being
21 done. There's crowd-funding sites. There's pay tree
22 where people just give you money to create a project.

1 We know people who have gotten \$100,000 for an
2 independent film from their fans. And I think one
3 thing that really hasn't been talked about that we
4 have experienced over the years is really the death of
5 physical media.

6 Back in the day, three, four years ago, we
7 used to make an anniversary film, it would cost us
8 \$50,000 to fly people in and shoot the film. We put
9 the thing on DVD and we'd make \$100,000. That doesn't
10 happen anymore. People do not want to buy physical,
11 at least in our fans and I'm guessing across the
12 industry as a whole, that physical media is going
13 down. And that's something that really hasn't been
14 talked about.

15 People just want to have the content where
16 they want it and they want to watch it when they want
17 to watch it, not have to sit at home, pop in a disc
18 and watch a movie.

19 MS. CHARLESWORTH: Thank you, Mr. Michaud.
20 Mr. O'Connor?

21 MR. O'CONNOR: Okay. So I realize I didn't
22 say the most controversial part of my proposal before.

1 So now I'll say it.

2 MS. CHARLESWORTH: Thank you very much for
3 waiting until now.

4 MR. O'CONNOR: I didn't do that. So well, I
5 mentioned copyright management information. Closing
6 the loop on it is that perhaps change the safe harbors
7 in cases where it's an entity that's going -- a
8 service provider that's going to display, allow
9 streaming or downloading and then it doesn't get to
10 take up content that allows any of that activity if it
11 doesn't read the protocol of the copyright management
12 information. Does that make sense?

13 MS. CHARLESWORTH: As much as it can at this
14 hour.

15 MR. O'CONNOR: I'll follow up more in
16 written comments.

17 MS. CHARLESWORTH: No, no. I encourage you,
18 if you want to develop that further and share it in
19 written comments --

20 MR. O'CONNOR: It's basically keeping the
21 title intact --

22 MS. CHARLESWORTH: Yeah.

1 MR. O'CONNOR: -- and then saying you don't
2 get to post it, don't get to make it available at all
3 if there's no title on it.

4 MS. CHARLESWORTH: I get the concept. Thank
5 you. Yes, Mr. von Lohmann?

6 MR. VON LOHMANN: I just want to close here
7 by pointing out that all of the large online service
8 companies, and many of the small ones, that have
9 testified have spoken about things they do above and
10 beyond what 512 requires on its face.

11 I certainly haven't heard any form of
12 complacency on the part of participants here. I
13 haven't seen any complacency in the press. You see
14 many of the service providers who are not here today
15 are adopting measures, including takedown/stay-down
16 measures, voluntarily above and beyond what the
17 statute requires.

18 And so, I think I look forward to continuing
19 the voluntary efforts that Google and a whole bunch of
20 other companies out there have been working on in that
21 same vein. The problem sites are not the services
22 that are participating in this event. They are sites

1 that are not under the DMCA.

2 MS. CHARLESWORTH: Okay. Mr. Nash?

3 MR. NASH: Let me say that what we'd like to
4 do is operate in a world where all the interactions
5 between the content creators and the services were
6 voluntary and that market rate negotiations were
7 conducted around the value of content.

8 The problem is that 512 makes it impossible
9 for us to secure market rates because the largest
10 services operate with full catalogs of content without
11 the necessity of license. When you go back to
12 intention, 512 was really all about protecting truly
13 passive Internet pipes from copyright infringement.
14 It was never intended to shield services that were
15 designed around and dependent upon music distribution
16 from negotiating fair licensing deals.

17 So the intention was never to have an
18 alternative to licensing. And when you think about
19 the scope of this, user-generated content platforms
20 like YouTube, user base of 900 million, maybe 10 times
21 as big as the subscription music economy. And yet,
22 they're providing maybe only 4 percent of the revenue

1 on a worldwide basis to creators of music. That gives
2 you a sense of imbalance. That was never intended by
3 the authors of the DMCA.

4 MS. CHARLESWORTH: Thank you. Mr. Delgado,
5 I think you have the last word.

6 MR. DELGADO: In terms of the comment about
7 careful what you wish for, if someone has that magic
8 lamp, I have 900 labels that are willing to rub it.
9 So you know, we definitely -- it is something we wish
10 for, that it'll -- it's notice-and-stay-down will
11 actually work.

