DEPARTMENT OF COMMERCE MULTISTAKEHOLDER FORUM ON

IMPROVING THE OPERATION OF THE DMCA NOTICE AND

TAKE-DOWN SYSTEM

SECOND PUBLIC MEETING

MAY 8, 2014

1:00 P.M. - 5:38 P.M.

DAVID BROWER CENTER

2150 ALLSTON WAY, BERKELEY, CA 94704

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY KRISHANNA DERITA

CSR # 11945
<table>
<thead>
<tr>
<th>INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>OPENING REMARKS</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
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<td>24</td>
</tr>
<tr>
<td>25</td>
</tr>
</tbody>
</table>
MS. PERLMUTTER: There was this anticipatory hush falling over the room. I thought that meant it was good to get started.

Good afternoon, everyone. Welcome to the second meeting of the multistakeholder forum on improving the operation of DMCA notice and takedown system. We are very pleased you could attend, and in response to popular request, we are alternating the locations for this forum between the east and west coasts to enable the widest possible participation.

And I also want to welcome you who are joining remotely.

I'm Shira Perlmutter, the chief policy officer at the USPTO, and it was our pleasure to kick off this forum along with NTIA March 20th with the first meeting at our office in Alexandria. It was a very productive meeting with active and positive engagement from a very broad range of stakeholders. So we were very heartened by that as a beginning, and particularly striking was the fact that the group at that meeting actually reached consensus well before the scheduled end of the day and did agree to focus initially on issue of
standardization in the notice and takedown system
and also to create a smaller working group to
examine these issues from an operational and
technical perspective.

So that's our mandate for today. I also want
to stress that one of our goals today as well as
throughout the entire multistakeholder process
is to develop an understanding of the special
challenges that face individuals and small, medium
sized enterprises as they attempt to make use of the
notice and takedown system. We do want to be sure
that those challenges are considered by the working
group as well as in all plenary discussions so that
we can make sure we are improving the operation of
the system for small as well as large players.

So it's now time to roll up our sleeves and to
start to look at technical aspects. In response to
our requests for presentations on the technical
issues surrounding standardization of the notice and
takedown system, we've received five submissions
that have been posted on our web page so all of you
will have seen them, and also have one or two
additional live presentations as well. And these
are all listed on the agenda.

So what we'll do is start by hearing from the
presenters in the order that they are listed, which is alphabetical, in case you were wondering. And if anyone has specific questions about the content of any of the presentations, please feel free to raise them immediately after that presentation. But we would ask that any general points or comments or areas of disagreement or agreement be held until after the presentations.

After all the presentations is when we will have time for a full participatory discussion. During the discussion period, we hope to hear an open and wide ranging conversation about the actual and potential roles and benefits of different types of standardization. So in other words, what works well or doesn't for whom and why. And there will be an opportunity for remote participation. We will take questions from outside the room, and the purpose is of course to set the stage for all of you, the stakeholders, to start working together to find ways to improve your own experiences with the day-to-day operation with the notice and takedown system.

And if we can begin by making progress with respect to standardization, we can then discuss which other issues this forum is ready to take up when, whether in plenary or in the working group, including
the issues that were identified earlier in the green paper process. Towards the end of the discussion period, we will turn to identifying the initial tasks of the working group. So keep this in mind as a goal as we continue throughout the afternoon.

This is the plenary forum opportunity to provide direction to the working group from the outset. This is going to be an evolving and an interactive process with ongoing reports and reactions in both directions, but we do want to get the working group off to the best possible start.

After the discussion, we will break for 30 minutes, both for refreshments and also to give you a chance to talk to each other, and we will then reconvene and start talking about the formation of the working group. As you know, those of you who were at the last session or who followed it, this is an inclusive and self-selected working group. So there's no artificial constraints or numbers as to who is on it.

Just to remind you, we are looking for participants who have practical and operational expertise rather than legal and policy expertise for this initial topic. And any results in the working group or any developments in the working group will
be taken back to this plenary forum for full consideration by everyone. And don't worry, that will include the lawyers for those of you who are nervous.

Now, just a couple of points about the working group. Broad representation of all the different stakeholder constituencies is key to the success of this entire initiative. So please do check as we start talking about the working group this afternoon that your constituency is, in fact, represented, as I'm sure you will want to do. And if not, we would urge that you consult with your colleagues to identify a representative and also consider participating yourself.

We've heard some concerns about the potential burdens involved in being in the working group, and let me just say that while we on the one hand wanted to achieve real progress and an outcome by the end of the year, which will require a meaningful commitment of time and attention, we are also well aware of the need to be realistic and to be considerate. We know that you all have day jobs and other things to do.

So what we are suggesting -- and this came out of the discussion on March 20th as well -- is that we would hold working group meetings on the same day
as plenary sessions of the forum as well as in
between, but with flexibility, then, for the working
group to determine how best to structure the in-between
meetings. So at least we will economize on
everyone's time. There will be one day where
meetings will take place and the working group can
decide how to communicate and interact and make
progress in between. We do encourage in-person
meetings because we have found that they are
generally the best way to interact productively.
But we do understand there may need to be other
options for at least some participants.

And one thing that may help, we do think that
the use of alternates which we said would be possible
for different constituencies should help so that you
could have one representative in an east coast
meeting and one in a west coast meeting and take
turns; however you would want to structure it. And
at this point, we do seem to have a general
consensus that we should proceed with only one
working group. On March 20th, we had talked about
different working groups on different topics and
then the tasks and compositions of the working group
may vary over time, depending on what we are doing
then.
So I'll stop there by saying we are very excited about this project now getting off the ground, and I thank everyone here for your participation. We do think this is a great opportunity to demonstrate that consensus solutions can be found for operational issues involved in online copyright without the need for legislation. So I very much look forward to learn from today's conversation. So I'd like to give the floor to John Morris, who is the associate administrator and director of Internet policy for NTIA.

MR. MORRIS: Great. Thank you.

Let me add my welcome. So I know lots of faces in the room, and some of you may have been on the same flight from Washington with me. But there are also a lot of faces and participants that I don't know that we perhaps don't know as well. And that's kind of one of the points of trying to have meetings out here as well as Washington; to get new participants into the process.

So some of you may be a little bit less familiar with my own agency, but much more importantly with the multiple stakeholder approach that this effort is really trying to use to make progress on DMCA notice and takedown.
So just very briefly, my agency, the National Telecommunications and Information Administration is much smaller, much less well known than PTO. But we are the primary advisors of the president on information and Internet policy issues. So just as PTO, you know, addresses the whole broad ranges of issues in the intellectual properties basis, my agency looks at the whole broad range of issues in the Internet policy space. And the multiple stakeholder process is an approach to Internet policy making that the administration has used really in a very broad range of areas. I mean, ranging from Internet governance issues related to ICANN; Internet Corporation Unassigned Name and Numbers to Consumer Privacy.

My office operates a number of multiple stakeholder processes like this one trying to address certain consumer privacy issues, and then here we are also using it in the DMCA context. And the value -- one of the values of the multistakeholder approach is that it really allows stakeholders to kind of figure out workable solutions to policy problems at a much more granular level than, say, Congress or a top-down regulator. So rather than having Congress impose a one-size-fits-all rule that kind of has to cover a
very broad range of industries or situations,

stakeholders can really tailor rules and other
policies to the specific situation. And certainly
not consumer privacy spaces. We've found that that
can be effective to really focus in on specific
situations.

So that's really kind of the theory behind the

approach to policy making that we are trying to

pursue here. Whether you just, as you know, a final

word on the multistakeholder process is actually

hard work, though, because it, you know, you don't

just have Congress telling you what to do or

legislature telling you what to do. It's really,
you know, you guys need to, you know, collaborate

with other stakeholders and often collaborate with

stakeholders that in the past you've primarily

argued with. So we need to keep arguing, but some

of those arguments aside, and try to really see if

we can find some common ground.

So you will need to listen hard to everyone's
views and you will need to work hard to stay focused
on the topic at hand, but you know, most

importantly, you need to be respectful of the

perspectives and views that all the different

stakeholders bring. So that's the approach that we
are trying to pursue here. And let me just hand it
over now to PTO's Darren Pogoda, who is going to be
our Master of ceremonies. I think he's going to do
a great job.

MR. POGODA: Just a few administrative points
about participation in today's meeting. So just to
reiterate what Shira said, we are going to have
people listed in the agenda giving formal
presentations come up. To the extent you have a
question or commentary on a specific presentation,
we invite you to do so after that presentation. To
the extent you have more general remarks, we invite
you to wait. To the extent you want to participate
in the discussion here, we would ask that you come
up to this microphone.

That will allow two things: One, it will
permit you to be picked up both in video and audio on
our webcast, which is taking place right now, and it
will also allow you to speak to everyone else in the
room. And we would kindly ask that you identify
yourself by name and affiliation when you come up to
the microphone because that will be for the record as
well that's being webcast, but it's also being
transcribed as well, and we will post that archived
webcast and transcription on our website just like we
did for the first meeting.

For those watching via the webcast who want to participate, we have set up a phone bridge just like we did last time. I'll repeat that number here and the passcode as well, but it's on the agenda we posted and I will -- it's also on the webcast site itself. But I'll say it. That number, if you want to call and participate, is 1-800-369-3319. The passcode is 1981439, and you will press star one if you want to participate. And the phone bridge operator will place you in the queue and we will be alerted here in the room that there's someone on the line who has a question or wants to participate with commentary in some way.

I would remind the people who want to participate that way via the phone bridge, just reminding, please turn down the volume on your webcast when you are doing it. We have a little bit of a technical work through that we had to deal with at this location that we didn't have to deal with last time. So in order for everyone to hear you in the room without any background noise, we would just ask you to do that.

So without further ado, we have a list of formal presenters and we are doing this in
alphabetical order. So the first up on the list is Sandra Aistars from the Copyright Alliance, and I will turn it over to her.

MS. AISTARS: I am Sandra Aistars, CEO of the Copyright Alliance. And the presentation that I am making today reflects the feedback that we received from our grass roots members. Our organization represents nearly 40 associations and organizations that represent individuals across the creative spectrum. We also have nearly 15,000 grass roots members who are individuals who have joined with us in their individual capacity, and are artists and creators of all types and also small business operators across the country.

We conducted conversations with a number of individuals and particular in depth conversations with five individuals who represent five diverse areas of creativity and who have in depth experience, hands-on experience with the DMCA notice of takedown process in their own areas. Those five folks represent independent artists and small businesses in the Indie film maker world, Indie music world, Indie label world, graphic artists and novelists as well. Three of them are here today with me, and I believe two others are on the phone watching live
stream. So thank you for all of your participation
and advice and consultation.

I'll start by saying that to a person,
everybody that I speak to about these issues in our
network says more or less the same thing. They say
that they are reluctant activists or reluctant
spokespeople about these issues. This is not an
area that an artist particularly wants to be active
in. It's not an area that anybody enjoys taking a
role in. And so to the extent that they are
knowledgeable, to the extent that they are eloquent
spokespeople or passionate spokespeople on these
issues, it reflects actually a lot of frustration
and reluctance on their part rather than any sort of
desire to be sending DMCA notices while
participating in this process.

