DEPARTMENT OF COMMERCE MULTISTAKEHOLDER FORUM

IMPROVING THE OPERATION OF THE DMCA NOTICE

AND TAKEDOWN POLICY

FIRST PUBLIC MEETING

Alexandria, Virginia

Thursday, March 20, 2014
A G E N D A

MORNING SESSION

Opening Remarks:

SHIRA PERLMUTTER
Chief Policy Officer and Director for International Affairs, USPTO

Welcome from NTIA:

ANGELA SIMPSON
Deputy Assistant Secretary, NTIA

"TOPICS"

Administrator:

DARREN POGODA
Attorney-Advisor for Copyright Office of Policy and International Affairs, USPTO

Government Representatives:

SHIRA PERLMUTTER
Chief Policy Officer and Director for International Affairs, USPTO

GARRETT LEVIN
Attorney-Advisor, USPTO

JENNIFER BLANK
Attorney-Advisor, USPTO

SUSAN ALLEN
Attorney-Advisor, USPTO

JOHN MORRIS
Associate Administrator and Director of
Internet Policy, NTIA

AFTERNOON SESSION

Welcome from USPTO:

MICHELLE LEE
Deputy Under Secretary of Commerce for
Intellectual Property and Deputy Director,
USPTO

"PROCESS"

Administrators:

DARREN POGODA/GARRETT LEVIN

Government Representatives:

(Same as Morning Session)

Closing Remarks:

SHIRA PERLMUTTER
Chief Policy Officer and Director for
International Affairs, USPTO

PROCEEDINGS

(9:11 a.m.)

MS. PERLMUTTER: Good morning. I'd

like to welcome all of you here in Alexandria

and also all of you joining us today by webcast.

I'm Shira Perlmutter, the Chief Policy Officer

and Director for International Affairs here at

the U.S. Patent and Trademark Office.

And it's my pleasure to start by

introducing Angela Simpson, the Deputy Assistant

Secretary at the National Telecommunications and

Information Administration to deliver some

opening remarks.

MS. SIMPSON: Thank you, Shira.

Welcome. And it's great to see such a large

group here at the first meeting of the

multistakeholder process organized by USPTO and

NTIA to address the notice and takedown system

set up by the Digital Millennium Copyright Act.

Thanks both to your guests here in the
1 room and to the many others who are watching on
2 the webcast this morning. This level of
3 participation is a testament to the strong
4 interest in the notice and takedown system and,
5 also, the importance of being able to make
6 progress to improve that system.

7 This group today will explore ways that
8 stakeholders, companies, users, technical
9 experts, and others can improve how the notice
10 and takedown system operates. You,
11 stakeholders, will determine the outcome and
12 success of the process, not the government.

13 As the group works together to tackle
14 the DMCA issues, it's important to remember that
15 the multistakeholder model can be a powerful
16 method for ensuring that rights holders'
17 interests are protected while the Internet
18 continues to be an engine of economic growth and
19 innovation.

20 I want to take a moment to highlight
21 what, in my mind, is truly a key value in the
22 multistakeholder approach to policy development,
and that is that all of you, as stakeholders,
can develop solutions to problems at a far more
granular and nuanced level than Congress or any
regulatory process could. I'm not guaranteeing
that it will always be easy. But by sitting
down together to work through these challenges,
you guys can create solutions that can be both
effective and workable for all participants in
the online ecosystem.

It's not realistic to think that
today's meeting will result in final agreement.
However, I hope that today's meeting is the
first step in a journey that will result in
broad agreement about how the notice and
takedown system can be improved. We can start
an affirmative, constructive dialogue on how to
improve notice and takedown and how we might
start and structure this group's work. We can
begin to explore with open minds the possible
areas that might lead to future work and
eventual consensus, and our goal today is to
begin this journey together, not to reach the
ultimate destination.

USPTO and NTIA have convened this process to encourage stakeholders to reach an agreement on an important issue. But let me be clear and reiterate. We will not impose upon you our view concerning copyright, DMCA, or the notice and takedown system. Instead, we're here to encourage stakeholders to come together, cooperate, and reach agreement on important issues.

We expect to act as the convener of a bottom-up process that you will work together to develop solutions that will improve the existing system for rights holders, service providers, and users. We will ensure that the process is open, transparent, and consensus-based, and you will create the substantive outcomes. In turn, we expect this group to work together to determine the best way to maintain an open process while still making progress on the substantive issues.

We at NTIA have some experience
convening multistakeholder processes in the privacy context, and you'll hear more about that in a moment. But I can assure you of three things: they're hard work, that work is much more pleasant if everybody can disagree without being disagreeable, and they will result in genuine progress.

So the ultimate success of the process is in your hands. We welcome everybody who is committed to putting in the hours that will be necessary to make this process work, and we thank you for your interest and for your attention to this important issue. There's a lot of work to do, so let's get started.

And with that I would like to turn it over to John Morris of NTIA.

Thank you.

(Appause)

MR. MORRIS: Great. Thanks, Angie.

Just to, you know, follow up, I'm going to give a little bit of a glimpse of the privacy multistakeholder process that NTIA has helped
administer and facilitate over the last couple of years.

You know, although, obviously, all of you have heard about this multistakeholder approach to policy making, I suspect that many of you are still wondering, and possibly even worrying about, you know, exactly how will this process work. And so -- But that's a question that I actually really can't answer. I have worked in a couple of -- a number of multistakeholder processes, and at the end of the day, how this stakeholder process will work will be up to you.

I mean, I'm really, in a sense, just repeating what Angie has just said, that we are going to be creating, working with PTO, you know, a venue and a forum to have discussions. But, ultimately, it will really be a stakeholder-driven process. And we will be as supportive as we can providing resources, both PTO staff and NTIA staff, to try to fill needs and meet needs that the stakeholders have to
help facilitate a conversation. But it's really
going to be up to you.

So, although I can't predict how the
process is going to play out, I can give you a
little sense of the first multistakeholder
process and how those meetings work. We started
in July of 2012 with a meeting of about three
hundred participants, both in person and remote
participants. My colleague, John Verdi, who was
in the back of the room but -- there, that guy
over there who's walking in the back of the room
-- was NTIA's and still is NTIA's lead
facilitator for the multistakeholder process.
And so he essentially shepherded or herded, you
know, a group of three hundred people into
beginning a process similar to what you're going
to begin.

And, thankfully, over a couple
meetings, that three hundred -- group of three
hundred kind of winnowed down to sixty or
seventy different people who would come
regularly to the meetings, both again in person
and on the phone -- on the webcast. And, frankly, that's -- three hundred is way too large. The group that's here -- I don't know how many people are on the webcast -- but the group that's here is a great starting point for a conversation.

And although, at first, the stakeholder group wanted -- they asked NTIA to impose a set of working procedures on the group, we didn't do that. We declined to impose a set of procedures. You know, we suggested some kind of initial directions and topics, but ultimately it was the stakeholders that really decided how to move forward and what to focus the conversation on.

Lots of people in the privacy context agree that there was value in trying to make progress on privacy, but frankly, they looked around Washington, and they realized that if they wanted to make progress on privacy, they were going to need to do it themselves. It really wasn't going to be coming in the near
term out of other policy processes in Washington.

So that's what they did. They committed to hammer out a code of conduct on mobile applications. And, you know, they discussed a very broad range of topics and ultimately ended up focusing on, you know, topics that they really felt they could solve, that they could make -- reach agreement.

As Angie said, it took a lot of work, both in public meetings and privately in sidebars and meetings and consultations that the stakeholders organized between the public meetings, and it ultimately worked. It resulted in a code of conduct.

The industry, the online industry, a number of major companies started testing the code of conduct starting late last summer, and I'm very pleased to report that today an increasing number of companies -- you know, some major companies, a lot of smaller companies -- are in fact implementing the Mobile Application
Transparency Code of Conduct.

So, I mean, in this -- in the copyright and green paper context in the meeting that we had in this room in December, I heard a broad range of ideas about the DMCA and ways that we might -- or you might be able to reach agreement on ways to improve the operation of the notice and takedown system. And I heard those ideas from the content community, from the online industry, from civil society, and a bunch of the ideas at least struck me individually as plausible ideas.

And so, I mean, I'm optimistic that there's a lot of different topics that you guys can choose to work on and hammer out and, I hope, make progress. But, again, it's not going to be up to me. It will be up to you to decide which issues and which areas are worth pursuing.

So, as I said, my colleague John Verdi, also another colleague, Maureen Lewis, sitting in the back of the room, and I will be here today and then working with you throughout the
process, working with PTO, and we are very happy
to be a resource about what's worked in another
ccontext.

But just to be clear, whatever worked
in the privacy context may not be the right
approach or the right technique to try to work
in this context. So, I mean, we're happy to
kind of tell you what happened in a particular
circumstance if that's appropriate, but really
in the end you guys will figure it out. It will
take a meeting or two to really feel like this
is moving forward, but I'm pretty confident that
it will move forward.

So let me turn it back over to Shira.
NTIA really looks forward to working with all of
you and with PTO to make this process a success.
So thanks very much.

(Applause)

MS. PERLMUTTER: So I have to say I am
particularly pleased to see this full crowd here
today, both actual and virtual, because this
forum today really is an important step in the
work envisioned in the Green Paper that we released in July.

We're finally beginning to move from thought to action. And this move to action is divided into three tracks, today representing the beginning of one of them. The policy issues we identified in the Green Paper relating to remixes and the first sale doctrine and the calibration of statutory damages will be tackled through a series of round tables we will hold in different cities over the coming months, and we'll be announcing those in the very near future.

A second track will address the role the government can play in facilitating the further development of the digital marketplace.

But today's forum begins, first in time, a third track, and that is one that focuses not on policy, but on operational questions. So you'll hear this as a recurring theme throughout the day.

This forum is not about policy or
legislative changes. It's about the practical
operation of the notice and takedown system
under the existing structure of the DMCA.

So let me underline Angie's and John's
point that progress in identifying potential
improvements will not be coming from the
Department of Commerce, it will come from you.
The stakeholders own this forum, and its success
-- our success lies in your hands.

So I wanted to expand on that point a
little bit and put it in context in the
copyright context. As everyone is aware, there
are many, many issues, many areas of controversy
and contention relating to copyright in the
digital environment, and we tried to describe
those in the Green Paper. Many of those issues
can ultimately only be resolved by the courts or
by Congress.

But as we worked on the Green Paper,
one specific issue -- as to one specific issue,
the possibility of a very different path began
to emerge, and that is this one. Now, the
notice and takedown system, set up by the DMCA, was constructed as a very careful balance of interests and responsibilities. But fifteen years have passed since it was enacted, and it's not surprising that subsequent developments have given rise to certain challenges. Some calls have been made -- and we saw that in the written comments -- to modify the statute, but we've also heard many strong views that the system still works.

As we read the various comments and positions, it became clear that many of the problems that were identified related to operational aspects of the system or could potentially be addressed, at least to some extent, through voluntary agreement among users of the system.

So what we're doing here at the Department of Commerce is offering you an opportunity to do just that and trying our best to make it as useful as possible. So your work today can set the stage for a meaningful outcome
And thinking about what is a successful outcome, I thought I'd say a few words about that. Our definition of success is, first, to have a positive and constructive dialogue to be able to set up that kind of atmosphere, and, second, to figure out ways to improve the current situation as much as we all can. And we do firmly believe that this is possible to do based on everything we've read and heard. If we turn out to be wrong, then the only approach to improvement may be through litigation and/or legislation. But it does make sense to first try this potentially more productive alternative.

Now, of course, on the issue of notice and takedown, we're not working on a blank slate. Many of you in this room, if not everyone in this room, have been discussing aspects of this issue for years in different contexts.

As this forum moves forward, we do ask
that you not simply repeat past debates or
deliver the same comments that you've already
submitted to us in writing. The hope is to
achieve progress by engaging on a more pragmatic
and operational level. It's important to stress
what may be obvious, but, of course, no one will
be foreclosed by participating in this forum
from advocating whatever legislative change they
want to propose outside of this non-legislative
process. But I would urge that we see what we
can accomplish here first. The outcome may
change your perception of the need for
legislation or its scope.

And, of course, we're aware that there
are several very important copyright discussions
going on in other government venues, notably the
Copyright Office, the Hill, and the IP
Enforcement Coordinator's Office, and I'm glad
to see that we do have officials from these
venues in the room with us today. I see the
Registrar of Copyrights and Joe Keeley just joined
us. And I did want to say our process is
intended to be complementary to all of their work, and we look forward to continuing to collaborate with them in looking for solutions.

So let me be a little bit more specific about our work today. As we've been stressing, the process belongs to you, but we did think the most productive approach would be to suggest some topics for the stakeholder forum to address going forward that were gleaned from the Green Paper, the public comments we received, and December's public meeting.

So these topics, which we'll put up on the screen for you to see in a minute, are essentially a straw man. They're designed to be simply a starting point for discussion. We are not in any way endorsing or committed to them. And if you agree that the forum should address these topics in its future work, that's great, and maybe we can move on to process. If you don't agree, please propose specific and constructive changes, deletions, additions, whatever you want.
And just to be clear, we don't see today as the time to discuss positions on the topics, but rather to decide which topics are appropriate for taking up in this multistakeholder forum and ones on which you think progress may be made.

So once the substantive topics have been selected, we'll move on to talk about the process going forward, including the possibility of both additional plenary meetings and working groups, smaller working groups. Above all, we want the process to be inclusive and we want it to be transparent.

So, once again, we'll present you with a suggested approach for comment and potential changes. Finding a process that actually works and can produce a result in a reasonable period of time will be critical, and that will only be possible if the stakeholders step up and commit time and energy, within reasonable limits, of course, with a goal of achieving some outcomes by the end of the year.
So with that, let me introduce Darren Pogoda from the USPTO who will explain our thoughts in more detail and shepherd the day's discussion. Thank you.

(Applause)

MR. POGODA: Thank you, Shira. I just want to welcome everyone myself to the USPTO today. Thank you for attending in person. And for those who are watching via the webcast, we appreciate all the work that you've done and all the thoughtful comments that you've prepared and submitted.

Just a very brief reminder -- I think it's fairly obvious already -- but the event is being webcast. We'll be creating an archive of that webcast and putting it up on our website so it can be accessed publicly as well as a transcript of the event, too. Just so everybody's aware of that.

Shira and myself are joined today by our colleagues Garrett Levin, Jenny Blank, Susan Allen, from the USPTO, and John Morris, who is
up on the stage from NTIA, and also from NTIA
but not up on the stage, Maureen Lewis and John
Verdi, both in the room, and we all look forward
to a productive day.

In the course of preparing for today's
event, we received a lot of questions concerning
what this process would look like, how would it
play out, and we spent a great deal of time
thinking about this ourselves. As we've said
many times already today and we'll likely say a
lot going forward, this will be an open process
and this will be a stakeholder-driven process.

But we thought that opening the meeting
by just having me walk up here onto the stage
and saying "discuss" might prove a little to
casual. Accordingly, we've thought -- we
decided that it would be helpful to provide a
starting point for everyone, a conversation
starter where we identify potential topics and
then, under those topics, identify different
issues and questions that this process could
eventually provide answers to.
To be clear, what you will see in the slides that we'll be presenting is not something that we have manufactured out of whole cloth. It is reflective of the public record that we have gathered and analyzed to date, and it provides our thoughts and ideas on how we can proceed constructively as well as suggestions for organizing the overall process in a practical and productive manner. Again, it is not intended to be an exhaustive list, but just a good place to start. It is open to your changes and edits and ideas.

Before we begin, I just wanted to offer a few administrative points about actual participation in today's meeting. For those in the room, you can see that we have microphones set up on either side of me. So to the extent people present here want to participate in the discussion, we would kindly ask that you come up to the microphones, that you directly face your colleagues in the audience and address them as opposed to addressing myself or my government.
colleagues up here on the stage. I, as sort of
the MC/Administrator, will recognize you and
then invite your remarks.