12 And in terms of that, YouTube, I'm actually
13 going to talk well about YouTube because I am YouTube-
14 certified and I think Content ID is brilliant. I
15 think it's great. But the blocking, we send a release
16 to block and it stays down. It doesn't go back up.
17 So there is instances where this notice-and-stay-down
18 works and we use it. But then, on the other hand, you
19 have the Content ID.

20 And in my certification, one thing I learned
21 about is when you upload the content, it still takes -
22 - they can do 400 or 500 hours of content a minute.

1 But it takes months, weeks or however long for the
2 content that we submit for our rightsholders to get
3 registered by that Content ID through their priority
4 system. So if they can at least match up 400 and 500
5 hours that they can upload to the 400, 500 hours to
6 claim it, that'll be a big help for our providers as
7 well.

8 MS. CHARLESWORTH: Okay. Well, thank you
9 all very much. We are going to reconvene I guess at
10 quarter of for open mic and we'll go for about an hour
11 and then we'll call it a day. So I hope -- I welcome
12 you back, if you're interested in making further
13 remarks for the record. If you haven't signed up --

14 MS. TEMPLE CLAGGETT: Signe up, yeah --

15 MS. CHARLESWORTH: -- please make sure to
16 add your name to the list, which is outside on the
17 table.

18 MS. ISBELL: And also, one note, when you go
19 outside, please keep your voices down. There are
20 judges working who have complained about the noise
21 level in the hall. Thank you.

22

1 (Recess from 3:29 p.m. to 3:47 p.m.)

2 SESSION 8: Wrap-Up/Open Mic

3

4 MS. FERTIG: -- and if I could just have
5 people line up on this side of the room, we're just
6 going to have anybody who wants to speak in the open
7 mic session that's signed up on the sheet get in line
8 in the order, first, of people who have not spoken at
9 all on any of the panels. We want to give those
10 people a chance to speak first. So that would be
11 Vicky Sheckler and then Tim Diggle.

12 MR. DIGGLE: Hello.

13 MS. FERTIG: Great. And then, if I can have
14 people line up, just so that we're ready, because we
15 have very limited time. We're going to go Brian
16 McNelis, Michael Masnick, Cathy Gellis, Ira Siegel,
17 Tom Murphy, Braxton Perkins and then Keith
18 Kupferschmid, Bob Tourtellotte, Dave Green, Ruth
19 Vitale and then Peter Midgley.

20 So if you do not end up wanting to speak,
21 you are more than welcome to pass your session, your
22 time to speak. But we're going to give everyone two

1 minutes. And Kim, my colleague, will be holding up
2 the signs. I'm going to relinquish that duty for this
3 session. So without further ado, Tim?

4 MR. DIGGLE: Thank you. Excuse me. Oh, up
5 here? Okay. So just really quickly, I've heard a lot
6 of people talking about data, we need more data. One
7 of the big problems --

8 MS. CHARLESWORTH: Sorry, I'm very sorry.
9 When you start speaking -- and I know Rachel sort of
10 said your name, but can you say your name and who you
11 represent, if anyone?

12 MR. DIGGLE: Oh, sure. Okay. My name is --
13 my name is Tim Diggle. I worked on town for a
14 videogames company and in a past life I was a musician
15 who tried but failed to make it. I wasn't affected by
16 piracy. But I've long had an interest because I work
17 in the content industry and videogames was a second
18 life for me in the content industry and we need
19 copyright obviously.

20 So my big problem with the way the safe
21 harbor works is, to my understanding, an infringer
22 uploads, illegally, copyrighted material -- you know,

1 illegal material. They get a takedown, and even if it
2 gets taken down and stays down, the huge aggregator,
3 which includes big tech companies like Google, is
4 keeping the advertising revenue that's been earned
5 during that period when infringing material has been
6 up.

7 Now, I'd like Google to be transparent about
8 how much money they've made since their inception from
9 that kind of practice because I'll bet it's a lot.
10 I'll bet it's a big proportion of their money. And I
11 am in favor of notice-and-stay-down but I'd also like
12 to see more action taken against people who are
13 advertising against infringing material and people who
14 are making money.