And I think that's a valuable thing to
keep in mind as we go through the process. I think
it's important in terms of perspective to understand
that artists and creators really don't want to be
engaged in these sorts of enforcement exercises.
There's no upside for them in terms of their
creativity and their personal work and their personal,
you know, growth and expression as individuals, and
you know, their goal is to see a system where users
are educated, where their interaction with site operators is seamless and polite and professional, is efficient and effective. These are the ways that artists reach their audience and conduct their business.

The Internet is a very important resource for them, but it's also a very challenging resource for them sometimes. So that's a little bit about the perspective that we heard. As you see, a lot of artists do use the DMCA actively. They welcome this as a first step, but are a little skeptical that it will have the desired effect unless it is coupled with additional activities in other areas.

We focused on three particular areas in this initial round. First is to find some harmonization with regard to the information presented to and requested from users during the upload process so that it is more in harmony with what creators provide during the notice and takedown process.

We also talked about the creation of standardized interactive forms that could be used with websites with UGC components, ideally aiming towards developing a standardized plugin that could be easily adopted across a variety of sites.

And finally, we talked about the
standardization of an announcement that could be provided to users at the end of the process when content has been taken down from a site. An announcement that would be neutral in tone and non-stigmatizing with respect to the artist and educational with respect to the copyright issues.

Our goals here are to serve everybody's interests to decrease the number of overall notices being sent and being received. We recognize that it's a burden on all participants in the process and we feel that education of users is a helpful way also to stem the takedown of notices being sent.

We recognize also that accuracy of notices is very important and completeness of notices is very important. And so standardization to help artists and creators be able to quickly use the process might help. And again, we are interested in developing systems that make sure the interaction that people engage in both in terms of artists and creators engaging with websites, but also users engaging with artists and users that all these are positive and not stigmatizing for any party and that there's adequate information exchanged so that the people can have useful exchanges and facilitate finding one another and communicating with one.
another as is necessary for the process involved in
notices and takedown. And perhaps counter notice
process, but that that information not be shared in
a very public way that exposes people's private data
to the rest of the world.

We observed a variety of challenges in terms of
surveying people in their day-to-day takedown
activities. We have listed a number of them here.
I guess I would group them into kind of two
categories. One is that there are, as I noted at
the outset, significantly more requirements required
of artists and creators as they are taking down a
work than there are of users of sites as they are
uploading work.

We recognize that those requirements are
as a result of the DMCA notice and takedown process
itself, but we believe that this sort of imbalance
between the type of information being sought from a
user of a site during the upload process, if nothing
else, is likely resulting in users not thinking
carefully before uploading copyrighted works and not
quite analyzing whether they do have the rights that
they need, not perhaps thinking through all of the
consequences of uploading a work to which they don't
have the rights. And so for educational purposes,
and to reduce the overall number of improperly posted
works, we would suggest finding some way to
harmonize those two processes.

Then the second batch of issues are issues
which had lumped together more under the rubric
of bad practices. These are activities such as
obscuring contact information, making it very
difficult to find the DMCA agent, displaying all
sorts of pop up ads and other, you know, challenging
forms and processes that are nonstandard, change
over time, and are difficult to navigate through
when you are trying to get to the button that allows
you to report abuse on a site. Numbers of sites
also require copyright owners to become members of
the site to join or subscribe to a site before you
can issue a takedown notice. That seems improper.

Various sites require repetitive entry of
information and repetitive entry of Captcha codes.
They don't always work. The forums don't always
work like they are supposed to. Very few sites
confirm receipt of notice and only a very few sites
notify copyright owner of removal of infringing
work.

So you don't actually have an idea of whether
the work has been removed, with one exception, which
is when you go to the website and find that you are
being listed on the chilling effect site as an artist
that sent a notice for content to be removed, and
sadly, a lot of artists find that being listed on
such a database with such a title is stigmatizing
and it implies that by exercising their legal rights
under the DMCA notice and takedown process, on
purely legitimate grounds, they are being
stigmatized as being interested in somehow chilling
the free speech and expression of others, which as
artists, they are clearly not interested in doing.
And you know, find it offensive to be labeled in
that fashion.

A couple of other suggestions. In terms of
large sites in particular, it would be very useful
if those sites used content ID type programs and
allowed users who are senders and reliable senders
of DMCA notices to qualify for trust sender
programs. That's sort of a fast lane for sending
DMCA notices in a batched fashion.

So just to walk you through some of the
illustrations of some of the things that we've found
and that we are talking about, this is a quick
illustration of the differences and requirements
between uploading and issuing a takedown notice.
So on the left-hand side, you see the upload screen from -- this is from YouTube -- and there's really nothing required with regard to information from the uploader of content circled in red at the bottom of the screen. The only reference to copyright information is under the heading "Help and Suggestions," and the suggestion is that you should try not to violate the copyright rights of others. And if you are interested, you can click to get to another screen to get further information about what that means. I suspect that very few people actually, you know, read the small print at the very bottom of the screen and that fewer still take that helpful suggestion and click on the link to go and get further copyright information before deciding whether they thought the, you know, proper rights to upload the content that they are seeking to upload. On the right-hand side, you have the same parallel process for the takedown screen.

So you see there's a variety of information being sought from the artist issuing a takedown notice, including, you know, what's the issue, are you an individual, a company, an agent, what are you seeking to remove, warnings about, you know, personal information that will be posted when the content is
removed; personal information sought about the
individual, not the company. And then the DMCA
required statements on the bottom under penalty of
perjury.

Again, I recognize that these are things
that are sought in accordance with the DMCA
requirements. But there's quite a disparity between
what's sought on upload and what's sought on takedown,
and harmonization may help somewhat.

We've illustrated on this next slide a couple
of ways that one might try to harmonize the two
processes. This first kind of batch of information
is really the same sort of information that would
also facilitate communications in case of a takedown
or a counter notice situation. It's basically the
same information that's being sought on the takedown
screen.

The second kind of set of boxes is an
attempt to parallel similar sorts of assertions as
an artist makes in the takedown process, instead of
referring to the DMCA where suggesting an
acknowledgment that the Copyright Act provides for
certain protections and that there are certain
penalties that go along with violating such
 protections, and that the user is aware of those and
it's aware of the terms of service at the site, and
you know, has agreed to all of those things before
uploading content.

The next couple of slides I'll walk you through
quickly, but they illustrate some of the challenges
posed by bad practices used by some sites, I
recognize that this is kind of hard to see.
Unfortunately it's because there were about eight or
nine screens that we had to go through to get to the
point where we could report abuse. And so we shrunk
them down. But this come from a linking site that
links you to cyber lockers. So on this first screen
on the left, you see this list of pirate sites, set
of links.

So you go there to click on the links.
When you click on the links, it will take you to the
cyber locker which begins to stream the content
together with ads both for toilet paper and for a
sex site apparently. And go to the bottom the page,
and you can find the area where DMCA appears in
small type. You click on that in order to find the
DMCA agent. A full-screen ad appears. You can
bypass the ad and move on to the next screen.

Moving on to the next screen, it tells you that
you should go get step-by-step instructions which
will explain that you should go back to the site, stream the contents and click to get to the spot where you can report the content as being inappropriate. As you follow those instructions, another full-screen ad appears. Ironically, in this instance, the ad is for the community of St. Mary virgin. For your assistance, maybe you can spend a little bit more time on the pirate site, watch a few more sex ads.

The screen that you see then is surrounded by more ads. In this instance, it's for Geico and IBT. You have to enter a Captcha code in the middle of the screen, which brings up another full-screen ad. You get out of that ad and move on to the next screen. You ignore another pop up ad for yet another sex site, and we have blocked out the most, shall we say, interesting content on those sites. But you finally get to click on the "Report Abuse" button on this screen, and this is like eight screens, at least as many ads.

And when you hit the "Report Abuse" button, yet another full-screen ad pops up. If you ignore that ad, you can get to the forum to fill out to report abuse. That form itself is nonstandard. It has a variety of boxes that you have to fill out, a Captcha
code that you have to enter. Once you've filled all that out, nothing actually happens except that you can watch more ads. And in this case, they are for Downy, the US Army, Panera, Lean Cuisine, Febreze, Pampers, Microsoft, Bounty, PNG. And you can visit TruthAboutOnlineSluts.com website.

So under "Forum," you never get a confirmation about whether your content has been taken down or not. Chances are, it still remains. So this is just an attempt to takedown one link on one site for one cyber locker. And the experience is that the folks that we work with, you know, report that they are taking down, you know, hundreds and thousands of links as independent artists on a regular basis and those are being reposted, you know, daily, weekly, monthly. So going through this sort of a process just to remove one link is, you know, frankly impossible.

I'll close with just a word about kind of the filing process of the post takedown announcements. And this was mentioned in the DMCA hearings at the Judiciary Committee. And this is actually a screen from Maria Schneider, who testified there. And this appears when this content has been removed from YouTube.

You get a statement that says, "The video
is not available due to a copyright claim by Maria Schneider identifying her by name because she is the copyright owner in this instance. And I guess all I would say is that we are creating the atmosphere online ourselves that we work in as both as artists and as websites, and so if we want a cooperative atmosphere and an atmosphere where users respect copyright and don't feel that copyright is a negative aspect of their online engagements, that can be best accomplished with, you know, neutral and educational and informational announcements, rather than announcements that, you know, suggest with a frowny face that an individual has somehow deprived the user of content that they would otherwise be happily enjoying.

I'm not denying that there are instances where inaccurate takedown notices are sent. I'm not denying that there are instances where even false, and you know, wrong-headed takedown notices are sent. But those, by all accounts, including accounts of, you know, large sites and operators like Google are the vast, vast minority of instances. And so the response that we get from artists is that they feel fatigued, they feel dispirited. They feel demoralized by these sorts of responses when they are sending in
absolutely valid notice and exercising their valid
DMCA rights and asserting their copyright over work
of their own creation.

So I would urge us to focus on this aspect as
well, and try and find a way that we can positively
communicate both if there are legal avenues of
finding valuable and entertaining content online and
that we engage artists and creators in this process
of working together with website operators usefully
and productively instead of keeping them at arms
length, and you know, making them feel stigmatized
through the process. I've summarized some of
the starting points for consideration. I think I
have touched on all of those as we went through. So
thank you.

MR. POGODA: Thank you, Sandra. And next up is
Mr. Joshua Wattles from Deviant Art. Before we
proceed, did anyone have a question or a comment
specifically on Sandra's presentation that they'd
like to share? No. Yes? Okay. Please just name
and affiliation, please.

MR. HALPERT: Jim Halpert from the Internet
Council. And that was a very interesting and quite
compelling presentation, Sandra, but one feature of
it I think would not be workable. And I think there
are significant First Amendment type issues that are
posed by people who post content to identify
themselves.

There's a law that just passed, the
Russian Duma, that required extensive notification
of any blogger who posts any kind of content on the
Internet. And if you have a site that's globally
available, the consequences of having all that
information be stored could chill the very free
speech that your members very much value.

And so I think we need, I mean, we think
about this. We also have to think about how some of
these identification sort of goals work in other
contexts for what are wonderful American platforms
for free speech and whether there may not be some
significant downsides to requiring the same sort of
identification that someone requesting a takedown
would need to provide, precisely, because when you
identify, I mean there's the same issue, I guess,
with regard to the example you had with
regard to YouTube. But I think this is quite
complicated and would be a radical shift in the way
that the Internet works today.

MS. PERLMUTTER: Why don't I suggest, since it
was a very specific comment, why don't you have a
chance to respond and I guess my suggestion is maybe just in terms of figuring out how we make it through everyone's presentations, we could make sort of specific questions about things that maybe weren't clear to you or you didn't understand and save most of the rest of the discussion for after.