For those watching on the webcast who
want to participate, you can participate as
well, and you can use a phone bridge that we
have set up for today's event. The number for
that is 1-800-369-3319. The passcode is
1981439. If you weren't able to write that
down, it's okay. The number and the passcode
information is actually posted on the Livestream
site where we are providing -- where people can
access the webcast for this event. Once you
dial in and enter the passcode, you would press
*1 and an operator would place you in a queue in
order for you to participate via the phone
bridge.

A couple more administrative points.
We would ask all participants, however you're
participating, to identify yourselves by name
and organization. And if you are an attorney,
to identify who you represent, if anyone. This
will not only be helpful for me as your MC, but also for the public record we are creating here, the archive for the webcast, the transcript, but also just so people here can get to know one another at the initial meeting.

We would also ask that our participants be mindful of the limited time that we have here today and, therefore, to keep your remarks as concise and to the point and on topic as possible.

Finally, but I think most importantly, we would ask that you please not approach this as an adversarial process, but instead treat it as a collaborative and cooperative forum.

With all of that out of the way, let's jump right into this by first walking you through some of this proposed structure that Shira and I have talked about for this multistakeholder process so that you have a big picture overview of our thoughts, and then we can come back to the beginning and start inviting participation and discussion on the
discrete topics.

I think we're going to pass out actual copies of the slides; right? Okay, yeah.

Thanks, Alain. So there will be -- You'll see them on the screen, as we walk through the slides, but we thought it would be helpful to provide people with paper copies as well so that they can follow along, and we'll start doing that now.

So I'm just going to, like I said, walk you through this and just do a dry run so that you get the big picture, and then we'll come back and start discussing sort of the discrete topics.

A little bit about our agenda for today. We envision there being two primary session, the first session where we'll discuss some high level principles just about the overall process in general, and then move into identifying substantive topics for future discussion by the group.

And then, assuming we can accomplish
that task, we would, in the second session, move on to the process and framework of how we would go about addressing those issues.

Some of the high level principles. It will be multistakeholder-driven. It will be an open process, transparent, and consensus-based. It will focus on the operation of the notice and takedown systems within the confines of the existing DMCA provisions, and this is not a forum where proposals for legislative change will be discussed.

Moving on to some of the substantive topics that the group might consider, just sort of a way to organize them, the first topic would focus on improving the efficiency of the notice and takedown system. The second topic would focus on minimizing inaccurate notices and abuse of the process. And the third topic would focus on some of the difficulties faced by individuals and/or small and medium-sized enterprises.

So just delving into Topic 1 a little bit, some of the questions that might help
 facilitate a discussion that we've come up with:

Would standardized notice formats or templates provide effective efficiencies for both notice senders and recipients?

Some service providers currently use systems designed for "trusted" or "verified" submitters, which enhance the efficiency and speed of takedown. Can this practice be expanded for greater utilization?

Can stakeholders develop and deploy effective means of minimizing the reposting or automated repopulation of previously taken-down infringing material, and if so, how?

What role can educational efforts play in the notice and takedown operations, including with respect to users who are uploading or downloading infringing materials and users identifying legitimate content?

Are there existing successful practices that can be drawn upon for guidance?

In what other ways can best practices be developed to increase operational efficiency,
Including reducing the volume of notices, through cooperation, communications, and technology?

Should there be different solutions for different types of stakeholders?

That would be some of the subtopics we identified under Topic 1.

Under Topic 2, which focuses on minimizing inaccurate notices and abuse of the process:

What best practices could be developed for sending, accepting, and responding to electronic notices to ensure the accuracy of notices and to remedy erroneous notices?

Can potential legitimate uses (such as fair use, political speech) be better accommodated in the notice and takedown process, and if so, how?

Would the establishment of right holder points of contact be a valuable tool for those users who believe their files have been removed in error or for other purposes?
What role can educational efforts play, including with assisting users in understanding why content has been taken down and the available options (for example, counter notices)?

In what other ways can best practices be developed to minimize inaccuracies and abuse of the system through cooperation, communications, and technology?

Should there be different solutions for different types of stakeholders?

Moving on to the third topic that we have put together and which deals with the difficulties faced by individuals and/or small- and medium-sized enterprises:

What role can educational efforts play for individuals and SMEs, right holders, and service providers that will make the process of notice and takedown easier?

In what ways can specific best practices be developed to address the needs and problems faced by individuals and SME users?
We have also had the idea of a data analytics support, and this would be involved the USPTO's Office of the Chief Economist who would be available to provide support on data-related questions.

And I believe Alan Marco is -- There is Alan Marco, who is the Chief Economist in the USPTO's Office of the Chief Economist, and he is here in the room with us today and will be available for any discussion that might come up on this topic.

And just to give you a little bit of a flavor of what will hopefully be discussed in the afternoon session, and that is more of the process and the framework of going about addressing some of the topics that you identify for further discussion.

And the main point to take away from there is what we thought might be a constructive starting point was to identify working groups for each of those topics that were identified in the morning session here, and then to have a
discussion about how those working groups might
work and what they would cover, what their
composition would be, meeting logistics, all
kinds of stuff like that.

So we're going to go back to the
beginning -- almost to the beginning and try to
jump into the process of identifying the topics
that this group will work on -- agree to work on
and try to provide answers to its work ahead
this year.

So at this point, this is where I think
I would just say "discuss." So let's -- Maybe
the best way to do it is just start walking
through the process.

But, again, this is a stakeholder-driven process. You know, whatever it is people
want to address or not address or discuss or
whatever points they want to raise, please feel
free to do so. So to the extent anyone wants to
start addressing these topics, the microphones
are here, and I think we should start having
those discussions now.
MR. YOKUBAITIS: I don't mind starting off the dance. Is this on?

MR. POGODA: I believe it is. Just if you could identify yourself and who you're with, sir.

MR. YOKUBAITIS: Thank you. Ron Yokubaitis. I'm from Austin, Texas. And down in Austin, we run several Internet companies. Data Foundry is a data center company, and the -- but the one I want to talk to is our Giganews. It's a Usenet provider. It's the Internet before the Web, and it's still a massive global network, and we've been running Usenet servers for outsourcing to broadband ISPs, cable companies, telephones, and individuals. We have customers, both commercial and residential, in 215 countries. So -- But we're a small company, fifty-something people, down in Austin, Texas. We can leverage high volume server infrastructure, collocated in data centers around the world from Europe, multi-major
cities, to Asia, to North America. South America we reach through Miami.

But what I wanted to say is, yes, we'd love to see some standardized notice because we write the software. A notice is submitted. You know, we take in-text -- you know, we take the cells with software we've written, find a number in our system, a message ID that identifies the particular objected-to whatever it is -- it can be a picture, movie, name, whatever -- that's just too massive to look at, and we delete it.

But my wife and I and sons, we ranch also down in Texas, cattle down on the border where, you know, we all speak English and Spanish and mixtures of the both. And, you know, I just got through gathering cattle here for five days here over last -- into last week and weekend, you know, and we'll brand them all next -- we'll brand what we're going to keep next week.

But in this process -- and I'd love to see something standard because just one standard
notice, we, again, adapt our software to pick
those cells out, find it, delete it -- but
there's no talk about the big problem, and that
is these rights holders don't brand their
cattle.

They all want the burden on me, their
neighbor, who's running cattle and running
pasture and grass, and they've got their cattle
wandering all over my place and they're all mad
and huffy, but they don't put a brand on it and
they don't fence their cattle in. They're
wandering all over the Internet -- In fact,
they'll give their cattle away.

I was at a copyright discussion in Hong
Kong three years ago, and they had an NBC
Universal guy, they had a telephone guy there,
and the guy asked the question in the back and
the NBC guy liked it so much about a particular
movie, he said, here, I'll send you a free copy
of a DVD for asking such a good question. And I
said, there's the problem. They're all mad at
us because someone's giving it away, but here
he's giving it away, and that person is going to
take that DVD and lend it.

But I would love for a standardized
procedure, if it's a form on the website or
something, you know, the holy water is passed on
among the special interests here. But something
that if you're going to sit here and put this --
if you multi-billion-dollar companies with tens
of thousands of employees will not invest the
money to get you a brand for your cattle and
somehow fence them in, how should I cry for you?

I'm trying to avoid liability. You put
tremendous liability on us, and somehow this
multi-billion-dollar company is whining that
we're not doing something fast enough when they
don't care enough to brand their cattle and let
them wander all over eating my grass. They
ought to be paying us for their durn cattle that
wandered on my ranch, on my servers, on my
bandwidth, on my power, and tying up my text,
screwing around because they are so negligent.

And these are powerful companies, I
know. They own, you know, a tremendous amount here. But, please, y'all -- and I know you got a coat on to come up here -- make them brand their cattle, and if we can have the standardized notice procedure I'd really like it.

I want to thank you all for having the forum, and these topics are very timely. Thank you.

MR. POGODA: And thank you, sir. There are many ways I envisioned this meeting opening up, but a discussion of cattle and Texas was probably toward the bottom of the list. But I understand your point, and I want to thank you.

As a reminder, we are trying to identify the topics that this group is going to try to come to some resolution on, some outcome on by the end of the year. And the first question we put up there -- and that was, would the use of standardized notice formats or templates help improve the day-to-day technical operation of the system? -- you know, if we
invite people's thoughts on this, how they think that might work.

Is there anyone else that has something they might want to say? How you think it might work as a topic, not necessarily how you might think it actually might work in practice. But, again, how you might think it might work as a topic that you agree to discuss whether or not it might work in reality as a practice.

MR. SIMON: Good morning. My name is Emery Simon. I work with Business Software Alliance. You made great points, and colorfully and vividly.

So standard notices, I think, is the right place for this process to start. It's an area where we can find common ground. We'll build confidence in the process. It will make a difference in the system.

Many of the issues that are on your list, which is an extraordinarily long list, are going to be more difficult, and I would suggest that we think hard about triage and success and
the process working well.

So standard notices -- and it's not a simple issue, but it's simpler than a lot of the other things, a lot of progress has been made on it -- is a good place to start.

Let me make a general comment which is -- two general comments, actually. Where is Allen? I only have two, not three. Two general comments. One is we come at this from, I think, a unique perspective, or at least our members come at this from a unique perspective in that we are substantially the victims of piracy. In terms of dollar losses, the dollars lost by the software industry are ten times the size of dollar losses of other industries in this room. A lot of our losses are not online. A lot of our losses are in enterprise settings. But online is an important part as well. So we are victims of piracy.

We are very much concerned about controlling piracy, but we're also innovators and we drive the technologies, the platforms,
the architectures that make the Internet work.
And in whatever it is that this group decides to do, that balance needs to be maintained. We need to keep track of the fact that the solutions for piracy are important, but it's not solutions at any cost. It's solutions that make sense and are rational.

So with that -- and I urge that kind of balanced perspective here -- the point the gentleman made about -- I mean, my members operate networks, operate what we call "cloud services," what others call "cyberlockers." We're happy to do all the things that are right to stop the illicit activity, but right holders have to help themselves as well, and that was basically your point and I agree with that completely.

Last point, and then I'll stop, which is extraordinarily ambitious process you have set out and I applaud your ambition. We, at least, have bandwidth issues in being able to cover all this, and it's going to be very hard
for many people, many of the organizations, many
of the companies in this room to keep up with
this. We are not dedicating a resource to this
process. We are not in a position to do that.
I'm sure others are not either.

So I would encourage this process to
think about efficiency, not just ambition, and
how we get things done within the resources that
are available to us.

Which kind of brings it back to what I
started with, which is, I think, a great place
to start is on standard notices, and that should
be the focal point of the entire first stage of
this process. All the other things you've
identified were interesting, but let's get
something done that can provide some success and
some momentum in the processes. I apologize for
speaking so long. Thank you.

MR. BAND: I'm Jonathan Band
representing CCIA, and I agree with a lot that
Emery said, which is always a troubling
phenomenon. But I definitely agree on the
notion that this was a -- what's been outlined
is sort of a very ambitious agenda that will
pose very serious bandwidth problems for people.

So I think that the idea of ultimately
coming up with one thing is probably the best
way to go, and then we have to sort of figure
out what that one thing is.

You know, if it were up to me, I would
say the one thing would be the abuse of notices
or the lack of -- the incorrect information,
something on that second topic, rather than the
first topic.

It seems to me that overall, if you're
saying, you know, is the system efficient, I
think it's -- certainly, for many people it's
very efficient, and especially to the extent
you've raised the concern about volume. Well,
that would indeed -- indicate that it's very,
very efficient, that it's very easy for many
rights holders to submit many takedown notices,
so that suggests -- and there's very quick
response to that. That all would suggest that
it's -- the system, as working for at least many players, is very efficient and maybe too efficient. Maybe we need to make it less efficient from that perspective.

But where the issue seems to be more of a problem is maybe with either the small rights holders or, again, with the inaccurate notices. But, regardless, I think focusing on one topic would probably be the best way to go.

But, perhaps, even before we select the topic, there needs to be some better sense of the various metrics involved and some basic fact gathering. Certainly, you do have a record in terms of all of these -- all the comments that were submitted.

But I think there's still a lot of very basic facts that we don't know about, sort of the precise process by which a lot of notices are generated, sort of the automatic process and how much does that software cost, how much does it cost to run. You know, that can really be important if we're trying to say, well, how can
we make that kind of -- To the extent that we're saying there's a problem for the small rights holders, well, if they could have some of the tools, then things could work better for them. But how much -- what are the tools and how much do they cost and how much do they cost to run?

And it just seems to me that there's all sorts of basic facts that we don't have, and once we have those facts, we might be in a better position to sort of drill down on, you know, where the problems really are.

I mean, we have a lot of anecdotal evidence, but that's all it is, is just anecdotal evidence. So it might be more fruitful to have something more concrete.

But notwithstanding that, the notion of building on Emery's point of like really focusing on one specific thing that we can -- where we can likely make progress is a good way to go. Thanks.

MR. POGODA: Thank you, Jonathan.

MR. von LOHMANN: Fred von Lohmann from
Google. I just wanted to very quickly also endorse the topics that are currently shown on the slide here as great areas for possible improvement.

Speaking from Google's perspective, we did a lot -- over the last three or four years, we've done a lot of standardizing data formats, templates. And I think I speak for many service providers when I say getting us out of a world where we receive emails in dozens or hundreds of different forms with attachments with potentially dozens of different formats, that has yielded huge efficiency gains and improvements in turnaround time that we've seen. So we know that there's actual, real-world impact for getting some of this work done.

And I'd also say that on the second bullet point on the slide regarding trusted submitter programs, that's another area where Google has put a lot of effort in in the last several years, and we've also seen very immediate and tangible improvements that have
been delivered as a result of that. And it was our suspicion four years ago when we started the process that probably the vast majority of notices that we received are submitted by a very small number of submitters. And, in fact, to take Google Search as an example, today we get over 95 percent of all the notices that we receive from members of our trusted copyright removal program, which constitutes, you know, something less than a hundred entities altogether. So it gives you a clear idea that by focusing there on volumes and efficiencies, you can make a big difference.

And I'll finally end by echoing what Jon Band had just said, that for all of these topics, I would encourage us to add fact-gathering as an important additional point. On this issue, in particular, I know Professor Jennifer Urban at Berkeley is actually in the process right now of putting together a survey that was sent out to service providers asking very concrete and important factual questions
like do you use a web forum? Do you receive
takedowns as emails? What percentage? How do
you operate that? These kinds of basic factual
questions are things that, frankly, I think,
have been missing. Because, of course, there
are tens of thousands of service providers, and
we still don't know the details of how many
notices do they see, how do they process them,
did they already have web forms, all these kinds
of very basic operational questions.

So with that, again, thank you to the
PTO and NTIA for what I think is a very good and
useful topic to start with.

MR. POGODA: Thank you.

MR. LEHMAN: Hi. I'm Bruce Lehman.

I'm here today, actually, for Visual Artists
and, specifically, the Artists Rights Society,
which represents the copyright interests of over
80,000 fine artists. Also, I've had some
personal experience with the notice and takedown
system because I function, with one of my hats,
as basically a pro bono general counsel for a
small publishing company, so I have a little idea of how it works myself.

So I'd like to -- Since, as I understand it, we're really at the point now of just discussing kind of topics, formats, how to proceed, I'd like to make some observations.

First of all, it's a great idea to have standards. I think this is a welcome process in that regard.