15 Now, sites like Pirate Bay, Megaupload and
16 stuff, they were carrying Google ads. Google is
17 making money off of advertising on those sites as
18 well. So -- and I refuse to believe the world's
19 biggest data processor can't manage to get more data
20 to us about this. I'm finding it a bit -- I'm a bit
21 incredulous. So it's not like -- and it's not like
22 this is a victimless crime.

1 You know, we've got huge aggregators and the
2 creative middle class is getting screwed. And
3 American cultural exports are like a massive source of
4 American soft power. So I really hope that something
5 comes out of this where the U.S. government gets much
6 more on the side of people who are making content and
7 less on the side of big tech, which has done pretty
8 well out of all of this really. That's it.

9 MS. CHARLESWORTH: Thank you very much.

10 MS. SHECKLER: Vicky Sheckler, with the
11 Recording Industry Association of America. There's
12 just a couple of points that I'd like to make in
13 response to some of the comments that we've received
14 today. First, on the question of fair use, we think
15 about fair use. My members think about fair use.
16 They use fair use every day. To suggest that we don't
17 care about it is completely false.

18 Second, on the issue of counter-notices and
19 the abuse of notices, we cite to a study from IFPI in
20 our comments of their experience for one month with
21 takedowns on YouTube. We recommend that you look at
22 it. The bottom line, they found that 80 percent of

1 the counter-notices that they received in that month
2 were from their perspective false, misleading, didn't
3 claim what they said -- or report what they said they
4 claimed. They claimed fair use and it was a full,
5 hundred percent copy, for example. So we cite -- we
6 ask you to look at that as well.

7 Third, in connection with what the gentleman
8 before me was saying, who are the real winners here?
9 Let's look at Automattic's work, for example.
10 Automattic said, I think, in their filing that they
11 have 34 million uploads a month and about 548 notices
12 that they receive. That works out to over a million
13 files that they get to profit from every day and have
14 to deal with 18 notices. You know who's getting the
15 benefit of the bargain on that. I just picked on them
16 because they had the numbers there. I think we see
17 this across the board.

18 There are several companies in my world, in
19 the music distribution world, in the United States
20 that profit massively from proxy infringement. And
21 then, we see what happens with the licensing and the
22 fact that we don't get fair market value any more for

1 our music. We need to find a way to fix this. We
2 believe that thoughtful implementation of a filtering
3 system can and will work.

4 I give you one example, Tumblr. In the year
5 before Tumblr implemented a filtering system, we sent
6 them over 28,000 notices of infringing URLs. In 2015,
7 we have sent them 700. Big difference. They lose
8 that burden. We lose that burden. We hope you'll
9 find a way to do that. Thank you.

10 MS. CHARLESWORTH: Who's next?

11 MS. FERTIG: Brian McNelis?

12 MR. MCNELIS: Yeah. Brian McNelis,
13 Lakeshore Records. So just three really quick points
14 as we wrap it all up. There was a lot of great
15 information today. There was a lot of talk about
16 questions about a small claims proceeding. I kind of
17 like that idea. You know, people don't go to federal
18 court to resolve parking tickets or speeding tickets.

19 And I think that that kind of mechanism
20 somewhere in the ISP part of it -- I don't know, small
21 fines for uploaders or downloaders, where there's an
22 economic disincentive to -- or an economic incentive

1 to be good citizens and an economic disincentive to
2 not be a good citizen would be a way to get all
3 stakeholders, including the public, to have skin in
4 the game so that we're all at the table together.

5 Also, as far as old platforms and new
6 platforms and old media and new media, I'm pro-choice.
7 You know, it doesn't really matter to me. Every
8 creator should do what makes sense for them, what is
9 profitable for them. I think the problem arises when
10 you remove consent from that equation, that you can no
11 longer opt out and if you can't opt out, you can't
12 negotiate for fair compensation. So consent and
13 compensation have to be part of a model and a
14 mechanism that helps all creators.