MS. AISTARS: Thanks for that comment. In terms of how the information is provided and where the information resides, I think, you know, information as far as certain identifying information is already collected from users of sites. This is not a request to collect information in any public way or to publish it in any public way. It's a suggestion that we work out a system where information is available so that it can be used between the parties that need to engage amongst themselves in a conversation potentially about notice and counter notice situations mediated by the site operator as necessary. So I think it's something that we can discuss through a working group process.

Certainly the intent is not to have First Amendment concerns implicated in any fashion. And we are equally concerned that we not have user information published by, you know, upload user
information published in some public forum as we are
that we not have private information about artists
who are issuing takedown notices published in some
public forum. So I think the concerns are intertwined,
and there should be a way to work through those
concerns in parallel.

MR. HALPERT: We'll talk offline. I'm not so
sure.

MS. PERLMUTTER: Can it be online?

MR. HALPERT: Once it's stored, the secret
police of any country can go get it from the service
provider.

MS. PERLMUTTER: We are not trying to take any
issues off the table. I just want to make sure
everyone puts their ideas down and then we will have
a full discussion. So keep notes of all the issues
that you want to raise again and we will come back
to them.

MR. WATTLES: I'm not with the secret police.
I'm very pleased to be here. I am a late entrant,
and thank you very much for giving me the
opportunity to talk. And the deal was that if I did
talk, I'd have to be a surrogate for this thing
called SMEs that I had never heard of before.

So I'm here as Deviant Art, and we will
talk about that in second and we are a user-generated
ISP in terms of content. But in terms of the
surrogacy, I have a disclaimer, because we really
don't engage in Cloud activity, we don't engage in
locker service, and somewhat uncomfortable acting as
a surrogate for particular locker service behavior.
If you want to hit me up on that because I'm supposed
to be a surrogate, that's fine. I'll try my best.
And I will confess, as a lawyer, I have represented
clients who do engage in that business.

So you know, the big issue for SMEs is how big
is small? You know, size is very relevant in terms
of this technical application of the DMCA is
exceedingly relevant. The drop-off from the top 20
ISPs to the top 200 spot is huge. It's deeper than
the Grand Canyon. It's a massive, massive drop off
in terms of size and competency. And the other
issue is, how do you measure size in this context?
Because it seems obvious, and I'm sure the working
group recognizes it, that there are some things that
top dogs can do that small and medium-sized ISPs
could never do in terms of resource. And that the
DMCA was not designed to be a resource hound. You
know, to just grab resource out of the commerce in
the world and the investment that's represented by a
vital and vibrant Internet.

Do you measure by traffic? Do you measure by content? Do you measure by activity? Do you measure by potential for infringing activity? You know, I think it would be good to have a discussion about that. I have no idea how you come out, but if you wanted to find SMEs, it seems to me you need to have a construct. These people are in, these people are out in terms of their competency and capability to comply with some of the thoughts that are coming up.

So Deviant Art, we consider ourselves to be pretty big. And pretty big in our vertical, which is art. And the reason we do is because there's no other art centric site, visual art centric site that's our size by many, many leaps and bounds. We have 31 million registered members worldwide, one point five users daily, 284 million user generated works. And we bring in about a 100,000 works a day and the work that are posted on Deviant Art are posted singly, not in batches.

So there's an intention behind each post as a statement of the singular presentation of a work of art. Some of you might argue about that. But that's certainly the intention of the post. Two
point five billion monthly page views, which is actually quite few. 65 million monthly unique visitors, of which 40 percent are US bound, and all of this ranks us as one of the top 250 websites in the world by traffic. More people visited Deviant Art in 30 days than visit all of the world's museums in a year. And actually, that statistic can be brought down to around 12 or 13 days. But it just doesn't sound the same.

So you know, we are big, but in this context, we are small. So the DMCA works on Deviant Art. And of a fashion. You know, we have a very accessible copyright policy. It appears at the bottom of every single page. We don't hit people with ads, which may make you happy. We wouldn't do that. We view that as insulting. We have an online guided DMCA takedown notice that's really very easy to fill out, and it has a plain English guidance along the way. We have the same sort of corollary type forum for a counter notice. We have, you know, administrative support that's quite efficient. All of our takedowns typically occur within two business days or less. And, you know, unfortunately, though, it requires an 11-page manual to train our staff to do it. There's a great deal
of nuance involved. And it's really quite complicated and it's not an easy, hey, it's your week to do this, hop on board and here is some training. It takes quite a bit of manpower for us to do it.

And we've found that using the DMCA mechanism internally has been very useful. The vast preponderance of issues on our side come from one artist against another artist with respect to use of work. And you know, we always try to get people to -- we are a social network, so we have lots of tools for people to communicate with each other. So we always try get them to reach some sort of accommodation.

So we find that using the notice and takedown process of the DMCA in our forms really requires of the artist that they have an intention to make that kind of demand. Our biggest, biggest challenge in this whole process is fair use. And it's a really, really serious issue in the arts and a deep, deep concern when you are talking about automation. You know, it's obviously poorly defined. Most of you are lawyers, I would expect, so I don't need to go through with any sort of proof of concept on that notion. Anyone literally can, you know,
rustle up some kind of fair use claim with a good faith belief on both sides of the coin, both in terms of a takedown and in terms of a counter notice. That makes it essentially nonfunctional. And the counter notice is a dreadfully intimidating thing.

You know, we are forced to communicate with respect to the counter notice that, please don't do this because you feel like it. You know, the result can be an infringement action brought very, very promptly, very quickly. And although there may be no sort of commercial damage that you can identify, there's this thing called attorneys fees and they cost a lot of money. And the likelihood of you getting hit with them if you are wrong is very high, and that's very intimidating, very chilling.

And it's a very sort of absolutist approach to something which is far from. We represent artists and we are also ISP. And so as a result, we are constantly engaged in a balance of those two things. It's complicated. It's difficult. It's a daily balance. But I guess the lesson for that, for this group, is that you can actually find a balance. We think we have. We are a very successful website. And part of our success, much of our success, is about our community sticking with us. And so, you
know, we think that there's, in that sense, hope.

So I think there's a context, a conceptual context, for the small and medium-sized enterprises as ISPs. And so part of that is the DMCA policy best practices and technology tools cannot for our purposes be benchmarked to the competencies of the biggest ISPs. You know, Google, Facebook, Yahoo, they, in fact, have a scale. They have resources. They have competencies. That's beyond the reach of the rest of us. It's just life. That's just the way it is. And so to benchmark yourself to their competency and capabilities is really a dreadful outcome.

And the same is true for the specific efficiencies that serve the business of the largest copyrighters. We have individual artists here who are completely different in terms of their capability of administering and management and takedown environment than those in the recording industry or the motion picture industry.

Copyright policy and practice has to be responsive to the fact that it is about cultural expression to the same extent that it promotes commercial use. And I've seen many of the submissions here harp very strongly on commercial
impact and just sort of slide over cultural impact. And it's very important not to do that. It really is. You know, I think we've learned and I hope we've learned that the Internet and the web are more than just, you know, another form of the DVD or the CD, that it's just like another distribution platform. What the heck? We'll figure it out. We'll make some dough. The integrity required to maintain an open and unconstrained communication through the Internet is vital to our culture. And the small guys like us are the ones who are the grass roots of that. We are the ones who create that vibrancy. We are the ones who bubble that up. This is what you can use it for. You can use it to create a flash mob, to overturn a president if that's what you'd like to do. Gee, we didn't think of that when we built it. We thought there would be a bunch of people talking about what they had for lunch. So you know, we really need to be really careful when you regulate in this area. But I do think these interests can be harmonized, and I think they are, and I think that's a great thing. So you know, we are in Berkeley. I went to school here a long, long time ago. Back when,
you know, when you said you don't need a weatherman
to know which way the wind blows was sort of fresh.
And you know, you don't need a weatherman to see
which way the wind blows when you see all of these
folks and all of you folks getting together to come
up with some best practices stuff. And this is
pretty much, I think, where we are headed. You
know, a standardization for DMCA forms that's data-
fed, that sounds like a really great thing. Right?
A uniform build would be great. If we
could create a uniform build that could be implemented
by the SMEs, don't create a uniform build that can't be
implemented, which means it's got to be available,
cheap, easy, not difficult and fit in prevailing
forms of data management. Used by small users. You
know, our engineers refuse to use third party
software, period. You know, they think they are
smart. They can build it better. As a result, we
have lots of things -- well, no. As a result, we
don't have lots of things. But you know, but you
need to be conscious of that in designing these
things.

Fast-tracked automated takedowns, that
makes a lot of sense, but many ISPs are completely
unable to do that. It's a very actually complicated
piece of engineering to be able to pull that off,
and the way in which different data set vary
tremendously. So it's a great idea. I think it's
going to be a real tough thing to accomplish.

Pre-registration of trust and content
owners is the kind of thing maybe you could pull
together and do under, kind of like a registration
system, Fox, ASCAP, something somewhere along the
lines. But you certainly would want that to be
controlled by people who have some objectivity. And
ISP side identification and interdiction, I mean, I
used to be general counsel of a major motion picture
studio and the hanging with the MPAA dudes and I forced
them to do things they thought I was an idiot to ask
them to do.

I know what it's like to have that pressure
and to feel that sort of commercial push of, you know,
why can't these ISPs take this stuff down? If they
see Peter Pan, know that it's owned by Disney? No,
Peter Pan -- I'm sorry. Anyway, a form of Peter Pan
might be owned by Disney, et cetera. But this is
really, really difficult to do. It's really, really
complicated to do and it's very extensive.

Kudos to the Google YouTube team for what
they've been able to accomplish in this area, but
it's only because there's a monetization structure behind it. That's the only thing that provides validity for it. And it's a specific type of monetization structure and it's a specific type of monetized structure and ISPs who are SMEs don't want to engage in. They don't want to engage in that business structure. So I think that's a major issue.

Very important that these things not be discriminatory. It shouldn't require high capitalization. Shouldn't require specific tool sets. It shouldn't require these business models that are just for the purposes of complying with the DMCA. In my view, these automated systems should apply only in circumstances where you are dealing with the full work. Either the user-generated content consists entirely of the complainant's work or the complainant on their side is making a complaint with respect to the full work. Then you can go automated. But other than that, I think we've got a big problem.

And I think it would be great if we had a carve-out if the use of the work is partial or derivative. Certainly on our site, that is a very strong predominant theme. And it's, on YouTube it is as well, and other video sites.
It's a really critical issue. And I would love to see in terms of private practice, in terms of best practices, some sort of mediated result in those situations so that you are not forced to the Draconian takedown path and that some sort of amelioration, some sort of discussion, something can occur.

You know, I have a big warning at the end. You know, best practices sound great. But as a former litigator and occasionally an unwelcome litigator, it's not something that I really try to do. Best practices, particularly in a Grokster inducement type of environment, very quickly get hung on you around your neck like an anvil and they very quickly become a lot more than just this sort of consensual process. So we really need to tread lightly here and be very, very careful. That's it. Thanks very much.