Secondly, and this is a, you know, very important observation, we can't have a one-size-fits-all system because there are, you know, huge differences in various categories of stakeholders. And those differences -- Obviously, the most significant difference is in the size of the stakeholding enterprise. Obviously, the one hundred trusted parties that Google has an understanding with are, generally speaking, large companies that can take care of themselves, or trade associations, what have you. But in my work with Visual Artists, one of the problems is that virtually every visual
artists in the world is basically a sole proprietor. To the extent that they file income tax returns in the United States, they identify themselves as sole proprietors. They're not really even small businesses. And so the burden of any kind of copyright enforcement, compliance, so on and so forth is very hard on these people because they have to take care of themselves.

Now, obviously, for fine artists, the artist rights organizations like the Artists Rights Society do perform that function. And so one of the, I think, issues that might be looked into is the encouragement or use of collective representation of small rights holders.

The Artists Rights Society members are fine artists, but there are lots of other categories of creators, and particularly in the visual arts world, that aren't fine artists. And, in fact, those are the ones who are most negatively affected probably by unauthorized taking of their works, particularly in a digital
context, and I'm speaking here of commercial illustrators and so on. I also work a lot with them and with the Medical Illustrators Association.

Just a word about how -- the kind of piracy that we find with the Artists Rights Society, and it doesn't take a genius to imagine what that might be. Even though -- You really have two kinds of unauthorized uses of works. One, of course, is when an image goes up on the Internet in a digital format and then it is downloaded and somebody reuses it in a digital format. That's much, much more difficult to deal with, much more difficult to control.

But the primary problem and the primary use of the notice and takedown provision by the Artists Rights Society, which has a pretty good system of dealing with this, is when you have -- and you can imagine this -- when you have posters and that sort of thing that are being sold on the Internet through an entity such as eBay. Now, I use eBay because Ebay is very good
to work with, is my understanding, and do a
great job. And that, I think, is an important
point, and that is that there are large
enterprises that already do have good business
practices and are very conscientious. The
problem tends to be more with other people.
And, of course, you'll never really resolve that
completely because you'll always have renegades
and so on. But I think that's an issue that
might be looked at.

First of all, there are some good
business practices out there, and I think it
would be useful -- I'm not aware of the fact,
maybe there have been, I'm not aware of the fact
that any of these companies have gotten
together, discussed things, trying to
standardize things, but I certainly think that
there are some models out there that work quite
well. And to the extent that information can be
shared, that those practices can be standardized
and so on, that would be very, very helpful.

And, also, to the extent that a code of
best practices can be developed, that is at
least a foot in the door of trying to reach the
less organized, smaller entities that are a
conduit for the distribution of unauthorized
works on the Internet.

So I have a -- And by the way, the idea
of the trusted representative of rights holders
is an excellent idea. And here, again, to the
extent that collective organizations,
associations of small rights holders can be
developed, then they can perform that function.

It's kind of hard to do that, but that is
obviously one way to go.

I just have some final suggestions on
how one might proceed in this process. My
impression is that you want to have -- you
actually want to get people together to develop
solutions, to talk about things. And, also, my
impression is that it is intended, beyond this
meeting, that there be sort of smaller groups or
discussions outside this context that then would
come back.
And by the way, this is not something completely new. Back both -- You know, I've been involved in this for many years, both in the development of the 1976 Copyright Act and then the development of the DMCA here at this office, and we used that procedure quite effectively to get groups to talk with one another.

And sometimes it was quite formalized, particularly, for example, with regard to librarians and publishers and so on. There you've got already organized groups that can represent people, so it's easy to do that.

So I would suggest, in proceeding, that there be developed what I might call "affinity groups," and that is, for example, visual artists are an affinity group, but small stakeholders are an affinity group. Obviously, big companies, you know, Hollywood, sound recordings, so on and so forth, those are a different category. They are highly organized.

So, you know, you can have different
affinity groups representing both different
classes of creators, at least, by basically
their size -- are they small or big? -- and
then, obviously, according to the subject matter
of their creativity. And then if those
committees or groups can work together, then
they can sort of develop at least sort of
coherent positions on things.

And then the next step is if these
affinity groups can get together and talk with
one another. For example, I mean, the Internet
service providers, of course, are an affinity
group in themselves.

Then at the end of the whole process,
what I would imagine would be a code of best
practices. And, you know, it's interesting. I
just had some experience in this the last couple
of days and some discussions. Obviously, one of
the things that the USPTO does on the Trademark
side is that it has certification marks, service
marks, et cetera.

To the extent that best practices are
developed, there might ultimately even be a
system of certification and certification marks
which would identify, for all involved in the
digital environment, really who is meeting these
standards. Those are my observations.

MR. POGODA: Thank you. And we
appreciate the remarks and the discussion.

Just a polite reminder to everyone that
we do -- just so we don't stray too far off
course, we do plan on discussing the actual
process this afternoon. So while we appreciate
all your thoughts on that, to help keep things
moving along, if we could save that for the
afternoon discussion. We're trying to focus on
actual topics that the group is going to try to
provide answers to in its work ahead.

I also see that we do have someone on
the phone bridge, and I just want that person to
know that I recognize you're there and we'll get
to you. We've had some people in the room who
have been waiting a little bit, so -- but I did
want to state that. Please.
MS. CLEARY: Good morning. My name is Susan Cleary. I'm Vice President and General Counsel for the Independent Film and Television Alliance. We represent over 150 independent production and distribution companies.

We are SMEs. Our companies are all SMEs. However, we are responsible for the majority of production, both television and feature film, in the United States. So what you would call small rights holders have a big impact. The companies might have five or ten people working at them, but the fact is that we are producing the majority of the production in the United States, and so we are not small rights holders. We are small- to medium-size enterprises that produce the majority of the content in the United States. So we have to have tools that are effective for the people that produce the majority of the content.

So we need, obviously, templates. We need a more efficient system. We did work with the IPEC office to work on best practices, as
everybody knows, for payment processors.

Practically speaking, let me tell you how that worked out for us.

We were able to work with the five credit card companies -- payment processors that had initially signed up, and we were able to get a form that actually fit all five of the companies. So we saw that their forms were all a little bit different, and we wanted to be able to present and coordinate for our members submissions on that process in a very uniform manner. So we've been able to do that.

The volume that gets coordinated, we actually send that out to our members if they need the template, and we have all the contact information, and we forward that on to them. It's a little bit harder because how many ISPs are listed in the Copyright Office, agent service of process? Hundreds and hundreds and hundreds of them. And so coordinating with American Express, Visa and MasterCard and PayPal might be -- and Discover might be a little bit
easier because we had top, top line formatting. But one of the points I would like to make is that perhaps having these templates that are accepted by the ISPs would actually lessen what they're calling "misuse of notices." Yes, we need metrics because ISPs, big and small, are coming up and claiming that there's this huge problem with misuse of notices. And quite frankly, are you lumping misuse of notices, are you lumping inaccurate notices, notices that had five points out of the six required in the DMCA? What is the problem? Are they small rights holders, or are the individual artists not able to locate the exact URL for where the infringing copy is for each and every copy that's infringing? That's really the problem here.

And so we really need to focus on something that makes that process more efficient, look at what we've already done in the past. And, you know, just in general, the SMEs, again, are big on content, but they don't have as many resources. They might have somebody manually
searching the web. They might not be able to
take advantage of technology. Technology is
expensive. Branding our cattle is extremely
expensive. We might only have fifty head of
cattle on our very small ranch, and, you know,
you get a price break once you get a hundred
heads of cattle. So, you know, that's a great
analogy, and the ISPs, big and small, need to
come to the table.

   We all need to solve something. And as
Emery said, you know, let's get something in the
bucket, and I think the templates are a great
place to start. We also have some history on
that through the IPEC office in getting that
together. Thank you.

MR. POGODA: Thank you. We'll take one
more question from the room, and then maybe
we'll go to the phone after that.

MR. SNEAD: Okay. I'm David Snead.
I'm the co-founder and the public policy chair
of the Internet Infrastructure Coalition. We're
a group of about ninety small to medium --
mostly small to medium-size businesses,
including Data Foundry and Giganews, although I
don't think we represent their cattle ranches.

We do agree that standardizing notices
is probably the best place to start. What we
have found is that a large majority of rights
holder notices -- a large number of rights
holder notices are rejected simply because they
fail to meet basic standards. To the prior
speaker's point, I do think metrics would be a
great place to start as well. The metrics,
though, need to come from the Department of
Commerce or someone who is unbiased and is not
presenting the same metrics over and over and
over again. So I think that that would be a
good place to start as well.

And, finally, we believe that
standardized notices are a great way for rights
holders and ISPs and infrastructure providers to
begin to cooperate and work together.

MR. POGODA: Thank you. John, can we
maybe try and patch through the caller? Okay.
I would just ask the caller, I believe you are going to be -- your audio will be live in the room now, so if you could just identify your name and who you're with, please.

MR. BULOCK: Yes. My name is Eric Bulock. I'm from DMCA Solutions. Can you hear me?

MR. POGODA: I can hear you, sir, and thank you and please proceed.

MR. BULOCK: Yeah. No, thank you.

One other point to be made is while we're talking about the templates and such for notice to online service providers, I think it's going to be important that we also have tools and databases provided by the government such as the online Service Provider Directory kept by the Copyright Office.

Today, small -- We service many small-to medium-size companies. And in order to notify the host -- to notify the online service provider, we need to know who the registered agent is to receive such notification. And,
unfortunately, the infrastructure and the tools provided -- basically, today, there is a directory that is not a database but rather just an alphabetical list of these online service providers.

So while we've been talking about rights holders and the mechanisms and process through which to notify a host, we need to know who to notify as a host, and we're going to need better organized methods of finding out who these online service provider agents are.

And, unfortunately, if you talk to the Copyright Office right now, there's basically one person who works through the Library of Congress, I believe, who's tasked with the job of organizing the registered agents for each one of these online service providers. And it does not exist in a database today. It is essentially just an alphabetical directory, and the actual mechanics of organizing the names are somewhat whimsical. So the way that companies are listed aren't necessarily even by domain
names. So when you have to look up a company,
it becomes very difficult.

And this kind of speaks to one of the
problems that the small and medium rights
holders have, is that to enforce their rights
and to actually create notices, we're up against
huge technological challenges in order to even
-- to put these people on notice.

So I guess my comment is that while
we're talking about the process, I think we also
need to have some process in the registration of
online service providers. Thank you.

MR. POGODA: Thank you. And just a
reminder to anyone else watching on the webcast,
if you do want to participate, you would just
dial that number, enter the passcode, which is
available on the same website you're watching
the webcast, and then you would press *1. In
the event you wanted to participate, you'd be
placed in a queue by the operator.

And we'll go back to some comments from
the room.
MS. AISTARS: My name is Sandra Aistars, and I'm the CEO of the Copyright Alliance. The Copyright Alliance has a very broad membership, but what we do most frequently is speak for small and independent creators and small businesses who typically don't have a voice in policy debates in D.C. So I want to echo some of the comments that Bruce Lehman made about the importance of including these sorts of participants in the conversations, and I'm very pleased that we have the opportunity to participate.

Echoing what Bruce said, it's important to ensure that as we develop any standardized processes, we are cognizant of the differences in business models, differences in ability to carry out the processes that are put in place that various participants in the marketplace will have. Whether those differences occur because of the type of work that they're producing as a photographer or as a visual artist in the graphic arts or in the fine arts
field, for instance, or, you know, because
they're an author, you know, their work may
simply be infringed in a different way than an
author in the film/audio-visual fields might be
infringed. So that's one point that I'd like to
keep in mind.

The second point I'd like to make is I
think the USPTO has done a good job in outlining
the host of issues that were raised through the
Green Paper process. And while I think it's
important to pick a point to start these
conversations, I would not want us to have any
of these issues really fall off the table.

And I think it's important to start
with something like standardized notices and
opening up the trusted participant process to a
broader array of senders. But I think a lot of
these other issues that have been identified are
all interrelated, and as we make progress on one
of these topics, I think me might find that
progress on other topics becomes easier as we
understand both the policy and the procedural,
both opportunities and challenges that exist as we sit and make progress together.

The final point that I'd make and just addressing some of the points that the first speaker of the morning made regarding the need to take steps on the part of the creative community to protect their own works as they distribute them in the Internet environments, I have sympathy for your feelings in terms of how difficult it is to enforce and to help us enforce our rights online.

It must seem to you that we're not doing anything to protect our rights because the infringement problem is so difficult and so challenging. But rest assured, virtually every type of work that's distributed online is distributed in some protected format, so if the cattle are indeed branded, the problem is that those protected formats are typically hacked, the brands are removed, the metadata that goes, for instance, with a photograph is typically stripped off as it's loaded up onto a website,
and that's why the problem is so challenging. And so one of the things that might also make the lives of small website operators easier is if we start looking at some of the technologies that have been developed by larger website operators or entities like Google with content ID and seeing whether there's some way that we can adopt those technologies, perhaps in the reposting context, so that if, in some situation, we've at least identified that a file has been posted once and it's the exact same file being sought to be reposted.

If we can brand that file somehow so that at least that file isn't being reposted, maybe we'll start making some progress to reduce the burden that you're facing as a small site trying to deal with those challenges. So thank you.

MR. POGODA: David, please. And I think after your remarks, we'll take a ten-minute coffee break. Just to let everyone know.

MR. GREEN: David Green, NBC Universal.
I just wanted to make a couple points. One is, a couple slides down, there's discussion of should there be different solutions for different types of stakeholders, and I think that's something that's already emerged as a theme that in terms of efficiency, there may be a particular notice that works very well for ISPs, but that notice may not work for search engines. That kind of notice might not work for cloud services. So as we begin to think about these issues, clumping them around what kind of service provider it is may be a more efficient way of dealing with the questions of efficiency.

The other point I'd make is John talked about the model of the privacy multistakeholder forum. There was another important model which is what led to the Copyright Alert System, and there are several grizzled veterans of those negotiations. But those were between ISPs and rights holders. They also included the smaller movie companies and independent records. And
what we found there was gathering in a group to
solve a host of problems was a very efficient
way of addressing this and included things like
what kind of notices would be easiest to send
for the content holders, easiest to process for
the ISPs, and that, as Sandra was talking about,
led us to be able to talk about things like
volume of notices, all the things that are in
here.

But it was much easier to do that in
the context of likes, you know, what Bruce
called the "affinity groups," along the lines of
how can we work with ISPs, how can we work with
search engines to address these problems. And
those may be best pulled apart and talked about
with the affinity groups, whether they're on
content -- with both the content and the sort of
method of the service provider.

MR. POGODA: Thank you. So I think
that's a nice natural break point. If you have
some thoughts, and I see a lot of people do,
please hold them. Don't forget them.
We have some coffee and some water in the back of the room, no easy feat for a government agency to provide, but we managed it. And there's a cafeteria directly behind you straight back, as well, if you need a quick snack.

We plan to start back up in ten minutes, so please, everyone, try to respect that and come back in that time. Thank you.

(Break 10:25 a.m. to 10:52 a.m.)

MR. POGODA: Welcome back everyone. I want to thank everyone for a productive pre-coffee discussion.

A few administrative details before we get into it. I just want to remind folks that there is a charging station in the back of the room where you can plug in your phones and computers.

Also, before we break for lunch, I'm told that there will be sort of a list of local eateries within walking distance you can go grab a quick bite at. There is be a cafeteria here
as well, which you've seen.

And, also, if any of the speakers want to ask me to move to a different slide, please don't feel stuck on a particular one. I'm happy to do so if anyone were to ask me that.

So just to do sort of a brief kind of review of what some folks in the room said in the morning, I think we've heard several people say that maybe our starting focus should be on one topic. Some people said standardized notices.

I think Jonathan had mentioned possible misuse, you know, with the idea from some people in the room being that picking a single starting point where some type of outcome is plausible and then progressing through additional topics from there where some type of outcome might be plausible as well.

And so I say this with the caveat, of course, that some people who spoke also said that we should be open to covering multiple topics and that we shouldn't necessarily take
things off the list.

And I think we also want to bear in mind, in light of the resource comments that some people made, that we don't want to turn this into a multi-year process or even more perhaps.