15 And then, third, you know, if we don't fix
16 these issues, what we're really rapidly moving towards
17 is a creative economy that only has hobbyists and
18 hits. You know, Jay-Z and Beyoncé are going to be
19 okay. They're going to have hit records. Marvel and
20 Universal and Sony are going to be okay. They're
21 going to make \$200 million films. And the hobbyists
22 who create, you know, music in their bedrooms with

1 very low budgets who do it for the love of doing it,
2 they're going to be okay too and maybe they'll make a
3 few bucks monetizing off of these platforms.

4 But what we're really losing is a creative
5 middle class that has been the backbone of our
6 creative culture for decades, if not centuries. And
7 it would be a real shame to lose that because we don't
8 have a mechanism that protects those people. Thank
9 you.

10 MS. TEMPLE CLAGGETT: Thank you.

11 MS. FERTIG: Michael Masnick?

12 MR. MASNICK: All right. I have four
13 points. I'm going to try to do it as quickly as
14 possible. The first is I get a sense from what I've
15 heard that there's at least some interest in maybe
16 creating a notice-and-stay-down provision for full
17 content. I would be very careful about that. There
18 are plenty of situations where full content can
19 actually be fair use. We just obviously had the
20 Google Books ruling not too long ago. That was full
21 content that was fair use. There's the
22 Bloomberg/Swatch case. There are a number of other

1 cases where full content can be fair use. So be
2 careful about that.

3 Another point, I think there are a lot of
4 legitimate concerns about how artists make money
5 today. That's you know, a very big and important
6 point that was just raised in fact here. It's always
7 been very difficult for artists to make money. And I
8 think we should be very careful about assuming that
9 difficulty making money today is necessarily because
10 of copyright infringement because at the very same
11 time, we see lots of artists who are making money. We
12 see a new middle class of musicians, despite what was
13 just said, who are making money not by going through
14 the old ways but by doing new things that are very
15 interesting.

16 Third point is a lot of focus on education.
17 And I think education is obviously very important.
18 But I think education has to be realistic and has to
19 understand the whole aspect of what's going on. The
20 idea that education is a way to convince people to
21 change their -- the way that they act -- people have
22 talked about educating away infringement of some kind

1 for centuries and it has never really worked.

2 And then, my final point is just sort of a
3 little bit on the format of this here. I thought this
4 was a great opportunity. There are a lot of really
5 interesting people here in the room. I was a little
6 upset about the way that the panels were set up in
7 that it was 20 people for 90 minutes. It wasn't
8 necessarily designed for a discussion. It was a lot
9 more focused on kind of a sound bite thing.

10 I feel like in the future, if possible -- I
11 understand that it's difficult to set this kind of
12 thing up. In the future, if possible, if there are
13 ways to set it up where it is really more of a
14 discourse and a discussion, we could potentially get a
15 lot more out of it. I think some of the panels
16 actually did get there. But a lot of them did not.
17 So that's it. Thank you.

18 MS. CHARLESWORTH: Thank you.

19 MS. FERTIG: Cathy Gellis?

20 MS. GELLIS: Thank you. Cathy Gellis, a
21 lawyer in solo practice. I work on the intermediary
22 issues and I also defend the free speech rights of

1 speakers on the Internet and that's the capacity that
2 I make this current comment about 512(h).

3 In my practice, I've quashed subpoenas
4 seeking the identity of anonymous speakers on the
5 Internet by people who are disgruntled by fair
6 criticism of them. I was able to quash that because
7 the subpoena arose in a jurisdiction where it required
8 a complaint to be filed. There was a fee shifting
9 mechanism in that jurisdiction and ultimately the
10 speaker's rights to anonymous speech were able to be
11 vindicated.

12 It's doctrinal that the right to free speech
13 includes the right to speak anonymously. It's
14 doctrinal that that right transcends onto online
15 platforms. But when we look at 512(h), we see a
16 complete lack of protections for speakers that, as we
17 were talking about in the panels about abuse, where
18 content could be censored on mere allegation.

19 With 512(h), you don't even really need that
20 allegation, let alone a lawsuit. People, censors,
21 critics -- or people who don't like being criticized
22 can easily abuse that mechanism. I think there's

1 already been abuse. But censorship is like water. It
2 will find a way if there's a way available to them.
3 Overall, the DMCA -- I think the overall input is to
4 not displace the DMCA that we have. But if Congress
5 wants to look at bits that could be tweaked and
6 improved, I think that the 512(h) mechanism is
7 something that needs a second look.