EAST BAY RAY: A short question. East Bay Ray. I'm in the band Dead Kennedys and we've been a small business for 30 years. And the thing that I liked was the confer and discuss between the artists. I mean, we've been, you know, had people use our stuff, you know, in other bands and hip hop bands and they call us up and say, "We want to use this
piece of music and is that all right?" And we work
out a deal. I was wondering, on this art thing, is
that kind of what you guys encourage? Is it like,
you know, YouTube? Go back to us and we'll host
it? That works pretty well?

MR. WATTLES: Let me tell you. So people, when
they post to Deviant Art, have the opportunity of
placing directly under the work that they've posted
almost any permission set that they would like to,
and many dedicate their work to the public. Many
dedicate their work as stock that can be
manipulated. Many have specific conditions like you
can use a commercially, noncommercially, you know,
you can't use it in any way if it's going to promote
the eating of meat. You know, whatever it is that
they would like to condition, they can.

EAST BAY RAY: It's like consent on both sides?

MR. WATTLES: There's that form of initial
presentation, and because we are a social network
and we have varying communication tools, you can
always communicate with the person that posted the
work directly, and that's a tremendous advantage for
us. And I would suggest for all artists. You know,
to be in environments where communication tools are
provided. So you know, and just on this anonymity
issue, we do permit anonymous participation on
Deviant Art. It's critical to the way in which
artists function in all of the arts. Absolutely
critical. But because we have these communication
tools, it's two anonymous people communicating with
each other. So it kind of works out.

MR. POGODA: So in the interest of time, I'm
going to ask that anyone hold any further comments
on Joshua's presentation and invite Corynne McSherry
from Electronic Frontier Foundation to come present.

MS. MCSHERRY: Hi, everyone. It's good to see
so many familiar faces here. This should be an
interesting process.

So I'm here on behalf of the Electronic
Frontier Foundation where I am the intellectual
property director, but I'm going to talk about some
public interest principals that EFF came up with
along with some other public interest groups that we
think should be incorporated as we start talking
about how we might standardize the notice of
takedown process and make it a little bit more
efficient for everybody. So that's EFF, New Media
Rights, Public Knowledge, Center for Democracy and
And all of us are groups that engage with the DMCA
in a lot of different kinds of ways.

And one of the ways that we engage with it is that, particularly the, EFF, but all of us are often on the receiving end of the e-mail of the person that had their contents taken down and they feel that that wasn't fair. They feel that their content was fair use and not unlawful and they are trying to figure out what to do about it and we have to talk to them about what their options are, and it's a very difficult process sometimes because we can tell them about things like the counter notice system, but then we also have to tell them, "Well, we think that your use is a fair use and you should completely counter notice and please do, but because I'm a lawyer, I have to tell you that if you do, here are the risks. In the unlikely event that a judge disagrees with you, et cetera, et cetera." And all of a sudden it starts to get very scary. So we kind of see that side of the picture.

And so, and also some of us represent small creators who want a takedown system as well, want an efficient takedown system, but also want a fair process. So we got together and tried to think about what are some ways that, as we go forward with this conversation, what are some principals that we should
pay attention to if we came up with standardized
forms or anything like that to limit abuse of the
notice and takedown system.

So I think our conversation here is supposed to
be about trying to find some consensus. So I
thought I'd start with a principle that I hope we
can all agree on, which is that improper takedowns
are bad for everybody. They are bad for speech and
we all care about speech. They are bad for fair
use, and we all presumably care about fair use, at
least some of the time.

They are also embarrassing, right, because
when a takedown of something that is kind of popular
and really interesting happens, it ends up in the
media. Everybody talks about it. It's embarrassing
for the person who sent the takedown notice potentially
and it really casts aspersions on the whole system.
People say, "This system is not working because it's
being abused in this way." And it can be expensive.

If the person who is targeted by an improper
takedown decides to fight back, now you are in
litigation and now it's expensive. So they are a bad
idea. And even if there aren't that many of them
compared to the actual takedowns that are actually
sent, nonetheless, even if it's a small percentage
given how many takedowns are sent, that's still a
lot of speech. So as we think about what we are
doing going forward, we should from the get go include
consideration of how to make sure that those improper
takedowns don't happen. Let's make that part of the
system better, too, or more efficient.

So there's a few things that we think we should
be paying attention to going forward and that should
be consistently part of the conversation. Principle
one; accuracy and completeness. So we are
envisioning, say, a web forum with a set of fields.
We have to make sure that all of the elements
required under Section 512 are required fields.
That doesn't seem like so much, but they should all
be there.

I should pause for a moment to say we
submitted material in much more detail and we'd be
here all day. We are going to be here all day, but
we'd be here even longer if I went into detail on
all of them. So please, you know, check those out
on the website, but this is going to be the
highlights.

Accuracy and completeness. All 512 elements.
A takedown notice should identify each allegedly
infringing work. What does that mean? Well, what
this means is that sometimes there's more than one
work in, say, a remix video or something like that.
So if you are the user and you have been targeted by
a takedown, you are not sure of who is complaining.
And depending on who is complaining, you might make
a different calculation as to whether it's
appropriate to fight back or not. But often, from
our perspective, we hear from users and they are not
really sure exactly what work is being complained
about. And if you only used it for two seconds
versus something else, that might matter to you.

We think it would be nice if there was an
optional field. We don't think this should be
required, but an optional field identifying the
location of the original work if it exists. So
there's a reference point so you can go back and
take a look. Takedown notices should remind senders
of the core elements of a 512 allegation, all of the
elements of the allegation, and have them affirm that
they have, in fact, met those elements, including
consideration of whether the use in question is
authorized by law such as a fair use.

It should include a 512(f) warning. What
I mean by that, a shorthand for a warning that many,
many ISPs do require. But it should be in everybody
single one. A reminder that improper notice can
subject you to liability. Again, this is common for
many ISPs, but it's not universal. It reminds the
sender to be careful. Take the extra step and make sure
they are sending it to the right person and targeting
the right content.

We think it would be helpful to everyone
if there were links to plain English definitions.
People should be able to see right there, not
scrolling to four pages away, what it is that they
are committing to, because people who send these
notices aren't lawyers and they shouldn't have to be
lawyers before they send a notice, but they are
invoking a legal process. So they should be
educated enough to do that accurately and fairly and
well. And there should be a prompt at the end for
accuracy, just to double check, making sure, asking
the sender to make sure that they are being careful.

Secondly, we think the standardization process
could be a really valuable opportunity for more
transparency, and I think that's been a trend that
we've seen more and more people and more and more
companies over the past years interested in a
transparent Internet understanding exactly what the
works are in a variety of ways. We think that kind
of idea should be built into this process.

So for example, where possible, where it sort of makes some sense and is reasonable, we think that the takedown notice should automatically also be forwarded to the original poster or somehow the poster who has been targeted should know that that's happened. All too often the way that you find out your content was taken down is because you go to the page where it used to be and it's just not there anymore. You don't know why. Maybe you know who complained. Maybe you don't. It starts a whole investigatory process. So that when we do that again, to forward the notice.

Also, counter notice. If you forward the notice to the poster, which we think you should, you should also include notice regarding the counter notice process. So let's make sure, and this is another point I will hit on in a second, that the counter notice process is as efficient and easy as the notice process is.

Now, we know that relatively few people counter notice. There's a lot of reasons for that. One reason is people are doing infringing things and they shouldn't counter notice. But sometimes people who have legitimate reason to counter notice don't.
And it's because they find it hard and intimidating and they don't know how to do it. And again, let's clearly identify the work that's infringed so people can figure that out.

Thirdly, we think that this can be -- this is building on transparency, but it's a slightly different category we are calling information. We think that this can be an opportunity for us all to gather information about the takedown process and make that kind of information public so that we can continue to make it more and more efficient for everybody.

So standardization could facilitate, if we had standardized forums, one of the things that could do is facilitate the creation of databases and we can learn from those databases. So one thing we can consider is building API's that make it simple to forward notices to database and then for people to build on top of those databases to learn and do research on them. Because if you have got standardized fields, right, that is potentially going to be easier to do.

Some service providers already automatically forward takedown notices to sites like Chilling Effects, which I understand can feel uncomfortable for some
people. But Chilling Effects is designed to be a research site. To find out, it was created to find out if the DMCA was chilling lawful speech or not. And the way to figure that out, it's not to say that every takedown notice chills lawful speech. It's to say if we don't create databases to understand how the DMCA notice and takedown system is being used, we can't ever learn whether it's having that effect or not.

Next, we think coming back to what I was talking about with the counter notice process we think there should be a level playing field for lawful users. And let's build that into when we think about standardization, so if we are going to have a stream line notice process, let's have a stream line counter notice process that's also easy for folks to use.

And another thing that we see all too often is that when people do get their courage up, submit to the jurisdiction of a court, take the risk, submit the counter notice and it turns out that they aren't sued, and so therefore the content could go back up, right, the ten to 14 days has passed and there's been no lawsuit so the content could go back up, it doesn't because the service provider doesn't get around to it. They don't have
time. They don't have the resources. And so the content stays down even longer than it should. And when you've got content that was improperly taken down, that may potentially be timely, that makes a potentially bad situation even worse. So why don't we make the reposting process as automatic as the takedown process. Again, assuming that there's been a counter notice and no lawsuit's been filed and everybody has followed the rules.

Finally, these are sort of our initial thoughts based on our experience dealing with the notice and takedown process and what we've talked about so far in this dialogue in this process. I'm quite certain that as these discussions continue, different aspects are going to come up, different possibilities are going to come up, different ideas are going to come up. And that's fine and that's good.

So what we've come up with so far is our principles shouldn't be written, sort of taken and written in stone. What is written in stone is that we think a guiding theme for our dialogue, not the only one, but one of them has to be that as we go forward with this process as we come up with standards, we should always be thinking about
whether we are limiting collateral damage to lawful speech.

In one hand are we making enforcement of copyright easier and better? That is a good principle, but also making sure that we are not making taking down lawful speech easier and better. We don't want that. That's bad for everybody as I suggested at the start. And now, I've -- this is a little bit unscheduled, but from New Media Rights, we have Teri KaroboniK and she wanted to add a few more words from the public interest perspective.

And thank you very much.

MS. KAROBONIK: Thank you, Corynne. My name is Teri Karobonik and I'm staff attorney with New Media Rights. For those of you that aren't familiar with New Media Rights, we are a small nonprofit organization out of San Diego that's fiscally sponsored by California Western School of Law.

And primarily what we do is provide free and low-cost services for artists, creators and entrepreneurs. When we are not doing that, we take what we learn on the ground and turn that into policy and educational work.

Of the many public interest organizations, we are really one of the few that gets to see the
entire picture of small organizations. We work
with small creators who need to deal with DMCA takedown
notices. We also work with small creators who have
had their work taken down and don't know what to do.
We also are increasingly working with two to three
people user-generated content sites that need to
implement the DMCA and need to figure out how to do
it with the resources they actually have.

Today I wanted to share some of those stories
to give a little bit of context to some of the
public interest principles. First I want to focus
on -- the first couple of principles were accuracy,
completeness and transparency.

At New Media Rights, we have seen that
accurate, complete and transparent takedown notices
make a huge difference. They are, quite frankly,
good for everyone involved. We've often seen them
even lead to out of court dialogues between content
holders and small creators that produce better videos
and even better apps and really great licensing deals.
So we want to enable conversations, the conversations
that the DMCA was supposed to enable in the first
place. But unfortunately, notices aren't complete
most of the time. We've seen many incomplete notices
passed on to creators and we are seeing primarily three
points of failure where the system breaks down where
certain pieces of information aren't delivered. And
I want to share some of those stories.