So recognizing that -- And there was one sort of other little bit more of a process issue, but kind of a topic issue, too, one of the topics that we identified in the slides dealt with sort of some of the unique factors and difficulties that affect individuals in small- and medium-sized enterprises. And I think there was some discussion in the room of looking at the needs of that segment of users and realizing that they have just -- they have the concerns under Topics 1 and 2 that larger users of the system might have, so perhaps it doesn't make sense to segment that out as a separate topic, but instead to just sort of let it naturally weave into some of the concerns and topics that have been identified under Topic 1
and Topic 2.

So with all that out of the way and recognizing that not everyone has spoken yet, we would love to hear from folks in the room as to whether or not they agree with that, disagree with that, or there are contrary views, supplementary views.

And I think we'll open it up for discussion again. Oh, and one more point. When you do speak at the microphone in the room, if you could just make sure to speak as close to it as possible, it would help people on the webcast here. Thank you.

MR. SHEFFNER: Good morning. I'm Ben Sheffner with the Motion Picture Association of America. Three quick points.

The first is we endorse what appears to be an emerging consensus that at least the first topic of discussion be focused around generating some form of standardized notices. We think that's helpful. We think it does improve the efficiency of the process.
We and our members were, in fact, some of the first to help develop some of these standardized notice forms and worked with service providers who developed APIs, you know, for example, that provided for the submission of notices through XML forms, so we do think that's a good first step. Not the only step, but the first topic that should be focused on.

The second thing I want to mention is the slide talks about improving the efficiency of the system. Efficiency is good. We're certainly all in favor of efficiency. But we think that even more important than efficiency is effectiveness.

The point of the DMCA is not simply to provide a framework for the generation of tens of millions of notices. The point of the DMCA is to decrease the amount of online infringement. And any process that talks about improving the operation of the DMCA has to look at ways to improve the effectiveness as measured by reducing the level of online infringement.
And let me just give an analogy to suggest what I'm talking about. If there's a high crime area of a city, lots of muggings and beatings and things going on and the police chief comes up and says, you know, we've addressed this problem, we have arrested a thousand people in this four-block area last month, that's nice, that's interesting, but it doesn't really tell you what you want to know, which is did the level of crime actually go down. Again, it's about effectiveness, not simply efficiency.

And then the last point I want to make is one of the three topics that were proposed is incorrect or abusive notices, which is certainly a topic that's worthy of discussion. I would just caution, though, before we go -- head down the road of devoting, say, a third of the time and resources of everybody to talk about that particular topic, that we put it in some perspective and look at data and not simply anecdote. Everyone has anecdotes of improper
notices.

And just to give one data point, because there actually has been some work on this topic, Professor Bruce Boyden of Marquette University Law School published a paper. It was actually published by the Center for the Protection of Intellectual Property at George Mason University a few months ago. And he gathered a bunch of data, largely from the MPAA's six members, and looked at a six-month period in 2013 and looked at certain categories of notices that our members sent.

There were 25 million notices in the categories, basically non-web video user-generated content, so you're left with basically notices to search and to cyberlockers. Of those 25 million notices that were sent, there were a grand total of eight counter notices sent in response. Again, that suggests that when you look at the number of incorrect or abusive notices, in perspective, it's actually a minuscule percentage of the total.
So, again, I'm not suggesting that we don't talk about that topic at all, but let's not let it -- let's devote the amount of resources to it in proportion to the problem that actually exists and not just be swayed by a few anecdotes. Thank you.

MR. HALPERT: I'm Jim Halpert, and I'm General Counsel to the Internet Commerce Coalition. I've worked with several people in this room on the DMCA framework in terms of what the statutory language says. I do want to respond to that last comment.

To give you an idea of the way that some of these notices are delivered -- sorry, I'm going to try to mute my phone here -- in one case, Rightscorp, which is paid by the individual notice, crashed one of our member's email servers sending three million notices related to material that this ISP client was unable to take down. It had sent over 12 million of these notices.

There is a real issue in terms of
volume. This hurts copyright owners as well as the service providers that receive this if, for example, the notice and takedown avenue to report these notices is crashed by an entity that's being paid on a model where they want to send more notices.

And I think it's important, in order to make this system work better for rights owners and for service providers, that we do include this, just as there are items in discussion that rights owners very much want to talk about, but that this be part and parcel of a discussion about how to make the notice and takedown process more efficient.

I don't think that these are outlyers. They're actually real, practical problems in terms of managing these structures. And it's important that, as we think about mechanisms that are going to work better, we think about disincentives or incentives for rights owners to use positive, workable methods to deliver notice and, ideally, for the rights owner -- where it's
scalable, for the rights owner to do so, to send
the notice itself.

For smaller rights owners, as Bruce
described earlier, they really do need the
agents to act on their behalf, but it may well
be that the model of being paid by the notice as
a sort of gun for hire is actually destructive,
at least for bigger companies who are using
them, of the whole process of efficiency in the
notice and takedown process. And, particularly,
incentives to being paid more based on the
number of notices you send is really an improper
incentive and one that I think is
counterproductive here. Thank you.

MR. POGODA: Thank you.

MS. PAULSON: I'm Michelle Paulson, and
I'm with the Wikimedia Foundation. I'm going to
try to limit my comments to the two subtopics
here.

MR. POGODA: I'm sorry to interrupt.

MS. PAULSON: Yeah.

MR. POGODA: Could you just speak a
little closer to the mic --

MS. PAULSON: Sorry.

MR. POGODA: -- and that will help us technically. Thank you.

MS. PAULSON: Better?

MR. POGODA: Yes.

MS. PAULSON: Okay. Michelle Paulson with the Wikimedia Foundation. I'm going to try to limit my comments to the two subtopics here. Basically, the Wikimedia Foundation is the non-profit that runs Wikipedia as well as a number of other online collaborative projects. Our user community is made up of both reusers of work and rights holders, so both interests are really -- have play within our organization.

We really do endorse having standardized notice and takedown procedures as one of the main topics that we first, I think, embrace. I think that it would be a good building place to just start where we can build consensus, and I think it will have the most real impact on a lot of the other topics that
are going to be happening hopefully in the coming months.

Particularly, we think that having the standardized notices will really help just educate the people who are sending and receiving the notices. We think it will help with both inaccuracies as well as misuse if people know what is supposed to be in the notices and the notices are used in a way that can educate people about things like fair use and things like whether or not, you know, they're the subject of the photograph as opposed to the actual copyright holder. I think it will really help both the senders of the notices as well as smaller ISPs.

As far as the trusted user and verified user systems that, say, Google has been using, while we think that it would be very helpful to use as a model, I don't think it's going to be necessarily as helpful for smaller organizations like the Foundation where we don't actually have the same numbers of repeat infringers. And,
also, our user community wouldn't really endorse having just trusted partners that we wouldn't take the time to individually evaluate every notice that came in and scrutinize it. Our user base is very sensitive to that.

So I think, as people have said before, there's going to be different solutions for different types of organizations. Thank you.

MR. POGODA: Thank you. And just a reminder, a little administrative point, there's no need for anyone to limit themselves to either the topics that are on the screen or anything I've asked about. You know, you should feel free to talk about any topic or issue that you think is going to be worthy of or perhaps not worthy of consideration for the group as they move forward. Thank you.

MS. FEINGOLD: Hi. My name is Sarah Feingold. I'm one of the first -- well, I'm the first attorney at Etsy.com. I don't know if you're familiar with our site. Etsy is an online venue for artists, designers to sell
directly to those people around the world.

Right now, we have around 20 million products on our site. I have been at Etsy for over seven years. I came on board as the seventeenth employee, and the DMCA is critical to our success.

We have a lot of small businesses that utilize our site. SMEs are constantly trying to police their works, and we see a lot of DMCA takedown notices just from big rights holders and from small ones, and I'm really excited to be a part of this as a small ISP, not quite up to the level of doing trusted or verified takedowns.

But I have to say, I do think that there is sort of a standardized form right now. I think that it's very clear what people need to include in these takedowns. And when Etsy receives a takedown notice, we take things very, very seriously. So -- And when we receive a takedown notice that is absent certain information we requested from the individual
person, we help to walk them through. I think there is education that needs to happen. I do think that standardized forms could help.

But what I really do want to talk about is some of the abuse issues, and I'm really excited to hear about the thoughts around here. I've seen people that I would hope would do a counter notice, not give a counter notice. I've seen a lot of abuse on my side as an attorney when I'm looking at these things thinking, yes, this is proper DMCA notice, yes, I'm going to provide educational resources and hope that person gives us a counter notice, and they don't give counter notices. They're small businesses. It's very intimidating. They'll be pulled into court potentially by really big bullies, and it's devastating from my point of view.

And another thing that I think that needs to be addressed, and I haven't seen many people talk about this, is the issue of trademarks. I've seen, you know, a fine line between a copyright and a trademark, especially
when you're a small ISP and it's commerce and people will say -- will give me a notice about trademarks instead of about a DMCA takedown notice because there is no counter notice procedure, because a small ISP like Etsy, who is offering a very small barrier to entry for people to start businesses, could be held liable for trademark issues as well.

So I would respectfully like to include trademarks on the table as a topic to discuss.

Thank you.

MR. POGODA: Thank you.

MR. SIY: Hi. Sherwin Siy, Public Knowledge. I, actually, had a point that I think follows on very nicely with the last speaker's.

We've been talking about sort of the diversity of rights holders involved in these issues of various sizes and levels of sophistication. We've talked about the various types of recipients of notices, of different sorts of online service providers of various
sizes and resources.

And I think that the question of the targets of the takedown notices and the diversity and levels of sophistication that we have there is also an issue, because the number of people who will upload or put something up for sale is always, actually, going to be even larger than the number of even the wide diversity of people who own copyrights and things.

And so while, you know, we want to make sure that there are -- I think people have seemed to agree that standardized formats have clear advantages, I would want to make sure that we don't end up with a system that doesn't or can't account or accommodate for non-standard responses, that will account for the variety and the confusion and lack of sophistication that might happen when people are faced with or want to file a counter notice.

I think there's issues with people being confused or intimidated by the 512 process
itself, and also there's questions of what happens with the layers of process that get added on top of the statutory process as well. And when you have standardized systems that are dealt with with parties that are used to dealing with each other very often, oftentimes they don't accommodate or account for people who are not used to or not accustomed to that system.

MR. POGODA: Thank you.

MR. SOHN: Hi. I'm David Sohn with the Center for Democracy and Technology. Just two quick points.

First, I want to add what I think is the emerging consensus, that I think it's important for discussion here to pick a single topic to start with.

I think the PTO has done a nice job here of laying out what's a fairly comprehensive list of possible topics that one could discuss with respect to the operation of the DMCA. I think, just in terms of resource intensiveness and getting an appropriate range of parties to
participate in the process, it would be almost impossible to tackle all of those simultaneously. Certainly, I know that groups like ours are not heavily staffed to do something like that. I suspect, even within industry, that's largely true. We've heard that this morning.

So I think picking an initial topic where folks can get used to working together, can get used to the process is really important, and the suggestion that standardization could be a good first one seems right to me.

Second, I just want to push back a little bit against the suggestion that the abuse of the process or mistaken notices aren't an appropriate use of time or don't merit equal consideration with other topics that have been raised on the list. The DMCA is really a pretty powerful tool for rights holders in the sense that it allows anyone, pretty much on demand, to get specific content taken down.

You know, there isn't any sort of
judicial intervention. And the more and more
the system is automated, the more it is the case
that if someone sends a takedown notice, right
or wrong, that content is probably coming down.
As a result, it is certainly attractive for
folks that want something taken down or want
something to disappear from the Internet for
whatever reason.

CDT did a report a few years ago about
the misuse of the process in the political
context where campaigns that objected to a
particular campaign ad or would like to see it
disappear -- excuse me, it's not so much done by
campaigns, but news organizations wanting to
appear neutral in campaigns would often cause
political ads, during the heat of a campaign, to
be taken down under the process. So, you know,
in that kind of context, there is real potential
for the system to have an impact on free
expression, and I think that's a very
significant set of interests that is worthy of
consideration in the process.
You know, it may be true that counter notices are a relatively small percentage of the overall notices that are getting sent. But, again, as we've heard today, it's often the case that parties don't, for whatever reason, submit counter notices. I don't think we can necessarily assume that all the notices that were sent and weren't counter noticed were valid notices in the first place.

So I just want to say I do think it's important for the process to consider inaccurate and potentially abusive takedowns as having an impact on free expression simply because this is a process where, if the quality of notices going into the system isn't high, the system's not going to be very good at weeding those out later. Thanks.

MR. GLAZIER: Good morning. Mitch Glazier with the Recording Industry Association. Thank you for holding this meeting and for this process. We certainly think that the multistakeholder process focusing on pragmatic
and practical solutions is the right way to go right now.

I agree with Emery that trying to take little bites and focusing on practical solutions is the right way to proceed. I think you've asked all the right questions here, and we would just urge a pretty quick drilling down on some specific topics that might fall into some of those buckets.

So in discussing tools, for example, to improve efficiency and efficacy, one of the things we hope that this process looks at are, within the trusted partnership process, the limits that are placed on the ability to search for infringements which then dictates the number of takedown notices that can be sent.

If you can only look at one percent of one of the top sites or services responsible for a huge amount of infringement, and therefore, because you can only look at that amount, you can only send notices on that amount, you by definition cannot be very effective in trying to
actually, even on a daily basis if you have to, within the construct of the notice and takedown system, actually achieve any kind of real success in finding that sweet spot where search and notice is commensurate with the amount of infringement. And so we hope, within the bucket of efficiency and efficacy, we can look at those search and takedown notice limits.

Within consumer education, there are a couple of topics that we think are worthy of consideration. One is a certification mark or a badge that could educate consumers when a search result reveals a link that goes to an authorized or licensed site that could allow the consumer to see in the results page that there is a link to a site and some sort of icon actually lets them know that this is a site where authorized and legitimate material is available.

In the same way, the other side of that is what is done for malware today, could there be some warning or some notice to a consumer informing them that the site that they're about
to go to has received a high number of notices, whatever that right level is, communicated in an objective and neutral way.

And then, on what we would call sort of the algorithm side, looking at issues like Autocomplete, which is a very difficult issue, but needs to be taken on so that search engines aren't inadvertently leading users to sites that receive huge numbers of notices.

And then you asked whether or not we should look at other practices that are out there. Within the context of lockers and other services and sites, we think that the UGC Principles provides a good best practices format for use in this process to look to as an example.

And lastly, on branding, we certainly are willing to talk about branding and metadata and cheap, efficient ways of identifying full-length commercial recordings so that a system between the copyright owner and the provider that works on both sides could be efficient so
that those who want to use that sort of system could use it in an effective way.

Our engagement with Austin is usually limited to 6th Street and South by Southwest, but we are willing to venture onto the ranch, so we hope that we get to discuss that as well.

Thank you for this process. We think that it's going to be very helpful, and we look forward to all of the discussions.

MR. POGODA: Thank you.

MR. ADLER: I'm Alan Adler with the Association of American Publishers. I think all of these topics certainly are -- do warrant consideration in this process, but I think there has been a realization, as I see the way the PTO has at least preliminarily shaped some of these issues, that some of these topics are going to present more difficulties than others given the premise of this forum, which is that we're supposed to be dealing with trying to come up with a consensus of solutions to issues to improve the way notice and takedown works
without the need for legislation. Some of these
issues are going to present more difficult
issues than others unless you sort of cabin them
according to that premise from the start.

So, for example, I think that Topic 1, which everyone seems to be forming some sort of
consensus as a really good place to start, one
of the reasons that it is a good place to start
is because that's an issue that is not
influenced by judicial construction of specific
statutory provisions and application in ways
that people would disagree whether or not the
court got the issue right.

This is not to say that it's impossible
for people to come up with voluntary best
practices and arrangements that could still
improve a situation that has been made bad from
the perspective of one or more stakeholder
constituencies because of the way the court has
treated the issue.