8 I don't think there's any reason that
9 federal, regular civil subpoenas would not be adequate
10 for whatever problem they're trying to remediate. But
11 that does add a little bit of judicial protection
12 because they do require that a case has actually been
13 filed and there's some sort of claims that at least
14 some judicial officer can take a look at and see if
15 they made any sort of prima facie case before that
16 really critical speech protection is stripped from
17 anonymous users. I don't think on a whole people
18 realize exactly how vulnerable they are, given that
19 current statute being on the books right now. Thank
20 you.

21 MS. CHARLESWORTH: Thank you.

22 MS. FERTIG: Ira Siegel?

1 MR. SIEGEL: Okay. Number one, thanks for
2 having these roundtables. I have some other points.
3 That should have been my point zero. Contrary to
4 implications by others, I don't know a single content
5 creator that doesn't think the Internet is wonderful.
6 Most copyright enforcement groups, customers do make
7 money doing business on the Internet. So the problem
8 of the Internet -- there is no problem with the
9 Internet per se. The problem, just like with DVD
10 printing, cassette printing, the problem is with
11 infringement.

12 I want to make a point about math. I heard
13 someone make a comment that Internet piracy is down.
14 The percentage of Internet traffic that might be
15 devoted to piracy may be down. But that's because
16 companies like Netflix and Amazon have grown Internet
17 traffic. So essentially, piracy has still increased
18 by streaming and by P2P infringement. Like I said,
19 that's increased, even if its percentage of Internet
20 traffic has gone down.

21 We have a problem with ISPs who not only are
22 not forwarding notices, but a lot of ISPs are refusing

1 to even receive notices. So what we have is willful
2 blindness with respect to infringement on various --
3 by subscribers to Internet services. And I want to
4 follow up -- this is my last point -- with the issue
5 of people are people. And how do you stop people from
6 engaging in bad acts? You punish them for doing bad
7 acts.

8 And how do you -- what's the best way of
9 punishing them? It's actually monetary punishment. I
10 bet anyone here who's parked at a parking meter in the
11 last month has made a point of putting in their money.
12 Why do you do that? The reason why you do that is
13 you're going to get hit with a \$40, \$50, \$60 or \$70
14 fine for not putting in a quarter or dollar into the
15 meter.

16 And by the way, even the people who are on
17 the side of against copyright enforcement, they've
18 said there should be monetary punishments for people
19 who supposedly abuse the system. So monetary
20 punishments are important. And in the case of
21 copyright infringement, it's a way of our getting
22 money to the content creators. And lastly, on that

1 very point, Jeff Sedlik made a point that I was trying
2 to make, which is we need to stop cloaking the
3 infringers' identity. Thank you.

4 MS. FERTIG: Tom Murphy?

5 MR. MURPHY: Great. So we've spoken a lot
6 about innovation and we've heard from a lot of
7 technology companies of the wonder of technological
8 innovation. And I just want to remind us that we
9 haven't heard a lot about artistic innovation or
10 cultural innovation or creative innovation. And even
11 though that can be disturbing, these proceedings have
12 me very encouraged because of a number of factors.

13 The way you set the tone yesterday morning
14 of reminding us about a balance and a dialogue is
15 something that we need to be reminded again and again.
16 And there were times when we talked about how we can
17 listen more to each other and how we can put ourselves
18 in each other's shoes. And I think that was very
19 encouraging, to not just be pushing a point.

20 I'm also encouraged by having a few people
21 in the room that are both creators and service
22 providers, people like Microsoft and Amazon who begin

1 to understand more of what it's like from a very real
2 and practical point. Creators are early adopters of
3 technology. They will always find new ways to express
4 themselves and new ways to reach their audience. And
5 they're also, at least in the music space, for now,
6 the canaries in the coal mine.

7 I'm glad we've asked about empirical
8 evidence and it's cited time and again that the music
9 industry itself, its monetary value has fallen in half
10 in the last 10 years. That money didn't just
11 disappear. It was diverted and there is still lots of
12 money being made. Lots of technology companies are
13 profiting from music and the problem is just that that
14 money is being diverted away from the creators
15 themselves. And so, we need to return to that
16 balance.