The first point of failure we've observed is
when the creator receives no contact information
whatsoever for the claimant leaving them unable to
counter notice, leaving them unable to even
understand why their work was taken down in the
first place. Keep in mind that many
individuals that we have seen that fall into this
category have had their own individual work taken
down and there's nothing they can do about it. It's
incredibly frustrating.

The second point of failure is when contact
information is included but the copyright holder isn't
identified at all or is identified by their third-party
agent. This makes it really hard, especially for remix
artists, to evaluate whether a notice is just fraudulent
on its face or not because they don't recognize the
third party name. So creators are really hesitant to
reach out to this third party and ask why their work
was taken down, or if they are the copyright owner,
because they are worried about getting sued and they
are also worried about if it's the wrong person,
that the wrong person isn't going to admit that they
sent a fraudulent takedown notice.

But we've also seen creators who thought it was fraudulent on its face and sent a counter notice because they thought this person clearly isn't the copyright owner, doesn't own it, we've also had them come into our office and have them say, "I've received this really scary cease-and-desist letter from an attorney and I don't know what to do." And that's not what the DMCA was supposed to do. This a huge point of failure that could be solved very easily with just a little bit more information.

The final point of failure is when the copyright, and Corynne mentioned this, when the copyrighted work being claimed isn't passed on to the creators. It's really frustrating for a remix artist that has 20 to 30 different works to have to evaluate, "Which one of my uses is fair use?" Well, since we have student interns, well, I think these are great fact spotting cases for student interns to get them to work through fair use. It's not something that the artist should be dealing with. The point of the DMCA is not to give artists and creators a copyright exam final. That's not the point.

These are the very points of failure that the
DMCA was supposed to prevent. And it still can. Very easily if users receive complete takedown notices as part of a standardized takedown process. In addition to the solutions above, it's also key that the principle of accuracy and completeness extend to a standardized takedown form that explains in plain English what the core allegation made in the DMCA down notices mean, specifically to help prevent specious and malicious DMCA takedown notices.

I want to highlight the importance of sending false or misleading takedown notices, and especially those that fail to consider fair use. That sending these notices may result in liability. These are two key warnings that would help stem rampant abuse of the DMCA for improper purposes, which chills speech, and quite frankly wastes all of our valuable resources.

To give you an example of an abusive takedown that this language could have helped prevent, I'd like to share one of the stories that we helped on directly. In January, 2012, we helped Jonathan McIntosh with the takedown of his video, Buffy versus Edward. Buffy versus Edward is a mashup of almost the entire -- bits of the
entire series of Buffy the Vampire Slayer as well as
bits of Edward from the Twilight saga movies. This
movie is a highly transformative work; in fact, so
transformative that the copyright office called it a
shining example of fair use as it's used in
copyright classes and media studies classes across
the country to teach what fair use is and what fair
use is supposed to be.

Despite two unsuccessful content ID appeals,
Lions Gate still sent a DMCA takedown notice. When we
asked why, when we reached out because this was one of
the few instances where we did get all of the
information, we were told, had a request to monetize
this video not been disputed, we would have placed an
ad on the content and allowed it to remain online.
Unfortunately, after appeal, we are left with no other
option than to remove the content. This is exactly
the type of baseless takedown that needs to be reduced,
and standardized language would help reduce these
types of specious takedowns.

Without plain language warnings, these types,
even though there are a very small percentage, they
will continue. And they are, again, a huge waste of
everyone's resources. We've seen many cases, including
those by smaller content owners, who might not be
experts in copyright law and might not understand what it means to send a DMCA takedown notice, and instead think they can use it to silence the critics. Over the years, we've helped several bloggers who have had their posts taken down through the DMCA often for short but unflattering but properly sourced quotes from public figures. We've even seen takedowns of completely legitimate materials by a third party, and this was a really odd case because it adversely affected the individual sending the takedowns, search results in Google for their name. Again, not what the DMCA is supposed to be used for. And we believe that if there were plain language warnings in place this type of behavior, especially failing to consider fair use actually has consequences, many of these malicious takedowns would not be filed at all, saving, again, saving us all valuable time and resources.

Finally, I'd like to address the idea introduced of a standard API that a lot of people have talked about today. At New Media Rights, we work with many small user-generated content sites. A lot of them are start-ups. A lot of them are kids fresh out of high school, college, really young kids. If we can give them a standard API for notice and counter notice, they could respond to large
requests, both from large and small content owners with increasing efficiency.

In fact, it would really help them protect everyone in the process and it would save everyone, again, time and money. By building in these safeguards to a standardized notice and takedown system, creators, content owners and user-generated content sites, can spend less time struggling with an inefficient system and more time creating and innovating and changing the world. Thank you.

MR. POGoda: Any specific questions? You can come up.

MS. SEIDLER: Hi, everyone. My name is Ellen Seidler and I'm an independent film maker and blogger, reluctant anti-piracy activist. I have a question regarding, there's a lot of talk about these erroneous takedowns, but there's also erroneous counter notices.

I just want to give one quick anecdote. On YouTube, my film was uploaded in its entirety. I rightfully sent a takedown and the film was taken down temporarily. Someone filed a counter notice, and I don't have the deep pockets to go to court to, you know, protect my rights, so basically I had no alternative. I just had to let it go and my film was
put back on line in its entirety. So it cuts both ways.

And we are not all Hollywood studios and we are trying to protect our work from infringement and the way it's set up right now, we have to go to court if we want to do that. So I would suggest it cuts both ways and we need to find a solution for that part of it as well. Thank you.

MS. MCSHERRY: I think that's a fine point and I think one thing we should think about as we go through, again as we are talking about the standardization and how we inform people and make sure senders are aware of plain legal definitions, senders of counter notices need to be made aware of, again, plain legal definitions.

It's true. I talk to people all the time and they think, not to name names obviously because it's privileged, but people will sometimes say, "I'm sure that that's a fair use," and I will say, "Well, no. It's not. Or maybe, but I'm not sure I'd stand on that one." And it's a hard one. It can be difficult for folks. We just need to make sure that where it is clearly a fair use and deserves to be, a counter notice would be the right approach, that they have that option, but I think that's a fair point.
People who send counter notices should be held accountable as well. Make sure they are doing it right, too.

MR. POGODA: In the interest of time, we'll move on. If people do have specific comments on that presentation, save it for the general discussion. Up next is Google and Fred Von Lohman will be giving the presentation.

MR. VON LOHMANN: Fred Von Lohman. Thanks very much, Darren, and thank you Shira and the PTO and John as well for hosting this event, and particularly moving it to the west coast to offer some more opportunities for folks on this coast to participate directly.

I want to, in the interest of, as I understood from the last multistakeholder meeting, the focus on increasing the efficiency of how to submit and receive these notices, get them submitted faster, cheaper in a way that's both better for large submitters and also better for smaller individual rights holders as well.

So with that in mind, I wanted to run through the way Google tries to address those challenges today in hopes that that might help inform the discussion. And I completely agree with
Josh that I don't mean at all to suggest that our
way is the way everyone should do it. I recognize,
I agree completely with Josh when he says that what
large service providers are capable of doing is very
different from what smaller service providers are doing.

And I also want to remind everyone that as I think was discussed in our very first meeting in
Washington DC at the PTO, there are by the copyright office's count more than 60,000 service providers who
have registered agents with the copyright office and
so let's all keep in mind as we talk about this that we are hearing from a very small minority of service providers. And I would venture that Google is in some ways the least representative of all of them.

So with that in mind, let me talk a bit about
how we handle this with an eye toward efficiency. I want to talk first about the web form, which many of you, I think many of you have used or know very well and talk a bit about that, and I also want to talk about the trusted submitter programs that we've established to, again, exactly with the idea of increasing efficiency, making it easier, cheaper,
more efficient to submit notices to us.

So let me start with the web form which we internally call troubleshooter form. The URL is on
the slide. Perhaps the easiest way to find it is
search in a search engine for Google DMCA. It's the
top result on Google and also on Bing, and I haven't
checked all the others, but I trust a search will
turn up this link quite reliably. The web form is
not just for DMCA notices.

And here I want to emphasize that users,
when they think, when they find contents that they
want to remove from Google, most of them are not
lawyers. Most of them do not discriminate in their
minds and say, "Okay. DMCA this is copyright,
defamation, trademark," whatever it might be. And
so as a result, the web form is intend to be a one-stop
shop for any removal request you might have. And it's
available in 43 languages. It's available obviously
around the clock.

The idea here is the form is designed to
reduced common submission errors and it's basically
like a structured interview where you answer questions
and tick boxes so that we can essentially channel you
to the right form, to the right process. So you don't
need to know when you start, "What I need to do is
submit a notice under Section 512 of Title 17." You
just need to know, if you know "I found my content
on Google property where it's not supposed to be
there," this form is intended to get you to the form
you need to get to, to get that addressed.

In addition, when you submit through the web
form, we have a submitter status dashboard for the
DMCA notices. This isn't true for all the others,
but for the DMCA notices, we create the ability for
you to see that we received your notice and to be
able to check and see if the notice has been acted
on.

So I think this was something that Sandra's
presentation and Corynne's presentation, I think
pointed toward as a helpful thing, feedback to the
submitters. So we try to do that. We also, the web
form also accepts DMCA counter notices, which we do
try to notify users when we receive takedowns, DMCA
takedowns for content that was uploaded by the user.
We attempt to notify the user when we receive a
DMCA notice. And in that, we include a link that
explains the counter notice process as well. But
the web form is another path to accomplish that.

So here is a screen shot of the web form.
Obviously any of you can take a look at it directly
on your own computers. As I described, sort of
starts with a "Which product did you find the
content on that you would like to remove?"
And after you answer, you know, a number of questions, the design is to try to basically get you to the right forum, answer the right questions. We then -- there's a link at the bottom which says use this forum and given the fact that in the above, "I've answered the questions to demonstrate that I have a copyright removal and et cetera et cetera," that will send you to the appropriate DMCA takedown forum.

So we think, you know, this is the product of a lot of experimentation and a lot of lessons that we learned from users who were trying to navigate the system, particularly individuals who are not legally sophisticated. And we are constantly trying to make this form more useful and more -- basically the idea is to improve the quality of the notices we received, both for the benefit of the submitters, who obviously want if possible to give us the information we need the first time so that they can get their content removed, but also on the part of the users whose content we are removing or in case of search, the sites out there whose content we would be removing from search results, to make sure that the notices we get are justified.

And to give you one example of a situation
where this comes up raises some of the difficult copyright questions, one of the interactive questions that you can come to in the course of submitting a copyright takedown is, is the content you want to remove a picture of you?

As you might imagine, or maybe as you might not imagine, a lot of people often misunderstand the way copyright law works with respect to photographs. Generally speaking, if it's a picture of you, the odds are pretty good you are not the copyright owner. The person who held the camera, there are exceptions. There's work for hire. I get all that, but this was an example of where we would often get takedown notices and it was unclear to us whether the user, or the submitter, I should say, had thought that through.

So we put in the question in the flow, and if you take into, yes, it's a picture of me, we have the ability to give you some information that says, "Do you understand that you know." Here is a link. It says a little bit more about, do you really mean it? Do you understand? Do you really own the copyright? Because if someone else took the photo and you had no control over it, probably you are not the copyright owner.