But I think, for example, when one
looks at Topic 2, you could see that that's an
issue that if you tried to discuss those issues of inaccuracies and abuse of the process in their fullest scope, you're going to run into the situation where the stakeholders are going to have to deal with the fact that there are going to be disputes over whether or not some of the court decisions that have been key -- for example, in interpreting the way 512(f) material misrepresentation standards apply, what the meaning is of "substantial compliance" with respect to notifications under 512 -- and that's going to just bog down the process, I think.

People are always going to be in a situation where they will disagree about whether or not courts got it right in particular cases. So as a general rule of thumb, I would urge that we try to look at those issues for which it's not going to be necessary for people to debate the way court decisions have been applied to particular issues in order to see whether or not people agree whether they got it wrong or right. Having said that, one of those areas I
think has not been mentioned so far, but I think it's critical to any discussion under Topic 1, and that's the issue of whether or not there are ways in which best practices can be developed to deal with the question of the repeat infringer policy requirements of Section 512.

It seems that the intent of Congress, and as a practical matter, the notion of a repeat infringer policy is one of the things that was supposed to be a bulwark against the notices becoming a runaway process. And even though there have been some court interpretations of how that provision applies, again, I think that we should leave on the table the possibility that best practices can be developed, that there are ways in which people can work for voluntary approaches to how repeat infringer policies can help contribute to making the notice and takedown process more effective and more efficient.

MR. POGODA: Thank you. I think we have one speaker coming up now. One second,
A reminder for any people on the webcast, you can participate by phone. There's nobody in the queue right now. But if you are and you've dialed into that number, just press *1 and you'll be placed in the queue by the operator.

Jonathan, please go ahead.

MR. BAND: Jonathan Band, still representing CCIA.

(Laughter)

AUDIENCE MEMBER: You're a stable client, Jon.

MR. BAND: Well, I've lasted all morning. So I just wanted to say I agree, again, with sort of the emerging consensus on the idea of focusing on the standardized templates and that that could take care of a lot of issues. At the same time, just wanting -- I just wanted to respond a little bit to a couple of other comments that were made.

It seems that, again, in terms of what
we're all doing here trying to make the DMCA work better, it's sort of one of these premises that we just sort of jumped over, but I think it needs to be said, that certainly from the perspective of a lot of my clients -- both CCIA, it's members, and other clients -- is that the DMCA is working really, really well.

And so, yes, it is important to try to fine tune it. It's always important to fine tune anything. But, you know, in terms of the notion that this is a system that is horribly flawed and, yes, it absolutely needs legislation, but because we can't get Congress to do anything, let's -- I mean, we just don't accept that premise at all. I mean, we think that this is basically a very good statutory framework and we're just trying to find a couple of ways to make it work even better than it's already working. So I think that that does need to be said.

And then just building on the point that David Sohn raised about the sort of misuse
or abuse in the political context, even though, again, that hasn't happened a lot, it has happened, and in terms of undermining the credibility -- the public credibility of the DMCA, I mean, those instances have, I think, really harmed the credibility of the DMCA in public perception. Because, you know, that's when the DMCA really becomes very visible when, you know, a McCain campaign ad is pulled down a couple of days before the election. That really gets people's attention.

And so what I would like to see, again, is the first topic we deal with is templates, standardized templates, but then maybe the next topic would be like best practices by media companies or news organizations to not to issue takedowns during political campaigns. I mean, something like that would really go a long way towards enhancing the legitimacy of the DMCA in the public perception because that's when they see it, it's in the political campaign context.

MR. POGODA: Thank you.
MS. OTORI: Huawa Otori with The Internet Association. We represent sort of a broad range of leading Internet companies based here in the U.S.

Just to echo Jonathan's point in terms of the premise of the day. Our member companies, what we're hearing from them is the DMCA is, you know, largely working as it should. In the past fifteen years, we've seen sort of a great development in process in how the DMCA's applied, which has really allowed our companies to grow and innovate and provide the services that they do today.

And I know, just in terms of best practices and moving forward, one point that's under this topic as well is the technology aspect, and our companies have been, you know, great leaders and sort of on the forefront of providing technological solutions to making the notice and takedown process both more efficient and effective. So in terms of moving along with best practices, that would be something to look
And one more point. I think something that hasn't been raised yet, just in terms of transparency, a lot of our companies are, you know, also putting out transparency reports and how they are working with this notice and takedown system. So if everyone in the ecosystem could do more on transparency, I think that's something that could be beneficial to this process as well.

MR. SYDNOR: Tom Sydnor, Consulting Intellectual Property Fellow, the Innovators Network, a 501(c)(3) think tank. I wanted to add a quick comment on points that Jonathan and David have made on DMCA abuse.

I commend the task force for taking a look at that issue. I think rule of law's important. That's certainly true in the takedown notice context. I think, in looking at that, not only do we need to keep a point that Ben Sheffner made about the very high efficacy rate of some takedown notice senders, also I
I think we just need to maintain perspective that lurking in the background of all this is a problem that we're not going to be talking about and that's unlawful uses of the Internet generally. There's a big problem there. It is not one that we should try to solve in this forum, and I commend the task force for not trying to introduce it. But the abuses of the takedown process, to the extent they exist, are a minor part of a much bigger problem and we should keep that in perspective as we discuss them.

I do think we can make some useful progress on some of those issues. For example, we just heard about the CDT study about takedowns related to advertisements from political campaigns, and David's right, most of the incidents documented involve a candidate making use of news footage in a campaign video that appeared to associate the newscaster with the campaign, which, you know, is a potential -- potentially undermines the efficacy of the
newscaster's speech. Moreover, that study focused mostly on takedowns from YouTube during the 2008 campaign season. At that time, YouTube's terms of service to upload a video that contained potential third-party content, you had to represent that you either owned all the copyrights in that content or that you had the owner's permission.

I discovered this the hard way when I was actually uploading a video that made what I considered to be a fair use of a short clip owned by somebody else. I read the terms of service and realized I can't upload it. Doesn't work. I can't claim permission, and I can't claim that I own a copy -- all the copyrights. So in that case, to the extent that you're dealing with campaign ads that not only created a potentially false indication of support by the news organization, but actually could have been fairly interpreted by the takedown notice sender as making a claim of either ownership or permission, it is not clear to me that we can
really fully put those in the abuse category.

However, that study was nevertheless useful to me because it did highlight this problem and maybe there are some solutions. For example, if campaigns put a disclaimer making it clear this is not used with the authorization of the newscaster, perhaps some disputes could be avoided.

So I think that it is important to look at that topic, and I look forward to learning more about it, but I hope we will keep those discussions in broader perspective.

MR. POGODA: Thank you, Tom. Tom wanted to commend the task force for not wanting to address all the unlawful use problems of the Internet, but this is a stakeholder-driven process. If you want to address that, by all means, we'll keep providing coffee and a room.

(Laughter)

Please, sir.

MR. RAE: Casey Rae from Future of Music Coalition. It's really great that all of
these topics have been flagged. They're all
definitely worthy of exploration.

My organization is most interested in
Number 3, which is probably how SMEs are
affected. We've worked very closely with
independent creators, musicians, and composers
over the years, and we also have many friends in
the independent label community. I'm not sure
that they're represented here at this
multistakeholder forum, but I think that they're
an interesting case study because you have folks
who are able, because of innovation, to do
things, to pivot more quickly, to utilize
innovation in a way that makes sense for a
diversity of business modes. They will never
have the market share of the major labels or
other folks in this space. So when you consider
their needs, you have to also look at the
innovation community and what they're able to
bring to the folks who create the content.

The interesting thing about that is
when we're exploring that conversation, you
know, we sometimes talk about what is and what isn't working. I think the proper framework would be what -- how to honor the intent of the statute while keeping in mind the specific needs of both sides of the SME universe, the innovators and the content creators and the rights holders. I don't know exactly how to do that, but I would definitely welcome further discussion about that specific topic.

And another thing that was interesting that came up today is, obviously, the universe that the Section 512 covers is much bigger than one or another innovation area or technology platform. But there was just a report that I read that YouTube has become a bigger revenue generator for rights holders on the user uploader side than the actual official videos that are released to that platform. Now, to me, that demonstrates the evolution of the platform, right?

Once upon a time, those users simply weren't licensed, but we have mechanisms to
collect and distribute revenue from that activity. So we have to -- I know it's outside of the purview of this conversation, but we have to be mindful of the licensing environment and the evolution of the space, because once upon a time that was just a new innovation that entered the marketplace, and now it's big business for major industry players and independents.

But, again, to reinforce a basic point, honoring the intent of the statute and having it work for SMEs has to include the perspectives of both the folks on the innovator side, who don't necessarily -- who probably shouldn't be overburdened with liability concerns when trying to bring a new idea to the marketplace, and the folks on the creator's side, who you want to be able to continue to assert their rights under law without feeling that -- disempowered or they have no rights or they're just simply better off giving up.

Now, I don't know if we can solve that, but it would be very interesting, if we get to
that area, to hear what everyone else has to say about SMEs on each side.

MR. POGODA: Thank you. Please, go ahead.

Just a reminder to anyone watching on the webcast, there is call-in information on the Livestream website that you can use to participate. And I am told when somebody's on the line, so don't be shy or feel that you're not able to participate just because you're watching remotely.

Please.

MR. LEHMAN: Well, I was reluctant to speak twice, so I apologize, but I had a --

MR. POGODA: You used a different microphone, so people might not remember.

(Laughter)

MR. LEHMAN: -- burning need to say something that occurred to me during the course of the meeting which is a topic that is not on your list, and you invited new topics.

MR. POGODA: Yes.
MR. LEHMAN: And that really is the role of the government itself. You know, I've always been struck, as I travel around the world, which I do quite a bit, that when one goes to many developing countries that are oftentimes the targets of Special 301 activity and so on at the U.S. Trade Representative, that one of the things that those governments do and are actually sort of pushed to do by the U.S. is to have education programs for their own people about intellectual property rights. So there's this strange thing that happens is you can go to Thailand and find more people that know about intellectual property rights and what they are than you can if you talked to a high school class here in the United States. And I think this is a real shortcoming, and I do think there's a role for the government.

Now, ideally, whoever drafts curricula or guidelines for curricula, the Department of Education or State Boards of Education, would actually see that this topic is included,
particularly since it's almost impossible to speak of education today without speaking of the use of the Internet, and it's a tool that practically every student from elementary school to Ph.D. candidacy uses. But that's a very big challenge.

I do think that with regard to the organizations that are represented here that there is a role, and actually the PTO already plays a role on the Patent side in that it has a fairly active program of reaching out to independent inventors to educate them about the patent system. I don't see anything like that, particularly on the Copyright side. And so I think one of the things that could be considered as an outcome of this, particularly if best practices are developed and certification marks are developed and things of that nature, is that the USPTO and the Copyright Office, which are the places that members of the public go if they're looking for something and they want a sense of, well, this is really the truth -- Of
course, a lot people don't trust the government. But I do find that, actually, the PTO has a lot of credibility with the independent inventor community. I suspect the Copyright Office does with the creator community. And I think that these two offices could be much more aggressive and active in not only providing information, but ultimately, as this process goes forward, play a role in its roll-out.

And, for example, if we ended up having a situation where there were -- there was a standardized format or there were organizations that everyone agreed could be trusted, the USPTO could conceivably, and the Copyright Office, on their websites, provide a link to those sites. I think they can do that.

And I know -- I'm pretty sure the PTO -- For example, right now, you know, we have a big problem with invention development companies. You know, you see these late night on television, these people, well, you know, you invent something and you can pay me $20,000 and
I'll -- you know, all of a sudden you'll become rich because I'm going to develop your invention. So there are a lot of scams that go on there. But I do believe the PTO has a list of reputable companies, so they play a role in trying to educate people, when they contact the PTO, as to what is legitimate and what is not.

And so I think that the people on the dais, and if there's anybody from the Copyright Office in the back of the room, the Copyright Office too, should realize that perhaps they might bear some responsibility for more than just carrying on this forum, but a more proactive role in following up with what comes out of it.

MR. POGODA: Thank you. I think we have a caller on the phones, so I'll let my colleague John patch that person in. And I'll just invite the caller to speak after the operator patches him through. The sounds of silence. Okay. We'll try again. Just let me know, John, when you think it's working.

Thanks, everyone, for a really productive conversation so far.

One thing that we've been hearing and I think that people have been echoing is that there does seem to be an emerging consensus around starting with this one topic of focusing on standardized formats. But we've also been hearing some calls on other topics for data, for fact gathering.

So one thing we'd like to open up discussion on, to the extent folks have comments on, is, if we start with the standardized format issue, whether there can be some parallel fact gathering going on on some of the other topics to tee those up for the next topic, for after everyone in this room quickly agrees on a standardized template, and then we're on to the next issue.

So we'd love to hear thoughts on that.

We can do that now. We can break for lunch and
then come back and pick up with that discussion
and then go into a discussion of process,
however folks want to play it. But, please, I
welcome you to come on back up to the
microphones, and I see someone else is on the
phone as well.

MR. POGODA: Do you want to do the call
first?

MR. LEVIN: Yeah, why don't we try the
caller. Do you want to come back up, Darren? I
don't want to mess you up.

MS. McSHERRY: Hi, can you all hear me?

MR. POGODA: Yes, we can. Please just
identify who you are and where you're from, and
you are speaking to the room so please go ahead.

MS. McSHERRY: Great, thanks. I've
been trying to get through for a while, so I'm
-- hopefully, the conversation hasn't gone too
far from where I was trying to speak my original
point.

This is Corryne McSherry from the
Electronic Frontier Foundation, and I just want
to stress what I think I heard from CDT, CCIA, and PK, which is that we want to resist the notion that takedown abuse should not be an important part of the dialogue, and I want to just mention briefly three reasons why.

First of all, I don't think that the number of counter notices that are issued is actually a particularly good metric of the amount of abuse that happens. I talk to people every week, sometimes many times a week, who find the counter notice process intimidating and scary, or they don't want to give up their anonymity and they feel like maybe they'll need to. So the counter notice really isn't sort of an easy metric for whether abuse is happening or not.

Secondly, I want to disagree with Mr. Adler's notion that takedown abuse isn't a good topic for a sort of best practices conversation. I think the opposite is true. I think that there's actually a great deal that well-meaning people who care about protecting fair use
online, which I think most people in this room would say that they do, cannot actually do a great deal to make sure fair use is protected without the need to consult any judicial decisions whatsoever.

And the third thing that I would say is, that was a practical matter, I think that it's quite right that takedown abuse, when it happens, really does undermine the legitimacy of the DMCA and, you know, regularly causes quite an uproar. And I think, as a practical matter, that any multistakeholder dialogue that was talking about the notice and takedown system and trying to improve it that didn't include a discussion of takedown abuse would really have no legitimacy in the eyes of many, many Internet users who care about that issue a great deal.

MR. POGODA: Thank you, Corryne, for your remarks and your persistence in staying through until you were able to deliver them.

MS. McSHERRY: Thank you.

MR. BERROYA: I'm Jon Berroya with ESA.
First of all, I want to just thank everyone who is involved in the process of setting up this multistakeholder dialogue. We are also very enthusiastic about the fact that this is occurring and that we're having an opportunity, along with all of you, to participate in what I think will be a very productive dialogue ultimately.

I want to echo the points that have been raised by many people in the room. Our members, I'm sure, would agree that the first point, setting up processes and a common sense of methodologies by which we could report notices out to the different parties like Google and others who are receiving notices so they can process notices more efficiently, more effectively, is a really good first goal.

I can tell you, from our own anecdotal experience, and I think our general counsel, Christian Genetski, mentioned during the December meeting that when we did a comparison between sites that are problem sites, one that
offers an API for us to use to send notices and one that we see a similar amount of infringement on, but offers no such API, the latency of infringement, that is, the amount of time a particular infringing file is available on those sites, skyrockets when there is no easy way of reporting the notice and to confirm whether or not that notice is being received and action is being taken on it.

So I think that's a huge step. I think it's something that helps not only stakeholders like the ESA and other content representatives, but it also is something where we can find a lot of common ground, I think, with the OSPs in the room.