17 I just want to have one last anecdote of the
18 culture that we have, that living in San Francisco,
19 it's very apparent. Last year, the music service RDO
20 was -- its assets were purchased for \$75 million by
21 Pandora. Yet the owed royalties to the creators, the
22 people who provided the music for that service, the

1 millions of dollars were put into bankruptcy court and
2 essentially lost. So the balance of content and
3 technology needs to be found. Thank you.

4 MS. TEMPLE CLAGGETT: Thank you.

5 MS. FERTIG: Next, Braxton Perkins.

6 MR. PERKINS: Hi. I'll stand. Sorry.

7 Braxton Perkins, NBC Universal. I just really have
8 one point. I had heard --

9 MS. CHARLESWORTH: -- into the mic. It's
10 too low.

11 MR. PERKINS: Sorry. I had heard in the
12 last section a couple of people talk about the need
13 for data. And they also talked about the need to I
14 guess check the assumption that the piracy hurts
15 creators of infringing copies are harmful.

16 And I did want to just point out, on page 49
17 of the MPAA's submissions, there are academic studies
18 that went through a peer review system by academics
19 studying the impacts of piracy. And that they're not
20 good. And so, the fact that we already have that
21 literature, we already have some academic studies --
22 I'm all for doing more.

1 But I want to just point out that academics
2 have studied the issue and have published studies.
3 Professor Ma and others put out a report called The
4 Empirical Analysis of the Impact of Pre-Release Movie
5 Piracy on Box Office Revenue, from 2014. And
6 Professor Smith and Telang wrote a paper called
7 Assessing the Academic Literature Regarding the Impact
8 of Media Piracy on Sales, in 2012.

9 So these studies are out there and I
10 encourage those who aren't familiar with them to read
11 them. They're written by academics and they do
12 articulate that there really is a problem with piracy.
13 And I think that helps also with the anecdotes that we
14 have heard from creators, that piracy really affects
15 their lives. Also take it from the academics.
16 Thanks.

17 MS. CHARLESWORTH: Thank you.

18 MS. FERTIG: Next, Keith Kupferschmid.

19 MR. KUPFERSCHMID: It's this one in front of
20 me here. So when I first -- I guess my first
21 statement yesterday was I came here to try to be a
22 reasonable, sort of moderate, express those views.

1 And I tried my darndest to do that over the two-day
2 period. And you know, I'd like to think, given my
3 sort of 16-year background working with OSPs and with
4 technology companies and also working with the
5 creative community at the Copyright Alliance, that I'm
6 able to see sort of both sides of that coin.

7 And it's disheartening when I see sort of
8 Mike Masnick's tweets throughout the day really
9 depicting this as just -- just inaccurately, really,
10 and in particular against me, referring to the
11 comments about privacy proxy services, calling them a
12 problem when I think I called the activity I was
13 referring to a problem and then saying I said no
14 privacy allowed, which I clearly didn't say. And
15 then, he also asked for volunteers to help
16 "educational", in quotes for some strange reason,
17 content for its website, the Copyright Alliance
18 website about copyright, think he'll accept my help.
19 So Mike, wherever you are -- you're over here
20 someplace --

21 MR. MASNICK: Right here.

22 MR. KUPFERSCHMID: I don't see you. Yes, I

1 will accept your help, as long as it is help, okay?

2 MR. MASNICK: Sure.

3 MR. KUPFERSCHMID: Because I think we can
4 accomplish something here. But we're not going to
5 accomplish anything if people continue to misrepresent
6 things, call each other names and take extremist
7 views. We need to come to the table with the goal of
8 trying to accomplish of making this situation better
9 than it is today. And then, one other point I'll just
10 make, which is something that was mentioned earlier
11 about the large number of takedowns being an
12 indication of success.

13 I would argue vehemently to oppose that. If
14 you were to come to me and you said, look, I have an
15 ant problem in my house, can you help me take care of
16 it. And you -- and I said, look, this week I killed
17 600 ants. And then, the next week I came back and I
18 said I killed 6,000 and then a week after that,
19 60,000, I think you'd fire me, okay? So it's not an
20 indication of success. We do need to do something.
21 Like I said, my goal here is to, yes, advocate but
22 also advocate for solutions.