So that's one example of one of the ways in
the flow you can try to improve the quality and the efficiency of the system so there's less back and forthing and e-mail to engage in that discussion. So that, you know, the web form I think of as a real cardinal method for Google to try to help smaller content owners to navigate the process.

We receive an enormous number of notices as you can see on our transparency report for search, for example, and those notices come from every conceivable sort of copyright owner; large, small, medium. Every conceivable sort of copyrighted work; photographs, software, music, movies, television. You know, you name it. And so it is a challenge to get something that works well in 43 languages Angeles as well. We try to do that with the web form.

About four years ago, we started working as well on putting together a set of trusted submitter solutions. And here the goal was not so much to address the needs of the individual rights holder who was trying to submit one or ten or 50 notices, but rather larger submitters who were trying to submit thousands, tens of thousands, hundreds of thousands of notices.

And it was our suspicion that that community might have needs that were somewhat distinct from the
needs of the individual rights holders. And so we looked into that. We suspected that probably this was an 80/20 rule. That probably if we thought about it, 80 percent of the notices we got were probably from 20 percent of the submitters. It turns out we were wrong, but only wrong in that it's more like a 99/1 rule than an 80/20 rule and today the vast majority, well more than 90 percent of the notices we receive are from a very small numbering of submitters. On the order of less than a hundred submitters probably account for more than 90 percent of the notices we received. So we were, I think our supposition, our guess was right.

And so let me explain some of the tools we've built for -- to try to make that process more efficient. Let me go through just four examples. These are four trusted submitter programs that we've established. Many of you are members and users of those systems. So I apologize for what for you will be review. But just to give everyone else a sense, so one is the trusted copyright removal program that we have for search.

The way this works is it is basically the same web form that I just showed you. But it has some important changes that allow much faster more automated
submission. So for example, if you are part of the trusted submitter program, when you go to that web form, the version of that web form you will see will not have a Captcha on it. You will not have to tick the required, the statutorily required statements because you will done that when you applied.

And having done that in the application, it's clear that that applies to each of the subsequent submissions you make. Same thing, you don't have to fill out your contact information each time, don't have to do the digital signature each time because all of that is done once in the application and then is incorporated by reference.

We also allow, the web form normally has a field where you can paste in, you know, type in if you were to do that, God forbid, but I think most people paste in the URL's of the material that they believe is infringing. With respect to the trusted submitter program, we add a functionality to the web form that allows the submitter to upload a formatted text file in place of actually having to actually paste into the web form box itself.

There are also some higher daily safety limits. So as with any web form, the goal here is to make sure that an accident does not occur where
suddenly we get millions of URL's that get processed and then after the fact someone says, "Oops. That was a misconfiguration." And we are put in the position to back that out. So we have some safety limit on the web for the trusted submitter program. Those are much higher, and when the submitters come to us and say, "We need more," we accommodate those needs and increase those as necessary.

Obviously, you can kind of figure much of that out by looking at the transparency report data as well. And of course, we do have a status dashboard that as I already described, the company's web form, even the regular web form submissions, but also applies to trusted submitters so they are able to see did we get the notice? Have we acted on that notice? And a place for that.

So here is just a list of the actual fields in the TCRP form for those who are interested in again the technical standardization form. I won't run through all of these other than to focus on this one in particular which some looks very interesting in Corynne's presentation, she mentioned the importance of having someplace where you know what the work that is alleged to have been infringed, like what that is.
And we do have a field for that. We say where can we see an authorized example. And the goal here is in the event someone has to review to figure out, you said there was infringing content on this page, maybe you said infringing photograph on this page, well, maybe when we go to the page to evaluate the takedown, we find 15 photographs and we have no idea which photographs you allege is yours, and maybe one is used in a fashion that is a fair use and the others are not. These are -- this is what this field is intended to encourage. To give us a more sensible way.

Now, of course if it's a movie studio and we don't need to see a whole movie, it's enough to say it's the new Terminator movie or whatever it might be. That's all we need to figure out. Oh, I can look on the whole page and see that. But for certain categories of work, this can be very important for our purposes. We don't require this field. You can submit without completing that field. But it's a good example of something, again, that we feel has improved the process, made it easier to intelligently figure out whether or not the notice is valid or not.

So this is the formatting for the text file, again for those who are kind of interested in the
technical standard that we've set for this. Very simply replaces the last three fields of the web form. You can upload that content, and obviously this is designed to be something that machines can create in an automated fashion and submit in an automated fashion in a more efficient and inexpensive way.

Turning to YouTube, we have two trusted submitter programs. YouTube, that I think you know, one, the CVP program is what I think of as more of a trusted submitter program. That is designed to enable senders to send us takedown notices in an easy way using a very search like interface. The second is the content management system, or CMS. That really is part of a much more robust suite of tools that we offer to content ID partners. So it's a lot more than a DMCA takedown. It's also things like monetizing, and you know, figuring out do you want ads to run on this or not? It's part of a much bigger program, but it does include in it the ability to send us a takedown notice for content that might otherwise have been identified in that context.

So this is an example of a screen shot of how CVP looks. Basically it is just like a YouTube,
regular YouTube search except when you get the results, if you are a CVP member, you get a tick box, and if you tick the box and hit submit, that comes into our system as a DMCA takedown and makes things easier and quicker.

Notice how different this is, though, from the search mechanism. Different services have different needs in terms of takedowns. What we heard from YouTube rights holders with respect to YouTube is it would be great to have a quick way to be able to do the search and send the notice in a relatively easy way.

What we heard on the search side is we need a way to automate and send a large number of URL's in bulk. So the systems are designed differently in order to accommodate those different needs. This is what the CMS version looks like. If, for example, you had a content ID match on a video and you said you wanted to block that video and the user, the YouTube uploader, elected to dispute that content ID match, then as a right holder in CMS, you would have a option to do that dispute and you can do that quite easily in the set management tool by completing this box, ticking the box, clicking submit, and we treat that as a DMCA takedown notice.
So a third version, just again, to emphasize, this is not a one size fits all process even at Google, a third version, the trusted submitter program that we have on Blogger is a bulk submission tool that is put together as an XML based API. Let me emphasize some differences about Blogger.

When we get a DMCA takedown notice for a Blogger post, what we do, assuming the notice is valid and otherwise compliant, we will revert that Blogger post to draft. So it will disappear from the blog. It will not be publicly viewable or accessible, but the content will still be there for the user. The user can log in and see, we will notify the user in the dashboard there was a DMCA takedown for this particular post. User still has that post and it affords the user the opportunity to edit whatever the infringing content might be.

To take into example, lots of MP3 bloggers out there, many don't understand that the link is not authorized and in that case, they may have written many pages about the song that they included a link for. It would in our view be a shame if those pages of original content were to disappear when the user can resolve this problem when they get the notice. They'll see, "I need to delete that link. That link was
infringing, but I've still got the two pages I wrote about why I love the song."

So here we use an XML, API that allows a large, again, easy submission of a large amount of post IDs that we can take down. One other thing I want to mention, again, the differences between different products, one thing we heard from some rights holders were that there's transient content that would appear on Blogger that was infringing. And that's usually in context of a live streaming site. For example, a soccer game, a boxing match, something like that that was being live streamed from some other service where the user, the Blogger user, had posted an embed in the blog post. The actual stream was not hosted or transmitted by Google, but you could see it through this Blogger post.

And the problem we ran into was it's extremely hard to do DMCA in that context because by the time we had an opportunity to look at the page, the offending content was gone. So it was impossible to evaluate whether or not there had ever been infringing content on the page.

One hour, two hours, however long the event had been. So what we said to the copyright owners is let's figure out a method where you can
essentially upload to us a screen shot showing the
infringing content on the blog at the appropriate
time, and with that screen shot, we will believe --
we will take your word that that's what was there.
Then we were able to say, okay. Now we have what we
need to believe that this was there, this was
infringing. We can take appropriate steps. So we
added that to the API to allow that to occur as
well.

So on Picasa, we have the similar program,
essentially the same as we do for the search. Web
form based, all the other things I said about search
basically the same for Picasa. Here is the same, the
text format for that, and finally, the appendix is
included on the website. You can actually see the
XML schema that we use for Blogger. So that's sort
of a high level overview of how you submit DMCA
notices to Google. I want to emphasize, it's not
all the same. They were intended -- they were
designed to accommodate the different needs of
rights holders and also the platform, whether it's
YouTube, whether it's Search, whether it's Blogger,
the needs are slightly different. But there's a lot
that we can and have done to make it efficient.

MR. POGODA: If there are any questions or
specific comments.

EAST BAY RAY: East Bay Ray from Dead Kennedys, and I'm a small artist. And we got frustrated with the DMCA notice. We had someone take something down from YouTube and they did that frowny face and they stopped doing it, but they had a link that's showing the facts with our name. And I have like a list of, I don't know, here. I'm showing the effects, which is, I guess funded by the EFF and they are using law schools like Harvard, Stanford, Berkeley, George Washington.

They say here that, you know, while they encourage copyright owners, they want to do these false takedowns, which I believe is under 3 percent. But what they did is they put the name of my band on there with a link. They publicly shamed my band. You can't get this because they are the owners. Some guy is making money off it, which is, you know, just somebody making money off of my work is kind of like, what, shear cropping. I do the work and someone does the advertising, and that's not innovative.

But anyway, I just find it Orwellian that the chilling effect is supposed to be about free speech, but what it's doing is chilling me because
I'm a real copyright owner and I make my living off this and it's been decimated. The EFF is talking about these -- I'm sorry. I'm nervous. I've never done this before. Petitioning my government. But you know, this is Orwellian in my view because it's just like our income has been sucked away by other people making money and there's like no discussion of plagiarism. Somebody uploads one of my CD's. The whole CD. They are monetizing it making hundreds of thousands of dollars. It's plagiarism and that's not right and that's not free speech.

MR. POGODA: Any more specific questions in response to Fred's presentation? If not, in the interest of time, Ben Sheffner from the Motion Picture Association of America is next.

MR. SHEFFNER: Good afternoon. I'm Ben Sheffner, Vice President of legal affairs of the Motion Picture Association of America. I want to thank PTO and NTIA for holding of this multiple stakeholder forum. As many of you know, the MPAA represents the six major motion picture studios here in the US. For the record, that's 20th Century Fox, Sony Pictures, Paramount Pictures, Disney, Warner Brothers and NBC Universal.
And just as a -- I want to acknowledge my colleagues who are here, Maryanne Graham from the Motion Picture Association, who has been sort of the prime implementer and person in charge of the operations of the copyright alert system. We also have representatives here from Warner Brothers, Disney, Fox and Universal Studios, which I think demonstrates the importance of this issue to our members. And a lot of them work sort of in the trenches day-to-day with the noticing process to be able to fill in a lot of these sort of technical gaps that you will see from my presentation.

So I know that focus of today's forum is the standardizing notice forum, but before I dive into the specifics of that I want to set a little bit of context and the reason that we think standardizing forums is a good idea and would be helpful.

So just to give you a little bit of a flavor of the landscape which our members face. The volume of the infringement they face on the Internet is huge. As an example, in the one year period from March 2013 to February, 2014, our members collectively sent over 52 million DMCA notices. About 30 million of those were to non-UCG sites like cyber lockers and about 22 million to search engines. That actually
understates the total because it does not include things like UGC sites, for example, YouTube.