I also just, in that same context, want to address sort of the tone of conversation. One of the prior speakers mentioned, you know, the creators on one side and the innovators on the other side. Our industry, and many industries that are represented in this room, see themselves as both creators and innovators,
and I'm not sure that it's helpful to the
dialogue to try and put people in one category
or the other because what we're coming towards,
or what we're supposed to be coming towards, is
a solution that really benefits everyone in the
room, which is a DMCA process or a process that
is a voluntary agreement maybe layered on top of
the DMCA that results in a more effective
solution that really reduces the burden on
everyone and increases the benefit to everyone.
Thank you.

MR. POGODA: Thank you. Please.

MR. HALPERT: Just to bring back into
focus what we might accomplish, the experience
with the privacy multistakeholder discussion and
online privacy notices was actually designed to
develop something that really could be scaled
and could work for smaller entities. And I
think standardization, if done in an intelligent
way, can help Ron Yokubaitis and his family in
Austin and help the ITV producers as well.

And I think there's a good reason,
first of all, to tackle something that's a relatively discrete topic on which there's a win-win proposition for all sides, users, rights owners, and service providers. And I think in doing -- in simplifying and doing work that can scale and can work for all different sorts of users, one can come up with something that does bridge a lot of different gaps. There may need to be some modification for smaller users. But it's not clear to me that if we tackle a discrete part of one of these issues that were put forward and then try to approach it from the perspective of both sophisticated entities on all sides and smaller entities, that we can't come up with something that would be effective and would build trust, and then it would be possible to address some of the other issues on this list if there's sufficient incentive on all sides to do so. But trying to be ambitious in a multistakeholder process, particularly when you're starting on the first topic, as John Verdi, I think, can attest, having masterfully
managed the NTIA process, is really I think a
recipe for failure.

Doing work in a manner that's
efficient, but trying to set up the discussion-
later-on process, but also very focused on which
there is pretty widespread agreement is the best
way to start a multistakeholder process, and I'm
hopeful that we can agree to do that here in a
way that will not be burdensome for any of the
parties and could win some significant results
both for bigger and smaller players. Thank you.

MR. POGODA: Thank you. Jim, if you
could just identify yourself for -- I think you
forgot to do it in the beginning.

MR. HALPERT: I'm sorry. I'm Jim
Halpert. I'm General Counsel to the Internet
Commerce Coalition and a partner at the DLA
Piper law firm. Thanks.

MR. POGODA: Thank you. Sandra.

MS. AISTARS: Sandra Aistars, Copyright
Alliance. I wanted to add one maybe nuance to
the standardized notice and template discussion
that we've been having and then also respond to
some of the comments about inaccurate or abusive
notices and some of the perceptions that people
have been expressing about, you know, feeling
bullied by the counter notice process.

So on the first point about the notice
templates, the nuance that I would add to that
discussion is, beyond just developing kind of a
standardized notice template, I think it would
be worthwhile discussing how and where those
notice templates are presented within a website.

One thing that I've heard from numerous
independent artists with whom we work is that,
especially some, you know, perhaps more
questionable websites will bury the contact
information and make it particularly difficult
to send a notice to the website, sometimes
sending you through seven, eight different
screens before you can actually deliver the
notice, delivering various pop-up screens in
between, you know, filling out the information
that you're requested to fill out. And so
that's the sort of behavior that we'd want to
discourage because, obviously, that leads people
to give up in sending their notices and makes
the whole system even more ineffective and
inefficient.

The second point about how notices are
delivered and responded to, I'm harkening back
to a discussion last week before the Judiciary
Subcommittee on Courts, Intellectual Property,
and Internet, where Maria Schneider, testifying
for the Recording Academy, was speaking about
the fact that when she, as an artist, is issuing
a takedown notice, there's all sorts of steps
that she has to go through to issue that notice.
But when somebody's actually uploading content
onto a site, there's not a similar sort of
document or checklist that a person is led
through to make them think about what they're
doing as they're uploading content. So,
perhaps, that's another useful exercise that --
or useful kind of standardized document that we
could seek to develop to help educate the
uploader community so that, really, content that shouldn't be posted isn't posted.

Another thing that Maria mentioned when she testified was -- and this goes to kind of the feeling intimidated, feeling bullied aspect of things -- on the artist's side, she mentioned the fact that when she issues a takedown notice, that oftentimes the content is removed and a legend is placed on the site that says, you know, sorry, content no longer available, it was removed by Maria Schneider, unhappy face. That is, you know, obviously, particularly uncomfortable when the identifying name is your name, an individual artist. It's less difficult, I think, for a large corporate entity to be named as the copyright owner who has removed the content. But if you're talking about an individual artist that's identified by name, I think that is perhaps, you know, more intimidating, more likely to discourage the individual artist from exercising their individual rights.
So perhaps thinking about how to more neutrally state why a piece of content is no longer available on a site would be another appropriate thing to consider as we develop these sort of standardized templates. Thanks.

MR. POGODA: Thank you. Yes? Okay. It looks like it's the last speaker, and then maybe we'll break for lunch after that possibly. Please.

MR. SIMON: I'm still Emery Simon from BSA. A couple of thoughts. One, Garrett asked the question which everybody's been ignoring, so I will try not to ignore it. So Garrett asked the question of while we proceed with the thing that we all agree we should be doing, which is some kind of figuring out how to make notices effective, should we also continue to work on other things and lay a foundation for other things? And my answer to that is maybe.

So the reason why I think it would be good for a process like this to start out with standard notices -- and the two Johns, Morris
1 and Verdi, will attest to this -- building trust
2 in a process like this is really important as
3 was true in the case of the privacy exercise
4 that you guys ran. And I think that we need to
5 start with something that makes sense, focus on
6 that, and then build from it rather than trying
7 to push this process too far too fast. So
8 that's kind of my response to Garrett's
9 question. I hope that's specific enough.

   The second one is -- I apologize, I
10 won't be here this afternoon, so I want to make
11 one point about process, which is we represent a
12 lot of large entities, but our bandwidth on
13 these issues is limited. So however you decide
14 to organize this process -- and we want to be
15 constructive and positive and contribute
16 substantively, technically in any way we can --
17 taking into cognizance the amount of bandwidth
18 that we have, others have, to devote to this I
19 think is going to be very important.

   The agenda, as you have laid it out, is
20 extraordinarily ambitious in my opinion. It's
more ambitious than at least we have the bandwidth to cope with. So thank you.

MR. POGODA: Thank you. Garrett thanks you as well, I'm sure.

So I think this is a pretty good break for lunch. We're going to start back up at one o'clock if everyone could make sure to be here by one o'clock sharp.

And I think the goal will be to maybe, hopefully, start finishing up our discussion on sort of the topics and then, with whatever time is left after that, move on to the process.

So thank you everyone for a productive and friendly morning -- what is that? --

AUDIENCE MEMBER: Restaurant list?

MR. POGODA: -- oh, and there is a list of restaurants in the back of the room, local eateries in addition to our cafeteria. So we'll see everyone back at one o'clock. Thank you.

One o'clock sharp.

(Lunch Recess, 11:57 a.m. to 1:10 p.m.)

MS. PERLMUTTER: Welcome back from the
lunch break. I hope everyone managed to sustain themselves, and we're glad to see a lot of you back for the discussion of process, which, of course, is slightly less sexy than the discussion of substance, but at least as important. So we're looking forward to that and glad you're all here.

I am delighted to introduce my new boss, the Undersecretary of Commerce for -- Deputy Undersecretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent and Trademark Office, Michelle Lee, to give some opening remarks for the afternoon.

MS. LEE: Thank you, Shira, and good afternoon to everybody. I'd like to thank Shira and her team and all of you for the hard work and our colleagues at the National Telecommunications and Information Administration for all the work that you've put into assembling another important public event on copyright and innovation in the digital economy. And welcome back from lunch, everyone.
I'm glad you're sticking around because we have some good discussion that is still to come. I'd also like to thank those of you participating via webcast for being part of today's events.

As Shira and others have already noted, this is the first meeting of a multistakeholder forum on improving the operation of the DMCA notice and takedown system, which we're hosting with our Commerce Department colleagues at NTIA. This morning you heard from Angela Simpson, the Deputy Assistant Secretary of Commerce for Communications and Information. I understand you had some fruitful discussions before lunch about these important issues.

Today's meeting marks an important milestone in our ongoing work on critical digital copyright issues. This process began in April 2010 with the launch of the Internet Policy Task Force, which, after significant public input, produced the 2013 Green Paper on Copyright, Policy, Creativity and Innovation in the Digital Economy.
The Green Paper identified areas where we thought the Department of Commerce could do more work to help improve the copyright environment. One of those areas is improving the operation of the DMCA notice and takedown system which is now over fifteen years old. As we explained in the Green Paper, those who use the system, including rights holders, online service providers, and consumers, have pointed out ways in which the system's operation can become unwieldy and burdensome. So we decided to convene a forum where you, the stakeholders, who actually use the system, could find agreement on improvements that benefit everyone.

Today's meeting is when we at the Department of Commerce step back and let you begin this important collaborative effort. We're here to facilitate that conversation. But the ultimate results of this process rests in your hands. We urge you to take that goal seriously. This is a golden opportunity to find
common ground and make meaningful improvements.

I don't need to belabor the economic and cultural importance of either copyright protection or the Internet as a means of disseminating information. You wouldn't be here today if you didn't already share that understanding. We remain fully committed to the vision then Commerce Secretary Gary Locke articulated in 2010 of finding "the sweet spot on Internet policy - one that ensures the Internet remains an engine of creativity and innovation and a place where we do a better job protecting against piracy of copyrighted works."

As you carry your work forward through this multistakeholder forum, I encourage you to be guided by that same goal.

We're pleased by the attendance today, both in this room and via our webcast, and more broadly, the significant interest all of you have demonstrated in this process through your input during our public comments and other discussions and initiatives that have occurred
since the publication of the Green Paper. You have our thanks for your constructive and meaningful participation as this process moves forward.

I know this afternoon's discussion will be as productive and enlightening as this morning's were. This meeting and future ones to be announced soon will benefit not just those of us in the room, but all creators and online users and the digital economy as a whole.

And now I'd like to hand it over to our afternoon panel which will discuss a very important question, the best process for the future work of the stakeholders forum. Thank you again, and best wishes to all.

(Applause)

MR. POGODA: Good afternoon, everyone.

Thank you for coming back on time from your lunch break. I just want to -- a few administrative points before we kind of jump into stuff.

One, for anyone watching on the
webcast, again, the phone number to participate
via -- remotely via our phone bridge is on the
Livestream website. You just dial that, enter
the passcode, which is also on the website, and
then you can press *1. You will be placed on a
queue by the operator, and we can speak with you
directly that way.

Second, there is a -- we really do have
a hard stop at 4:00 p.m. today. That is because
this room needs to be taken down and reorganized
for an event that is taking place here tonight.
That event will discuss changes to every other
provision in the Copyright Act so we hope to see
you guys there.

(Laughter)

But we do, so please keep that in mind
as you're beginning to speak.

So I thought that we would begin by
sort of, hopefully, finishing up kind of the
Topic discussion and then moving into some more
of the Process discussion. Along those lines, I
think that there is -- me and my colleagues
think that there is a fair degree of consensus in the room that we can sort of begin the larger multistakeholder process by addressing the standardized notice formats and templates and also how other potential issues might be addressed after that. We think there is some consensus in the room for that, but we're not the final arbiters of what has or has not really been decided.

So I guess I would open up the floor to sort of any final comments on that matter before we begin to move into a discussion of what a process for addressing some of the discrete topics might look like.

Is there anyone who has a burning desire to respond to that? Okay. Less than a burning desire? No. Okay. Well, that being the case, we'll proceed on the assumption that there is consensus on that point.

And without prejudicing the ability to sort of change anything, we'll move into a discussion of -- a little bit of the Process
discussion, the process and framework by which this group will go about identifying either that issue or other issues that may arise as work goes forward. And so I'm going to do sort of a dry run, kind of a just-the-facts-Joe-Friday presentation like I did this morning in a moment just so we can walk through it.

But before I do that, I will say that the slides you're about to see have been somewhat -- have been taken over by events a little bit in the sense that when myself and my colleagues here were doing some serious brainstorming about how this would look, we initially kind of thought in our heads, well, there would be multiple topics and that each of these sort of broader topics would each have a working group. And so you'll see in the proposal that there was a call for multiple working -- one working group for each topic.

But given the apparent consensus that, initially, at least, we'll be focusing on kind of one primary topic, you can just imagine in
your head, you know, amend this to suggest one
working group instead of multiple ones. So you,
hopefully, are beginning to see just how much
easier this is than legislation.

So allow me, again, to do just another
sort of run through the presentation kind of
proposal, conversation starter, what we were
envisioning, and then open up the floor to
discussion on what you all think about it and
what you all think the process should look like.

So there would be plenary sessions like
this, meeting approximately every six weeks is
what we envisioned, alternating between here and
facilities in San Jose. And then for all the
topics or topic that were identified, there
would be a working group. And then we kind of
came up with some thought as to the composition
of those working groups, the processes they
might employ, what the participants would look
like, and stuff like that.

So, again, for the plenary sessions,
meet approximately every six weeks, alternate
between here and San Jose. Those events would, just like this one, be open to the public. They would be webcast with a chance for in-person -- obviously, in-person and remote participation as well. And then at the larger plenary sessions, there would be discussions and decisions made at the larger plenary sessions on any recommendations or proposals that may have come from the smaller working groups. As I said before, one working group per topic.

And we gave some thought to what the composition of those working groups would -- Nobody would be forced to participate in one, obviously. It's all volunteer. But, ideally, a nice cross-representation might look something like this: nine to twelve representatives from the different relevant constituencies; alternates permitted to attend any meetings or work of the working groups for each of those representatives; the working group would be run by co-chairs.

It's possible the government might be
able to send people to sort of observe those meetings, but we really wouldn't in any way be able to kind of or want to actively participate in them. We would encourage the participation of participants who possess operational experience in sort of the day-to-day technical functioning of the notice and takedown system.

In order to ensure that the members of the working group would meet at least once between the larger plenary sessions, we thought that a structure where, on the same day as the plenary session took place, there would be a working group meeting. And then perhaps later in the day, or vice versa, a meeting of the larger plenary session. But that meeting of the working group would occur at the direction of the members of that group. Those meetings would be in person to the extent feasible.

Any working groups would report the results and recommendations that came from their work to the larger plenary session, but they would not be responsible for making any final
decisions. The work of the working group would be governed by Chatham House Rule. And it's not "Rules." We actually went back and forth on this. It's one rule. So just in case anyone thinks that's a typo, look it up. For those not familiar with that rule, the meeting content could be reported, but there would be no identity or affiliation of any speakers who actually said a particular thing. And, finally, nothing would be agreed to until everything is agreed to.

In terms of the actual composition of the working group, again, just our thinking here, there would be three to four reps from the ISP sector, including at least one individual or SME representative among that sub-constituency; also, three to four representatives from the right holder community, including someone to serve as a representative for individuals or SMEs; two to three representatives from the consumer and public interest groups; and one representative from the enforcement vendor
community.

So walk it back to the beginning, but -- Just an administrative matter. For anyone that came in late and you want to pick up hard copies of some of the slides that we're going over now, my colleague Alain has placed them directly behind him, and you can walk up there and grab some.

But unless my colleagues have anything to add -- Do you have anything to add? Okay. I think we'll just kind of open up the floor to your thoughts and views on -- well, anything you want really -- but focusing on the process and kind of some of the issues we just ran through.

Neil, okay. And, again, just a reminder to all the speakers, this is an open process. We're creating a public record. Name, who you represent, and then your remarks, please. Thank you.

MR. FRIED: Hi. I'm Neil Fried with the MPAA. Just to revisit the idea of maybe organizing the working groups by service. If we
seem to be coming to a consensus that there may be a very small number of initial issues, perhaps maybe even one as a starting issue, it might make more sense to do this, again, by service, so they can be tailored to the specific issues for each service. It also might be more efficient than having a working group of the whole. If we have only one issue, it would seem that everybody would be in one working group. The other additional benefit is that as we add issues over time, we could add those issues into the existing working groups rather than to have to form entirely new working groups for new issues. So I just offer that to the crowd.

MR. POGODA: Thank you.