1 MS. FERTIG: Thank you. Next is Bob
2 Tourtellotte.

3 MR. TOURTELLOTTE: That's okay. You know,
4 I'm loud enough as it is. So I don't think -- oh, I
5 need it for the thing? Okay. Thank you very much --
6 for the transcript, I should say, instead of the
7 thing. I've said thank you, but thank you again for
8 having me. I think as I listened to everything,
9 there's a lot more commonality in these rooms.
10 There's a lot more commonality in these panels than
11 there are differences. Now, there are big differences
12 and there are problems with 512. Those can be worked
13 out. People can get together.

14 I think I am all about fair use and free
15 speech. I think a lot of people like me are. I think
16 there's a lot of room on the other side of the table,
17 if there is another side of the table, for us to come
18 together. But we need that framework and that
19 framework does come from copyright. I mean, that's
20 just where it comes from. So thank you very much.

21 MS. FERTIG: Thank you. Next is Dave Green,
22 if you want to stay there, and announce yourself as

1 well for the record.

2 MR. GREEN: Sure, Dave Green, with
3 Microsoft. A wise music attorney, John Barranca, once
4 chided me to stop selling when it's already sold. And
5 I'm going to take a little risk at that point and say
6 as the Copyright Office has conducted these
7 roundtables and has heard very divergent perspectives
8 on the health and benefits and changes that may or may
9 not need to occur within 512, it's heard consensus in
10 an important area and that's the area of voluntary
11 measures.

12 And I think the learnings that I've heard at
13 least today are to expand those voluntary measures
14 beyond their current state of affairs to include
15 education, to include benefitting an ecosystem of
16 rightsholders who are not advantage by the current
17 discussions that have taken place. It's rare when you
18 find that consensus.

19 And I think as the Copyright Office
20 concludes its study, evaluates the comments and looks
21 for opportunities in which it can add value and it can
22 encourage the broader ecosystem, we encourage by our

1 comments and by our posture that the Office look at
2 the areas of consensus. And I think you'll find with
3 voluntary measures, that's a rare area of agreement
4 and that's an opportunity to move the discussion
5 forward instead of moving it backward.

6 The Copyright Office has been incredibly
7 busy in the last six months. They've released four
8 independent studies on a wide variety of topics,
9 including embedded software and 1201 and 512 and the
10 IT infrastructure. We would encourage as a part of
11 the discussion of the impact of piracy and the role of
12 512 that the office take a serious look and work with
13 others in government taking a serious look at studies
14 about copyright enforcement.

15 There's an interesting IPO survey that came
16 out from the UK IPO. And the bulk of that was not on
17 voluntary measures or on takedown or stay-down
18 measures. It was actually on antipiracy measures and
19 enforcement focused on the role of government. And we
20 would encourage and welcome studies in that particular
21 area to resolve the issues of the people who are not
22 at the table and who we -- who Microsoft believes are

1 inflicting a great degree of harm on both ISPs and
2 content creators. And with that, we thank the office
3 for the ability to participate in the roundtable and
4 share our perspectives.

5 MS. CHARLESWORTH: Thank you.

6 MS. FERTIG: Next is Ruth Vitale.

7 MS. VITALE: I think -- is this on? Can you
8 hear me? Hi. Thank you. I testified in Santa Clara
9 at the judiciary listening sessions as well and I have
10 to say it was very scary to come up to Silicon Valley
11 for the first time and think I was going to be the one
12 lone voice. But what I was heartened by is how many
13 people actually care about trying to come together, to
14 work together. Listening to Mr. Green today, speaking
15 with Fred von Lohmann, I believe that we should be
16 able to come to work together.

17 And I, like Mr. Kupferschmid, you know, I
18 don't want to see tweets that kind of misrepresent
19 where we are because I think we all have come here
20 today, I hope, to work together. I care about a new
21 generation of voices. That was my job in making
22 movies from Dirty Dancing to distributing Hustle &

1 Flow, from the ridiculous to the sublime or from the
2 sublime to the ridiculous.

3 And as Mr. von Lohmann and I discussed the
4 other day, we don't know where those voices can come
5 from. They can come from film festivals or they can
6 come from YouTube. But they all need to be protected
7 because without them, we won't have that next
8 generation. So that's what I want to put on the
9 record finally because it's important for all of us.
10 It's important for our culture. Thank you.