And just to put that number in a little bit more context, of those more than 52 million takedown notices, our members receive a grand total of eight counter notices. Not eight million. Not 800,000. But a grand total of eight. It would be be one thing if sending those 52 million plus notices actually had a lot of effect.

In other words, if they actually reduced the volume of infringing material on the Internet to a significant extent. The problem is that they don't. Infringing material, even when it's noticed pursuant to a valid DMCA notice is quickly reposted.

And just a couple of snapshots to illustrate this issue. Over the period of time from July 2013 to February 2014, 20th Century Fox sent over 33,000 DMCA notices on the movie Wolverine just to one particular cyber locker called Rapid Gator. That's an average of about 173 notices per day just on that one title just to that one cyber locker, and yet additional copies are still posted daily.

One additional example. In the period from May to October 2013, that's only about five months, Disney sent over 24,000 DMCA notices about the movie Iron
Man 3 to a cyber locker called Uploaded.net, more than 134 notices per day, and yet they were still posted daily.

So what should be the goal of this entire process? It's obviously to reduce infringement and to help promote an online environment that encourages both creativity and legitimate commerce, and the goal is something that I emphasized at the last forum back in Washington DC and that I'm going to emphasize throughout this process.

It's that sending lots of notices is not an end in itself. Sending lots of notices is necessary, but it's not sufficient. Efficiency is a good thing. I'm not against efficiency. Efficiency is better than inefficiency, but it's not enough. Notices must be effective in actually reducing the volume of infringement. Sending notices, again, I want to emphasize, it's just one means of reducing infringement and it's not enough. Standardizing the notice forum is valuable, but only to the extent that it results in faster and more permanent takedowns. Again, sending hundreds of millions of DMCA notices is not an end in itself if it doesn't actually reduce the volume of infringement.

So we do think that standardizing notice forms
is a valuable goal and it's one of the reasons that we have so many people from our studios here today. We think it actually can improve the processes. Again, can't solve the process on its own. It's not sufficient to solve the process, but it's probably necessary and helpful. We think it would reduce the burden on notice senders. We think it will reduce the burden on notice recipients. We think it will result in quicker sending and quicker processing of those notices. In many cases, it can give immediate feedback to the poster.

We think it's a good thing when if somebody tries to post infringing material that they get a notice that they've done so within a few minutes when they remember what they've done, rather than a few weeks later and also it will help enable faster takedowns of the infringing material once the notice has been received.

And I know that some other people have mentioned this in previous presentations. We think it will help improve, standardization will help improve measurement of the problem, facilitates analysis of the notice data and recognition of patterns, problems and progress and also importantly it helps identify repeat infringers.
The data that I quoted you on a couple slides ago about the tens of millions of notices that our members sent was actually quite difficult to compile because it's across so many different platforms and different of our members have different practices in their notice sending. But standardization across platforms across copyright owners will, in fact, help facilitate the collection of data like I cited a little while ago.

So the idea of standardized notice forums is not new. We have specific examples of it and we have specific examples of it where it works. I'm going to talk for just a couple of minutes about something that was developed over a decade ago by several our members, NBCU and Disney, and from the music side, Universal Music Group. And it stands for ACNS, which stands for Automated Copyright Notice System. This is a standardized machine-readable notice form, and importantly, not just that the forms are standardized, but that the communications protocol between the sender and the recipient is standardized as well.

This is now administered by movie labs which is a joint venture that does research on behalf of the motion picture studios. But
importantly, it's open source. It's available to anyone royalty free. It's available under a creative commons license. Anyone can look at it at www.ACNS.net, and in fact, we don't actually know how widely it's been deployed because anybody can go to the site, download the protocol and use it without telling us, without paying us, and we think that this is a good model as we are moving forward to show again that these things actually do work in practice.

ACNS was developed to work in all sorts of notice sending contexts, both in the 512(c) notice and takedown context as well as in the peer to peer context. As it happens, it's been mainly deployed in peer to peer, but again, it's available for use across all sorts of different platforms.

One of the main contexts in which it has been implemented is the copyright alert system, and for those of you who are not familiar, that is a standardized notice sending program where the major movie studios, record companies and ISPs have gotten together and through vendors, the copyright owners send notices to ISPs. The ISPs then inform the subscribers that a notice has been sent, and basically through various steps they are given educational notices about the
fact that they are using peer to peer to infringe in
the hope that they would get the message and stop
their infringing activities.

So behind the scenes, we are employing ACNS
very widely. So after the copyright vendors verify
the work, a notice is sent via XML directly from the
enforcement vendor to the ISP without additional
human involvement. And importantly, the subscriber
may receive notice of their alleged infringement
within minutes of it being detected. Again, we feel
that immediate feedback is very important. And
again, this data is fed directly into the databases which
help facilitate the analysis of the data that is being
produced through the copyright alert system.

Another example of the kind of standardization
that we think would be helpful is something that
Fred just talked about in greater detail, which is
YouTube's content verification program. There are
lots of similar programs across other sites; Blog
Spot, Justin TV, Ebay, Daily Motion, et cetera, and just to
focus on YouTube for a moment, we think it's very helpful.

And this kind of program is very helpful.
It allows copyright owners to submit multiple URL's
at once, and also importantly enables virtually instant
removal of the infringing content. Again, the ACNS
and YouTube system, these are just two examples of
standardization.

    Now, something like YouTube system, it's great
as well as the ones that have been implemented by
these other sites that I have listed below. But the
fact is that for major copyright owners like our
members who send millions and millions of notices,
it's quite a bit of a hassle to send one
standardized notice form to YouTube, another to E Bay,
another to Daily Motion, another to Drop Box, et
cetera, et cetera.

    We think a standardized forum and a
standardized communications protocol would be
important to implement across platform so that the
copyright owners would be able to fill and send
their notices more efficiently, and then also,
copyright owners both large and small would be
easily able to implement these standardized API's
and communications protocols so that even the little
guy could be able to implement these standardized
form. Thank you again to the PTO and the NTIA and,
I'd be happy to answer any questions.

    MR. MCNELIS: Brian McNelis. I am an
independent label operator in Los Angeles. I want
to thank the USPTO and I want to add a comment and I
had a question for you on your presentation. As an independent label, we are really small. We went on an exercise of sending out about 25,000 DMCA notices a year, about 75,000 notices over three years that were rather, you know, expensive for us to do. It's a costly process for a small independent stake holder, small record label, and you know, that only covered our top ten titles at any given time. We have a catalog of 300 titles and we just don't have the resources to pay to have somebody generating all these notices over time, and you know, if a small company like us generates 25,000 a year, you know, standardization is definitely going to be great for us to be able to send more, but those numbers were absolutely staggering and really kind of illustrates kind of the hopelessness that we feel in trying to protect our content in the light of such enormous, enormous numbers. We just can't keep up with the rapid reissuing of the content in this whack-a-mole game. We'd love to see something along the lines of stay down and takedown. But my question to you was, the systems that you have built, you know, big organizations like the MPAA, RIAA and all that, are these systems available to people like me,
small stakeholders? Is there an opportunity for
smaller stakeholders like myself to get access to
the systems you are building so that it's more
effective for us as well in this conversation?

Thank you.

MR. SHEFFNER: Sure. Well, in the specific
context of ACNS, the answer is absolutely yes. As I
mentioned, it's available. Anyone can literally go
to the website ACNS.net and download the
protocol. It's open source. It's royalty free.

You don't have to pay anything. And it's available
under our creative commons license. So the answer
is absolutely yes, and I think it's absolutely fair
as we are going forward, and hopefully the end
result of this will be some sort of agreement or
some best practices on standardized notices.
Obviously it has to take care of the little guy in
addition to the big guy.

But I would say even the big guy, you know,
yes. We represent big corporations and we can
afford to have enforcement programs. It would be one
thing if we sent those millions and millions of
notices and it actually did something. The problem
with sending the notices is it doesn't actually
solve the problem because the stuff gets reposted
right away. Again, efficiency is a good thing, but it's not sufficient.

And I realize again this initial meeting is focused on the idea of standardization. Standardization alone will not solve the whack a mole problem. And hopefully in future meetings, we will address things like takedown stay down, sets of best practices or agreements that will address that problem as well.

MR. MCNELIS: Thank you.

MR. POGODA: Finally, our final presentation. Mark McDevitt, Recording Industry Association of America.

MR. MCDEVITT: Thank you very much. I'm here with my co-presenter, Vicki Schechler who will be presenting. I work at the RIAA. My job is primarily to focus on our DMCA notice and takedown process. We have a staff of people that focus on nothing but investigating music piracy looking for content that is owned by other companies and then sending takedown notices on the content.

What we are finding right now is that there's a lack of standardization in the notice and takedown process. I think others have described, other providers, various providers, insist on very specific methods for the notice and takedown than the notices that we send. Different companies have
different processes. Even the same companies have
different processes. We have also seen from day-to-
day basis that forms get changed quite a bit, and I
think we'll show that in screen capture later where
one particular company changed the form a variety of
times, which made it hard for us to use our automated
systems to submit notices in an efficient process.

We do a lot of notices as I think everybody
is aware. The RIAA has been sending notices for a long
time to various service providers. You can see the
numbers here. They speak for themselves.

MS. SCHECHLER: That number 5.4 million in the
last four months or so is just to cyber lockers and linking sites.
We sent about the same amount to Google for search and
that doesn't include GGC or other types of service.

MR. MCDEVITT: Our member companies have roots
that go back almost a hundred years in many cases. They
own tens of thousands if not hundreds of thousands
of recordings. We only monitor for specific
recordings of theirs simply because we don't have
the bandwidth to focus on their entire catalogs. So
this limits what we can do, but there's obviously a
tremendous infringement problem on the Internet and we try
to focus on the recordings our members are most concerned about.

MS. SCHECHLER: So to give you a flavor of the
nature of the problem, there is a locker called For Share. For that site last year we sent over three quarters of a million notices to that site. And over 600 were for these two particular tracks. That goes to Ben's point before, and into the independent label's point before about the nature of the problem.

MR. MCDEVITT: The types of submissions that we have to undertake varies from service provider to service provider. There vary from web forms to uses of API. It wasn't too long ago that there were certain providers that would only accept notices via fax. And so we have to respond to those, and we have to send notices in very specific ways depending on the provider.

This is an example of the submission form that Twitter uses. Twitter, we've been sending notices to them on a relatively high volume for the past year or so, and when we started doing this, we noticed that this web form changed a number of times within about two months of us starting to send higher volume notices to Twitter, the web form changed several times. In insignificant ways.

In terms of the HTML behind the forms changed ways in terms of certain headings were changed, apparently for no apparent reason, but which caused our
automated systems to stop working for a time so that
we had to readjust them to respond to the changes of
the web form. The look and the functionality of the form
did not change, but certain tags within the HTML
form changed and we are not entirely sure why that
happened. But it made it very difficult for us to
submit these forms in an effective and efficient
way.

This is the Blogger DMCA bulk upload form Fred
mentioned earlier. We've also used this as Fred
mentioned.

MS. SCHECHLER: So this is the form. We
appreciate the fact that Google does offer these
trusted content provider tools to help us with these
notices, but then we see some different things. So for
example, with this Blogger form, it's not quite the
DMCA language that's here.

Again, for us, we are going to send the
notices, because that's our position to do so. But
we notice that there's some concerns. There's some
lack of standardization there, and then also we'll
show you a little later on some of the language that
we've already talked about in the past here today that
could inhibit some content owners from sending notices.