MR. BAND: Jonathan Band, CCIA. So I think, given that we're talking about one topic at this point, it probably -- I'm not sure it makes sense to have like a plenary. I think just kind of having a working group that focuses on the topic that we were talking about before,
sort of the template for notice, you know, standardized template for notice, having a working group that just kind of gets together and works on that, and then they see where they come to, and then -- That seems to me to make more sense than having sort of a plenary and then a working group. I think just one working group that sort of charges ahead on the one issue is the most efficient way to go.

MR. LEHMAN: Bruce Lehman again for the Artists Rights Society. So, as I understand it, the first topic would be the template for the sort of standardized notice, is that -- or the standardized -- Am I correct?

MR. POGODA: Well, that was our understanding of your understanding. Yes.

MR. LEHMAN: Well, I guess the thing that concerned me about when you outlined the makeup of the groups was I think you had only like three to four representatives of rights holders there. Well, you know, these templates are going to be used for -- For example, in the
visual arts, which I'm involved with, you know,
I think that's a much different subject matter
than sound recordings or than literary works
generally and -- or computer software, for that
matter, and I think if you just have three or
four people, you're going to have a hard time
having the interested parties represented. So I
think you should have -- If you're only going to
have one meeting, I think you should have more.

And then the final thing I would say is
that when I looked at that list, you had
basically representatives of the service
providers, and then you had rights holders, and
then you had people who represented, I guess,
the user or public interest community, whatever,
and I think that's imbalanced. Because I think,
as a practical matter, keep in mind -- This is
something that was seemed to have been lost
sight of this morning. The reason that we have
notice and takedown is because of an exception
to normal copyright liability, and that is that
Internet service providers have a safe harbor.
That's why we have the notice and takedown. Like so many of these things, it seems to be automatically something's put in that actually it all of a sudden becomes right, all of a sudden the copyright law becomes more for people that want to use anything they want without any restrictions rather than for what it's supposed to be about under Article 1, Section 8 of the Constitution and under the statute, which is exclusive rights of the actual creator.

And so it seems to me that the Internet service provider -- And by the way, that exception was put in for them so that they would not have liability, is all about non-liability, non-obligation to rights holders. And so I have to say, I think your description was grossly unfair and that this is unbalanced from the get-go in that it represents very much an anti-rights-holders bias -- I hope that's not the case, but that's the way I see it -- if you have that limited number of people involved. And,
particularly, I don't want the visual artists to be represented by the Motion Picture Association. I'm sorry, I don't. We have lots of problems sometimes with motion picture associations -- companies, because they use our stuff. You know, there's a Frank Stella picture -- painting in one of their movies. And so I think you have vastly too few people in slots for the rights holder community.

MS. PERLMUTTER: I'd just like to weigh in and give a little bit more of the background on what our thinking was and address some of the comments that were made by the last two speakers.

So, first, I think -- I wanted to be clear that what we thought we were hearing this morning and the way we are proposing to proceed was not to say there will only be one issue ever discussed in this process. It was to say what we heard emerging was a consensus that we should start with that one issue and then we would see where that went, that it may be that in
discussing that one issue, some other topics on
the list may end up coming up and be part of
that discussion. It may be that we'll make
progress on that one issue and then decide to
proceed to another issue.

We're not foreclosing discussing other
issues. What we thought we heard a fair amount
of consensus on was just starting with the idea
of the standardization of the process -- or of
the notices. The issues --

MR. LEHMAN: But the notice for visual
artists --

MS. PERLMUTTER: Let me just finish,

Bruce, and then --

MR. LEHMAN: -- would be different from
movies.

MS. PERLMUTTER: If I can just finish.

And then, of course, we could expand to other
issues or other working groups if necessary.

In terms of working group versus
plenary, in that if we start with just one issue
then we don't need both, we saw them as having
very different functions. So we saw the working
group as an opportunity for real daily
operations people to sit in a room and talk
about what's possible and how technology could
be used and try to achieve something very
practical and be able to do it under Chatham
House Rule, but then be able -- then have to
come back to the plenary where we would have
complete transparency and the ability for
everyone to look at how that discussion had
proceeded and see whether it was something that
was appropriate, and that, of course, would be
public in a webcast.

So that's why we thought those were two
very different kinds of venues and having both
of them could be helpful. And, again, feel free
to reject this. But I wanted to explain why we
were seen doing it that way. So I do think
there still could be value in having both a
working group and a plenary, even if we start
with one discrete issue.

And then, finally, in terms of the
number of representatives, look, our goal is to try to balance being inclusive, but also having a group that at least is small enough that they can sit and achieve something and every meeting isn't the size of this meeting. So we came up with those numbers as looking like some sort of reasonable approach, but we are certainly not wedded to that. So that can be reopened.

And one possibility is we could just say there was some discussion about affinity groups of different kinds. If people wanted to go off and discuss among yourselves with however you would define your affinity group and come back to us and say, here's the various representatives we would like to have in any working group, that's absolutely fine. We have no problem with that.

Have I missed anything? No. I think the point was just -- You know, it's very hard -- Since we want this to be a pragmatic, practical discussion that's more technical than policy, that it was much more likely that
something could be accomplished with, you know, a group of no more than fifteen people sitting in a small room as opposed to seventy-five in this room, and then having as a sort of assurance of transparency and consensus by and from the bigger group, that coming back to the plenary to bring back whatever the results of the discussion were. So that was the thinking. And, again, happy to change it, but I just wanted to make that clear.

MR. POGODA: Go ahead.

MS. TUSHNET: Rebecca Tushnet, the Organization for Transformative Works. So, actually, I want to sort of partially, believe it or not, endorse the concept that we might need more categories here and affinity groups might be the way to go there. But, you know, the kinds of information that are important are going to differ a fair amount across works and across categories. And I think that's also true for the user group representatives, too. So, you know, people who have sales websites, people
who have art websites, people who have text-based websites all have very different relationships. So I think it is important to keep that in mind.

MR. POGODA: Thank you. Victoria.

MS. SHECKLER: It's Vicki Sheckler with RIAA. We would like to agree with Rebecca and with Neil that in thinking about these groups, it does make sense to think about different types of intermediaries and different types of service providers.

I work with our operations team every day on the types of notices and tools they have with the various intermediaries, and based on the feedback that I've gotten from them and the work that we do with them, it is different in dealing with hosting companies, server companies, the website operators, and the search engines. So thinking about the different groups I think would be quite useful in thinking about approaching these topics.

And then, also, with respect to the
topics that we're going to discuss, thank you, Shira, for explaining that we're just starting with one topic and that we expect to have other topics. Our expectation is that in thinking about standardization of a notice format, that necessarily must lead into questions about efficacy of notices, the volume of notices, and what we can do to reduce those volumes and reduce the burdens on all of us. Thank you.

MS. CLEARY: Susan Cleary, Independent Film and Television Alliance. I just wanted to make one point on venue.

Perhaps, if there's concerns about home court advantage here, or home ranch advantage, we consider that Los Angeles be an alternate venue for California so that our colleagues up north come down to Southern California and the colleagues down in Southern California will come up to Northern California, but we can alternate.

Certainly, the tech companies are more and more based in Santa Monica, California, and
in Venice and in Marina Del Rey there is a huge explosion of tech companies down there and representatives are there. And, also, SMEs for many of the rights holders groups are based in Los Angeles. Just a thought.

MR. LANE: Rick Lane, 21st Century Fox. Although I like, for management purposes, this idea, because, you know, it can get very unwieldy. But at the same time, I wouldn't want anybody to feel excluded from these groups, and so that's always the balance.

What we have found in the past in the privacy discussions, there is a self-selection of worker bees who actually like to do the work and others who just like to show up, and it sometimes does narrow it down to a lesser group than one would expect.

So I think, at the outset, to try it, maybe have a self-selection of who wants to do x, y, and z. See how that works. If there are problems, we can revisit it at that point. But I wouldn't want such a good attempt to do the
right thing to be criticized because they weren't part of the process.

So from our view, we'd just like to kind of see it expanded. But I know that puts more pressure on you guys to try to manage.

MR. SIY: Sherwin Siy, Public Knowledge. I actually think Rick makes an excellent point that there's probably some degree of self-selection that can happen here. The question of how the composition of the working groups probably doesn't need to be sort of set in stone ahead of time. I would want to note that, just as the motion picture industry doesn't represent the visual artists, certainly content hosts and service providers don't represent users. So I think there's a wide variety of perspectives that need to be involved.

MR. POGODA: Thank you.

MR. YOKUBAITIS: Ron Yokubaitis again. I'll get my Giganews hat on and Usenet provider. So Usenet is far older than the Web and it takes
a different -- there's some things you can do
easier in takedown on Usenet and some things
that are harder. So I wanted to support -- I'm
not trying -- Vulcanization, I realize, we can
get pretty spread out. But I think kind of the
interest would be helpful.

Now, we would have stuff illegally put
on our servers that might be, you know, the
individual artist's picture, it may be a movie,
it may be music, software. I mean, anything you
can upload and share ends up on our open public
servers. We're not like a web that only the
webmaster knows really where everything is.
Ours are public interconnected bulletin boards
around the world called "Usenet." So the
copyright holders can see the contents or
whatever is on our servers as well as we do.
It's just massive. So it takes electronic tools
to find it and for us to find it and take it
down.

But I would love to have that more
tighter group, and I believe it's Ms.
Perlmutter, that, you know, you were suggesting
is kind of a workable way. And in the smaller
group, you could get over the rough spots and
get that out of the way and get down to the
operational details of what we can hammer out
and then keep the speech free that you may not
want to do in the plenary, because, look, we've
already worked this out. The rough edges are
gone. We got out -- vented anything we needed
to vent. And then we come to some kind of
workable hypothesis, hopefully, solutions.

But I'd like to know, are we going to
get to -- or have we already touched on that
earlier -- on the parts that would -- when we
get the vast bulk of our notices, especially
from the larger copyright holders. They have
agents, and it flows -- The DMCA works on a
large scale.

I think it starts to be onerous on a
smaller company, and we've had a lady here
earlier. We're a small company with massive
volumes and global reach, but we're still a
small company, so we don't have a half a person extra. So we are interested in making it more efficient, too, and automated, and we've written a lot of software to automate it, but one copyright troll? Oh, God. There's no penalty for sending us a false notice or -- because you send us a valid notice. Well, we find it, on average, with going through fifty percent of the postings. We only have over 40 billion postings, so you're searching to find it. You find it, take it down, go to the next one.

But when you get a false notice, you look through all 40 billion. Well, you know, they'll sue you for a billion, though you've only got one, so you send the search back two more times. So we search three times. So we're processing all that time, processor for a waste, and it's not there. Well, we say it's not there. We do get as high as seven or eight percent. Periodically, someone will have three-quarters of one month, something went wrong.
But we do have as high as seven, eight percent.
And when we were comparing a few volumes -- And we're extremely high, if not probably one of the highest volumes of DMCA notices, due to, say, someone posts a music file, it has to be broken up into pieces. We get a notice for each piece, and it can appear to be on our servers if one piece is left. So we have to process each piece. So that's unique.

And that's why the working group idea, I like. And I don't know if it goes by protocol, type of service, or conversely, whether it's movie film, software, visuals. You know, I'm open to what it is, but I like the idea to narrow it down, free speech, let's hash it out, if we've got a few personality problems, we can get that out, and then come back and not waste everybody's time, you know, in trying to get something done. Thank you all.

MR. POGODA: Thank you.

MR. HALPERT: Jim Halpert, Internet Commerce Coalition. It seems to me that we've
heard a bunch of different perspectives that may require modifying the approach of the notice form -- that's what we're talking about -- and it seems to me that structuring this toward efficiency, it might not be a bad idea to have an initial discussion.

We should probably err maybe on a one-time basis the practical concerns for the senders and receivers of these notices at a tactical level, not burden those folks with doing many meetings, because that's harder, but use them as a resource then to reflect back.

If you think about the problem that Ron just raised practically for Usenet, that's an important perspective. But it's not reasonable to ask Ron to show up at every single one of these meetings that would happen.

And to have a mixture of operational people, probably starting with a separate meeting of operational people, to recognize that a lot of those folks are going to be on the West Coast -- some of them, though -- Ron's in Texas
-- and to allow some remote connection or way to communicate so that it's not just a face-to-face meeting, there's some sort of videoconferencing capability or audio conferencing capability, to have a reporter of that discussion, and then to take that back to the plenary or to another group of folks who would start to draft based on that feedback.

And then after there's a straw draft, then to share it with the different -- say, the SME -- the various constituencies that are here for their comments -- to share it for the news group context, to think about how this would work in a multiple-tenant hosting environment, run through those different variables, but to try to work off of a general core approach that then gets adapted to the different technical constraints or business realities that different subsectors here are concerned about.

That way, there's general progress on the core set of principles, but they're then adapted to different contexts. And I think that
that is a way of working moving forward, would lessen the load on the smaller providers having to go through meetings, you know, starting through scratch, running through all the processes, but to have meetings that spread out and then report back to the committee of the whole with some modifications adapted to the particularities, particularly the SME constituencies, but perhaps other technical frameworks.

I don't think this is a success if there are repeated meetings over a course of a year, every three weeks or six weeks, for technical people who've got jobs to do otherwise. I do really like the idea that we heard about doing a bunch of these meetings in California because Los Angeles and Silicon Valley, we'll cover a lot of the different constituencies. I don't think that Los Angeles should be the only location by any means. I think it should probably move back and forth for those technical discussions. And then the
larger plenary could be held here, but with people reporting in on what was learned in the subgroups.

I'm just suggesting a combination of subgroup activity, technical activity, and then work in the plenary as a way to move this forward with genuinely useful information and to avoid shutting out points of view like we've heard both Ron and Bruce reflect, but also without having them to have to construct a whole framework and dialogue with many other different constituencies which I just don't think is realistic here.

So for that kind of matrixed approach, if there are any takers or comments on that, I'd appreciate hearing people's thoughts.

MS. AISTARS: Sandra Aistars, Copyright Alliance. I actually endorse what Jim just suggested in terms of at least a beginning structure. I think it's very useful to start any session with information gathering in a constructive way, sharing experiences in terms
of what has worked and what has been challenging, so that everybody goes into the process not, as Shira pointed out in the beginning of this session, in sort of a posturing or advocacy way, but truly in a rolling-up-your-sleeves and sharing experiences and challenges mode. I think that will inform the dialogue far better and set whatever working groups we then feel are necessary off on a better path to achieve success.

I would also endorse what Rick said. It's been my experience, also, working in various standard setting processes, that people go into them with a lot of enthusiasm and, you know, it tends to be, with a process that takes a lot of time and a lot of effort, a lot of travel time as well, that people self-select based on what their other job requirements are, how much time they can devote, and also, you know, where they've truly got the expertise.

And so rather than exclude people, you know, from participating, I would take an open
door policy from the beginning and make sure that anyone who wants to take part can take part. And I think we'll end up in a fine place, judging from the participation that we have now and, you know, how constructively everyone has participated today.

The final thing that I wanted to say, affinity group issues, I think it might be a little challenging, particularly from an artist's perspective. You know, artists' work ends up on all types of services, and there are challenges dealing with every different type of, you know, affinity group online. So to be able to participate in those discussions and make sure that your business model and your work flow is understood in each of those affinity groups will be important to individual artists and small businesses. And so splitting up and having conversations on an affinity working group basis may not end up working very well for those who don't have the bandwidth to, you know, split up across four different groups to cover
their constituency.

And, actually, I said that was my last comment, but I have a question in terms of how the makeup of the groups is intended. I'm not sure where cloud services would fall, whether under ISPs or potentially under rights holders. I know BSA represents a lot of cloud service operators, and I raise that only because I know that there are a number of cloud service operators who have been incredibly successful in working within the DMCA system and don't have the same experiences in terms of the volume of takedown requests, or, at least, you know, the perception from the artists' community is that they are doing a very good job in responding to takedown requests. And so I would love to see those entities participating in the conversation and giving advice as to, you know, what have they done as business practices that we could learn from, if others were able to adopt similar practices.

MR. LEVIN: So just to build off of
Jim's comment on the idea of kind of having some -- starting with some technical subgroups to really talk about the operational practical issues, we'd be interested in kind of hearing ideas on how to actually implement that, when that meeting should take place, who's going to kind of provide the technical people to discuss those practical issues, and, you know, how it would work into the overall meeting structure.