11 MS. TEMPLE CLAGGETT: Thank you.

12 MS. FERTIG: And lastly, Peter Midgley.

13 MR. MIDGLEY: So Peter Midgley, from Brigham
14 Young University. I would like to echo a lot of
15 what's been said and also thank the Office for being
16 allowed to participate in this discussion and offer
17 the perspective of an institution of higher education.

18 I think what I tried to emphasize yesterday
19 was that the DMCA does not exist in a vacuum. It's
20 part of a larger copyright system. You know, I
21 mentioned the Higher Education Opportunity Act, for
22 example, that we operate under which has references to

1 the DMCA.

2 So if we're going to be considering changes
3 to the DMCA, I think we need to look at it in a more
4 holistic way as part of the system in which it exists.
5 And you know, just based on my own observations from
6 the comments that were made, it seemed like most of --
7 in particular the smaller content creators that we
8 heard from -- they were interested primarily, from my
9 perspective, in injunctive relief and not necessarily
10 significant monetary relief.

11 And the statutory damages scheme that's a
12 part of the copyright system in our experience has
13 proven to be part of the challenge. You know, the
14 notices that we get and the threats and the language
15 that comes in part because of this -- the statutory
16 damages scheme, I just don't think that can be
17 ignored. If what really content owners is for piracy
18 to be stopped and if injunctive relief is the primary
19 driver for it, then I think we need to at least
20 consider what the effect of the, you know, overall
21 statutory damages scheme is.

22 MS. FERTIG: Thank you. That's it.

1 MS. TEMPLE CLAGGETT: Is that it?

2 MS. FERTIG: Yeah.

3 MS. TEMPLE CLAGGETT: Oh, well, we want to
4 once again thank everyone who's participated today.
5 You know, when I opened it, I said that, you know,
6 some had questioned our format because we do have a
7 lot of voices.

8 But one of the things that we think is
9 important is to have as many voices as we can. So one
10 of the reasons we had so many people on these panels
11 is because we were able to actually not deny anyone
12 who signed up and wanted to speak. And we think that
13 is important in terms of at least starting the
14 dialogue.

15 We do think that there is a next step, once
16 we get an opportunity to hear from a wide range of
17 people. Then we can, you know, further drill down and
18 see whether there are areas that we might want to
19 focus on more exclusively. But to start the dialogue,
20 we thought it was very, very important to really have
21 a wide breadth of perspectives and individuals to
22 come.

1 And so, we wanted to thank everyone. Some
2 of you have actually been with us through both New
3 York and California. So especially thanks for that.
4 But also the new voices that we heard today. As we've
5 said before, this is not the last time that you will
6 be able to talk to the Office about any ideas or
7 suggestions that you have for us to consider. We are
8 going to put out, probably sometime soon, but maybe
9 not too soon, a request for further written comment.
10 And then, as we assess what additional written
11 comments that we have, we will probably ask for people
12 to come in to speak with us either informally or
13 formally in terms of follow-up details that might be
14 important before we actually come out with a formal
15 recommendation.

16 So again, thank you all for participating.
17 We think that it's important just to have a dialogue
18 so that people can hear the different perspectives
19 and, you know, think about other -- standing in the
20 shoes of others as they move forward. Anything -- did
21 anyone -- anyone else want to say? All right, well,
22 safe travels back for those who have --

1 (Applause)

2 MS. TEMPLE CLAGGETT: We got a clap.

3

4

5 (Whereupon, the foregoing adjourned at 4:18

6 p.m.)

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CERTIFICATE OF NOTARY PUBLIC

I, Tracy Sanbrailo, the officer before whom the foregoing proceeding was taken, do hereby certify that the proceedings were recorded by me and thereafter reduced to typewriting under my direction; that said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Shanalee Gallagher

Notary Public in and for the CA

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I, BENJAMIN GRAHAM, hereby certify that I am not the Court Reporter who reported the following proceeding and that I have typed the transcript of this proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct, and complete transcription of said proceeding.



May 23, 2016

Date

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