I mean, we haven't really heard much from folks on whether everyone getting together every six weeks makes sense. We've heard a little bit -- some helpful things on location. But it would be useful -- I mean, I think what we'd like to do in the last two hours that we have is really kind of come up with a plan for moving forward.

And we've heard some good ideas, some good suggestions building off of what we've put up here, including the suggestion that to the extent we have working groups, that they be self-selected, which is something that I think
makes some sense. But we'd like to kind of dig
a little bit deeper and hear what folks have to
say about maybe this idea of having the next
meeting, whenever that takes place, be a real
technical discussion that kind of hones in on
the problems with non-standard forms and focuses
on -- potentially could be used to identify
whether there are -- whether it makes sense to
then split up into affinity groups focused on
different concerns raised by -- that different
right holders have, different concerns that are
raised based on the type of service receiving
the notice, things like that. So we'd love to
open it back up for that -- or just keep it
open, since it never closed.

MR. DOW: Troy Dow with the Walt Disney
Company, shorter than the mic. Just on those
thoughts, I think a couple of thoughts to follow
up.

One is I agree with the point that
Shira made, which is that the progress in this
area is most likely to happen in small groups.
If you get a big group together like this, the notion that you'll have a day-long productive discussion that's going to yield concrete results is unlikely. But when you get smaller groups together, I think you can actually make some progress.

I think, in the same way that you've had a meeting here today to try and get topics on the table, to sort through them, and figure out what's the most productive way to take the next step in terms of addressing topics, you probably need to have a meeting like this to address these topics that people are talking about now.

The technical discussion, get the issues on the table, what do people mean when they say insufficient standardization. Are we really talking about just a template and, you know, do you put the first name first or the first name last, and, you know, what words do you use, or are you talking about standardization of technical formats, are you
talking about other things. Get the issues on the table that people feel are deficient in this area so that we can then figure out how best to sort through them to figure out how best to break those down into individual groups to really sort of tackle those issues.

One of the other things I would say is, I know at the outset, Emery talked about the agenda and the list of topics being very ambitious. I think we should encourage some level of ambition here. I don't think we should get ahead of ourselves, but I think we should be ambitious. I think if we were to take the next nine months to really just sort through the issue of notice standardization, that would be very under-ambitious in terms of the list of issues that really we need to grapple with in terms of trying to make sure the DMCA is working the way it was anticipated to work.

I know Joe is sitting there. I think that his timetable probably wants to figure out more in the next nine months than just whether
or not we can agree on standardization of
notices. So I think a meeting that would get
the standardization issues on the table,
identify, I think, to some extent, the issues
themselves will self-select. You'll identify
where there are differences of views about how
to handle notices, what the technical details
are, what the service-type details are, what
those groups would be.

And then I think I would suggest an
aggressive approach in terms of setting up the
working groups that need to be done in order to
try and make real, tangible progress in this and
see how quickly it can be done so that you can
then move on and look at some of these other
issues and try and really take advantage of the
time and the process that is here. Thanks.

MR. LEVIN: Thanks, Troy.

MR. POGODA: Thank you.

MR. LEVIN: So building off of that,
would other folks in the room -- can we get
consensus around this idea of having the next
meeting of this group be that kind of technical
discussion? Now that we've kind of come to
consensus about the initial topic as a starting
point, should the next meeting be six weeks from
now and here or in California? Should it focus
on the exact kinds of things that Troy was
talking about and that Jim mentioned before of
laying the table or what the real practical
operational issues are in lack of
standardization?

And just so that everyone knows, the
dates that we had been looking at internally
when we had been kind of plotting this out, was
actually May 8th or 12th to avoid conflicting
with -- The Copyright Office is doing I forget
which one of their round tables. I think it's
making available the beginning of the week of, I
guess, May 5th. And so we were looking
initially at May 8th or 12th -- I'm just
throwing that out there as food for thought --
which is actually, I think, seven weeks from
now, but, you know, don't quote me on that.
MR. POGODA: Jonathan.

MR. BAND: Jon Band, CCIA. So I want to amend my previous remarks, and now I am -- Shira completely convinced me that there is a logic to having sort of the working group and then reporting back to a larger group for purposes of openness and transparency.

And I agree with what Rick was saying that, you know, rather than sort of have a very limited, you know, official membership, it's better to have it sort of a little more open and fluid and let self-selection take care of the membership, because I think it will very quickly sort that out.

You know, whether we're talking about every six weeks or eight weeks, I think we need to be mindful that if you make sort of too ambitious a schedule, then the problem of -- you know, the inclusion of the SMEs becomes more -- a bigger issue. So I think it would be easier for them to participate on every other month. But if you're talking about every month or six
weeks, I think that's going to be much more
difficult for them.

But one thing that -- I'm not
completely sure I understand this whole issue of
affinity groups, and I think it's dangerous,
especially to the extent that we're talking --
The whole point is to try to come up with sort
of a simple standardized template before we
start breaking it off and saying, okay, well,
there's going to be one template for search and
another template for hosting and another
template for other social media platforms, and
start vulcanizing it, as someone suggested. I
think it's better to start off with -- Let's see
if there is a way to come up with one standard
template that would be across platforms and
across different kinds of work, so whether it's,
you know, motion pictures or sound recordings or
photographs. Now, maybe that's completely
unrealistic and maybe it really does need to be
fine tuned. But I would think that, at least
initially, you certainly do have -- you know,
there are platforms that do have -- or there are
companies that have multiple -- that offer
multiple services on which different kinds of
works are uploaded, and they seem to have a
uniform template, at least within that company.
So it seems that it is perhaps possible to have
more standardization.

But I agree with Troy also that at
least at the next meeting -- or the initial
meeting of the working group, presumably it
sounds like on the West Coast, that there would
be -- you know, there is that threshold issue
that are we simply talking about a standard user
interface, or are we really talking about
something that would be more software-oriented
so that you could enter the information in and
that it would actually sync up directly with the
service and that level of -- I imagine making a
real API in that sense is a lot more
complicated, it would seem to me. I mean, what
do I know? I majored in social studies as an
undergrad. But that would be a threshold issue
that would need to be decided.

Are we just trying to come up with, at the highest level, just a consistent user interface, or are we talking about something that would actually go the next step? Or maybe we start with the user interface and then go to the next step, which would be a logical way -- But that would also seem to me to actually be a pretty ambitious thing. You know, it's not trivial to come up with some kind of standard API that would be able to plug into all these different platforms so that you just enter the information and then things start to happen.

MR. POGODA: Thank you, Jonathan. I think Shira has some remarks.

MS. PERLMUTTER: I think, you know, this is all really helpful, especially when people start changing their position in the middle of the discussion.

(Laughter)

So thank you. And, you know, we had all decided we weren't going to really say
anything today, but it's impossible not to join in in the discussion.

So to say, you know, I think it's an interesting idea that maybe you start with some idea of a standard and then see in what ways it needs to be changed for particular interests rather than starting by assuming you're going to do something different for each group or -- "Affinity group" is just something someone was saying this morning. I think I heard it a couple of times.

In terms of our having put up a very ambitious agenda, I agree, it does look like an ambitious agenda if you sort of take off each thing that's up there. But, again, just to explain a little bit. This was really an attempt to boil down the issues that were raised in a hundred different comments submitted to us in the public comment process and to try to fit them into just a few categories and phrase questions in a way that could accommodate people raising any of the issues that they had raised
in their comments. So don't take it as something that would be a list to be ticked off in this process. And there's a lot of overlap also between them. But I think they're sort of useful to bear in mind as we proceed, because they do summarize a bit and boil down the issues that have been raised if you haven't had a chance to read all hundred comments. We did read them all, and we did try to make sure they fit.

And then just one last point, and then I think what we'll probably do is take a ten-minute break and come back, just to say, also, as we think about this, I don't think we should see it as our task to set up a process now that will endure for the rest of the year. I think what we want to do is set up a process to start with, see how it goes, and then we will keep adapting it as we see where we are. So it may be that this process doesn't work for some reason or it works very well and we finish one piece of it and then we want to set up a
different piece in a different way. So I think we should just keep an open mind and we should be talking about what we're going to do right now in the near term, and then we will, as we go, decide what the next step is.

So why don't we take a ten-minute break and then come back. Thank you.

(Recess, 2:07 p.m to 2:25 p.m.)

MR. LEVIN: Hi. So we're going to go ahead and get started again. I'm going the give Darren a little break from standing up here and stand up here myself.

And we were doing some talking up here based on the discussion that we just had that you all just had about how we put this process together, and we wanted to throw out for discussion, for adoption the following idea, which is kind of building off of some of the things that folks have said and building off of the initial proposal that we put up.

So what we had in mind was to hold the next meeting of the forum during kind of that
May 8th/May 12th time period, do it in California at a location to be determined and announced soon, and have that meeting focus on the technical details of the problems and successes in the area of standardization of notices in terms of problems that exist as a result of lack of standardization, successes that have been achieved through standardization, both in terms of standard forms for notices as well as kind of technical standards for acceptance of notices, processing of notices. And kind of picking up on something that Jim said, we'd really like that meeting to incorporate lessons learned from SMEs, have the small and medium service providers, rights holders, come to that meeting, provide information, educate the rest of the group on the challenges that they face and the successes that they've seen so that they can then kind of -- you know, that their resource output is to come to that meeting, educate the group, and then the group will move forward in a kind of
open, self-selected working group process to kind of develop ideas and solutions that could then be brought back later both to the larger group which would also incorporate those SMEs.

For the working groups, as I said, self-selected. As we had mentioned in the slides, we had encouraged that constituents think about representation and finding representatives with whom they share affinities or concerns, and use those representatives as a way to kind of spread the resource burden. And, also, we would encourage consideration of having alternate representatives so that, you know, again, to the extent the working group meets in various locations, it wouldn't always fall on one person to do all that.

With respect to the meeting, the May 8th/May 12th meeting, the idea would be that folks would submit kind of presentations that they would like to make on the problems and successes, two weeks in advance submit them to the PTO. The PTO would then make those
available to the rest of the group so people can see them in advance and be prepared to discuss them. And that way it will allow us to not have to spend a ton of time going through the presentations and presenting them for the first time, but rather people will have some familiarity with them and can really roll up their sleeves at the start. The presenters could walk through them quickly, for those who have not had a chance to look at them, and those who have looked at them can react to them.

And so the two pieces of homework that would lie with the group between now and then would be those who wish to kind of make a presentation on the technical issues would have to prepare those presentations. And we're talking short presentations. These are not -- you know, they could be a page. Prepare those and provide those to the PTO within five weeks. And, also, folks should come prepared to identify who will be a part of the working -- who amongst them wishes to be a part of the
working group.

So that's the basics of it. Would love to hear if folks are strongly opposed to it, if folks have, you know, tweaks to make to it, folks love it, that would be great.

(Laughter)

Always happy to hear that as well. All right. Well, we'll take that as a yes.

(Laughter)

MS. PERLMUTTER: All right. Well, we'll give you a few minutes.

MR. LEHMAN: I have a question.

MR. LEVIN: Can you come up to the microphone just so that the folks on the webcast can hear.

MR. LEHMAN: This is Bruce Lehman. I have a question. I am assuming that the meeting, if it's in California, will be available by teleconference so that people who don't have the resources can participate?

MR. LEVIN: Yeah. We'd use the same setup that we're doing today, which will be it
will be webcast and then it will be the
opportunity for remote participation via phone
bridge -- moderator, phone bridge, the way we've
operated it today.

All right. Sounds like a plan. We've
got one person coming up.

MS. OTORI: Huawa Otori, The Internet
Association. So one question for you guys
before I continue. So the plan for the next
time in about six weeks is to have a technical
presentation and then figure out the working
groups from there. I know we've been having a
conversation about the working group and how
that would work with the overall plenary -- the
broader plenary group. So I guess an alternate
proposal would be for, once the working group
does begin and the process is started in that
way, having the working group meet at least
maybe every six weeks so that way, you know,
there's work being done at a reasonable time
frame. And then having the plenary groups meet
when necessary, whenever the working groups have
made significant progress in whatever it is that they're discussing for that time. And then, also, I wanted to address the conversations that have been occurring about sort of splitting the working groups in terms of service. Our member companies offer, as you guys know, a broad range of services, and often there's overlap in the groups that would result in splitting it up by service. And, you know, it's problematic in that it seems inconsistent with how the DMCA is currently drafted. So it would make sense to focus on issue and not necessarily by service. Thank you.

MR. LEVIN: Yeah. And I think what we've presented just now as the proposal would be there would be one overall working group on the topic of standardization as a starting point, and we'll see where it goes from there.

MS. PERLMUTTER: And just to emphasize again, you know, all of this is going to be constantly a work in progress, so we are not at all ruling out discussing all the other topics.
We think there are other topics that need to be discussed. It's just that we'll see to what extent they're discussed in the context of the first topic. We'll see what the level of productiveness and positive work is at the end of making some progress with the first topic, and then we'll figure out how to move on from there, whether it's in the same kind of working group format or not. So this is the initial work plan, and we'll keep discussing where we go from there.

MR. LEVIN: Okay. Well, unless there's anything else, I'll turn it over to Shira for some closing remarks.

I would just like to put up the last slide for just once second. I'd like to direct you -- I think we're going to use that -- If you haven't yet signed up for them, please do sign up for our Copyright Alerts at enews.uspto.gov.

It's the last subscription selection. You can just put in your email address. PTO is going to be using that going forward to make sure that
information is available. And the two websites listed there will contain information about this process going forward. The website you use to sign up to attend this event or watch it on webcast, we're going to continue to use that website as a repository for information throughout this process to announce new meeting dates and things like that. But if you ever have any questions about what's going on, where the next event is, what the plan is, you know, you should feel free to reach out and folks are always available and willing to discuss. So thanks a lot.

Now here's Shira.

MS. PERLMUTTER: I think this is the first time I've gotten to be both the first and the last speaker at a public meeting like this. I do want to say thank you, a very sincere thank you, to everyone who's participated, both in person and virtually, for the time you've spent and the commitment to the goals of this process. I have to say, I really found these discussions
not only very helpful and informative but really
marked by an extremely positive and cooperative
spirit, which to me is the most important thing
we could have achieved today.

And I do have to point out that we've
been amazingly efficient. And given that this
was supposed to go til four, we're finishing
more than an hour early -- almost an hour and a
half early. So if this is a hallmark for the
future, that would be terrific. I did want to
just make sure that before we all left -- I
thought we might have a lot of housekeeping
matters, but I think we've pretty much covered
that.

I do want to thank the team that worked
to put today's event on because, even though it
seemed very easy, it only seemed easy because of
all the work that went on behind the scenes.
So, in particular, I would like to thank Darren
for his hard work as the MC because I know how
tiring that is; everyone on the dais for their
great work, and they've all been introduced;
also, from the PTO, Alain Lapter, who is in the front row here; our NTIA colleagues, John Morris, who, unfortunately, had to leave early, John Verdi, and Maureen Lewis; and then, again from USPTO, Hollis Robinson and Linda Taylor; from our own Global IP Academy in the back, Mark Rein and the production team and Tim Luepke and the conference services staff here at our terrific facility.

So thank you all very much, and we look forward to seeing you in early May.

(Applause)

I'm sorry. I especially wanted to mention Garrett Levin, who has taken the lead in pulling together this event and our prior Green Paper conference. And I have to say Garrett has been an absolutely fantastic partner working, certainly for me personally, throughout the whole Green Paper process. And if I sound a bit sentimental, it's because, as some of you may know, tomorrow is Garrett's last day at the PTO. So this is a bit of his swan song. I think he's
just coming in tomorrow to clean up. And I have
to say it's a huge loss for us, but the good
news is that he's leaving not to go anywhere
inconsistent with our goals, but to join the
Senate Judiciary Staff, and so he will still be
working on intellectual property issues in the
public interest, which we're very happy about,
and I wanted to say thank you to Garrett and
wish him well.

(Applause)

So now this really is goodbye until
May. Thank you very much.

(2:34 p.m.)