And I think we should talk about what is the
right balance there in terms of giving content owners
proper information when they can and should use the DMCA
notice and when you are trying to chill their engagement
of their rights. And we want to make it so that people
that want to counter notice know that they can know how
to do it, also know what their risks are if they go
ahead and do so.

MR. MCDEVITT: And the content verification
that several people have already about talked that YouTube
uses.

MS. SCHECHLER: Again, we appreciate that there
are a variety of tools. We'd like to see some more
harmonization between these tools.

MR. MCDEVITT: This is a screen Captcha from a
cyber locker called Media Fire. Media Fire uses a
form as a lot of other providers do, and they also
allow an API that allows us to submit infringements
to them. We have seen on Media Fire particular that
the amount of visual acuity that we've seen has
dropped dramatically since they implemented audio
fingerprinting.

Formerly, Media Fire was one of the most
common cyber lockers that we saw on a day-to-day basis
offering infringing copies of our
members' recordings. About a year and a half, two
years ago, they publicly announced they'd implemented fingerprinting through the use of audio magic, and almost immediately, we saw the number of infringements on this service drop.

There are still a handful that show up here and there, but the volume has dropped significantly, and in fact, they are no longer anywhere approaching the top of our list in terms of list that we send to cyber lockers.

MS. SCHECHLER: The last bit of the presentation to give you a flavor of the range of different types of forms and processes, various 512(c) providers try to use. And now we are moving over to 512(d). So as Fred mentioned, Google offers two different methods to sending notices for search. We appreciate that.

Here is the language that I mentioned earlier, notifying a copyright owner of some concerns that Google wants you to know about beforehand. Again, not required by the DMCA to have this language here. The question is whether it's neutral language. Whether it's accurate or necessary language. And I would love to have that discussion with you on both sides of the house as we move forward with this process.

MR. MCDEVITT: This is an example of actually
one of the submissions we've made to Google for trusted provider
program for removal of search results. This is in
this case a number of results for Maroon 5. The
important thing about this for us that we've seen on
an operational basis is that the limitations that are
imposed on the formatting of this form are quite
significant for us. And I think if you look at the
transparency report, I think you will see that the RIAA is
among the top transmitters to Google for removal of
results from search.

And as a result, we have to go through quite
a bit of effort to try to slice and dice this data to
make it fit into the limitations that Google has imposed. We
can submit up to 60 of these one megabyte files to
remove these results. The requirement that there may
only be a thousand individual works referenced in this
particular file. Up to 10,000 URL's for each file.
So it requires us to kind of chop the data up in variety of
creative ways. Fortunately our developers have
been able to do it. But it could be a lot easier if we
didn't have to do that. If we could simply send in a
large file or some smaller, but maybe not up to 60 for
each of our submissions.

This is an example of what we have to submit
with Bing. Perhaps not surprisingly, it's an Excel
document. It's an Excel document and it requires again
a different form. Basically some of the same
information. The artist name, song title
and the URL of the infringement. But it is completely
different from what we submit to Google and it's
obviously different from what we submit to other
providers.

MS. SCHECHLER: Then we decided to go ahead and
show you what we are seeing on the app side as well.
We do submit takedown notices for apps that we
believe facilitate infringement. So here is the
eexample from Google. They, again, we appreciate
very much they have the web form and they have the
bulk tool for submitting takedown of apps.

But again there's some differences. Can we
have some more harmonization with that? And thinking
about the language and what language is neutral to make
sure that the users of the system understands their
rights and responsibilities that they have within
the systems. Compare that with Apple, completely
different approach. They throw it to the user and
the app developer to work it out themselves. Or
with Microsoft, which goes farther than just warning
you about your rights, responsibilities and risks in
submitting an app, but also ask you to, I think
it's, that you understand that this could be a material and
false misrepresentation.

So going above and beyond just informing
you about that, but asking to you certify and to sign
something. So Shira and John had asked not only about
the problems, but also about the successes. And
thinking about the successes, we want to talk to you
about the ACNS program which you heard Ben talk about
earlier which is used for P-2-P notices. How long have we
been using this?


MS. SCHECHLER: So we've been using this since
2005. To our knowledge, at least 600 universities
accept this type of notice with respect to their
networks and most of the commercial ISP's of mixed use. As Ben
mentioned, it's available on this website and it's
free to use. Is that a possible solution for some
harmonization? We understand and appreciate that
there are lots of smaller copyright owners that
aren't going to go in bulk in sending notices and
that they should have a simplified system to use.

So our suggestion is there should be a two-
prong approach. One, to look at the small to medium
enterprise if you will, and individual user, and
then one for the bulk users. And we have got to
think about two approaches and think about
standardization in both those approaches. We agree
with Corynne and the Media Rights lady this morning,
that we need to think about the counter notice side
as well, and making sure that it's simplified,
streamline and that everyone can get the information
that they need to know, when to submit a notice and
also when to submit a counter notice. Are there
other bulk solutions that are available? We'd be
very interested in exploring that as well.

As Ben mentioned, efficiency is only part
of the solution. Our goal throughout this entire
process, at least from RIAA's perspective, is to deter
infringing behavior and let the users know about the
wealth of legitimate options that are available today
to them. So we'd be very interested in further
discussions on what other means and methods are
available to try to solve this problem. Thank you.
Do we have any questions? I think it might be time
for coffee.

MR. POGODA: Vicki, I was just about to say. I
have it in my notes. First, thank you everyone for
your presentations. Very insightful for all the
effort you put into them. Thank you everyone for
their questions. I agree. I think there's
consensus that we need a break after two plus hours of listening to everyone, most especially our court reporter up front, who might need a rest.

So why don't we have a little bit of an earlier break. I think it's about 3:30. we will shoot to have everyone back in 4:00. We can continue the open discussion of what took place here and I think that gives plenty of time and discussion to everyone in the working group. So thank you everyone and let's plan to reconvene at 4:00 and get into the discussion a little more.

(A recess was taken.)

MR. POGODA: So thank you everyone for coming back after coffee and getting back in a timely fashion. I just want to remind everyone of our purpose here today, which is to identify some issues for the working group, to form that working group, and although all views are encouraged, the purpose might not necessarily be to respond to everything you might potentially disagree with.

So I think we should open up the floor now for a discussion of some of the technical presentations that we heard earlier today, that we heard a lot of interesting ideas and proposals in them, but I would, again, just remind everyone that the focus of any
comments, any input you give at this point should be constructive and aimed at identifying specific issues for the working group and maybe not just debate over potentially competing views on issues

So with that as background, I'll open up the floor to discussion on identifying some issues and some potential work for the working group. And if anyone -- yes, sir. Please do. Again, same rules in terms of so we can identify you for the record, the transcript, the webcast. If folks want to form a line to my right so that they can have a chance to speak, that will be fine, and please, everyone just identify names and affiliation. Thank you.

MR. BRADLEY: Mike Bradley. I'm a member of the National Writer's Union, which is a union of freelance writers in all genres. We are affiliated with the UAW. Our grievance officers and our members have used the DMCA, mostly for articles and extracts. We've had mixed results, of course. Most have replied positively, most ISPs, even in foreign countries. When someone, some ISP doesn't reply, we are basically stuck because of the cost of lawsuits.

So one issue is finding alternative ways to enforce through dialogue, good idea, the copyright small claims court, which is an idea that's floating
and taking some reality, and other similar measures.

Enforcement is a key issue for us because of having
to rely on federal lawsuits, and ISPs can easily
ignore that. Takedown notices can easily be
ignored. So I would hope that the working group
gives some attention to that. I personally think it
needs to come from the federal government and not
from the industry or not from any other self
interested parties.

Let's see. And I should say that the union
supports other organizations defending copyright
holders. Let's see. I've got some random
observations. We believe that standardized, of
course. Save the data on the ISP and make it
surgical so that someone filing a claim or a counter
claim can see previous history and identify repeat
offenders.

Let's see. ISPs, I think, should also,
every time they get a claim, search that database, I
think repeat offenders should have more serious
penalties. Even to the point of stripping them of
their domain, let alone taking down the web page or
the offending material since it becomes clear that
they are in the business of offending and
infringing.
Let's see. The final note. I'm very concerned about chilling, the chilling effect that the warning's given to claims holders about fair use and other legal issues that have a chilling effect on defending the copyright, and I would hope people will think about that when they think about standardizing of the forms. Thank you.

MS. ROSENBLATT: Betsy Rosenblatt for the Organization for Transformative Works. The Organization for Transformative Works is a 501(c)(3) nonprofit whose mission is to protect and preserve noncommercial fan works, most of which would fall into the category of remix. The Organization for Transformative Works also operates a nonprofit volunteer operated website called the Archive of Our Own, which is a host of noncommercial transformative fan fiction, has over 300,000 registered users, and receives almost 50 million page views per week.

And although those numbers seem large, we are actually among the smallest entities in the room, maybe the smallest entity in the room that hosts works. And I'm observing in this conversation a distance between the very real need to and interest in combatting piracy and the value of noncommercial transformative works. And they are very different
concerns that are in some ways disconnected from each other in remedy, but can affect each other. When one tries to serve one, one can have unintended consequences when it comes to the other.

And I want to make sure that as these discussions go forward, we keep in mind that these don't necessarily have to be inconsistent and we should be aware of how to make them consistent.

The OTW is unusual in that we represent both transformative creators and the small ISP in the sense that we are a host of sites and our mission is to protect transformative creators. And one set of voices that we haven't heard that much in this room today is the transformative creator whose work is taken down even though it is a fair use.

And it is -- we've submitted green paper responses, but not to the standardization situation, which is why I wanted to talk now. It's hard to overstate the disconnect between individual users and the DMCA process in this context. We hear frequently from fans who are terrified to post their noncommercial transformative remix fan works because they are afraid that they'll, as one wrote to us, get kicked off the Internet if I post my My Little Pony story. That's the situation we pride ourselves in as a
resource for fans. And they are even more frightened when they receive a takedown notice, which because of the nature of the work they are making is almost certain to be a false positive caught by an automated system. And we are keenly aware that the operators of these automated systems don't want to be catching these here, but they are deeply frightening for the recipients and it is often difficult to tell from them what work is alleged to be infringed, and as some have noted in a remix context, often small pieces of several works are incorporated, quoted from, discussed, and in that context, it's very difficult to know who even to engage with if you want to have a conversation about whether something is fair use.

And this has a disproportionate effect on groups of people who are underserved by the system in other ways. The most frightened are the young women, the disabled, the people of color and the poor, who already feel like they have been ignored by this system and fear standing up against a DMCA notice that has been unfairly given.

So with that in mind, a few principles I think may be helpful to think about as we go forward. And these -- I think as we've seen, some of these are in
dispute. We see different stakeholders already having different opinions about these. We haven't necessarily heard about them from this standpoint.

Posting regulations should, when you are making someone promise that they have the right to post what they are posting, that right should include that they might be posting something that's fair use, not just something that they own, but something that they are authorized by law to post for other reasons than ownership.

And as we are figuring out what a takedown procedure should be, we should require as many do a good faith belief that the work is not authorized by law, including by fair use, and explain what that means for people who might not know in both contexts. We should be wary of putting too much trust in automated systems as we go forward in this process because automated systems are the things that create these false positives.

Human beings looking at these works would know instantly that they are not infringing. This is somebody who's used a title of one book as the title for their fan work about another book. These are not infringing uses. And a person with judgment would observe that immediately. I'm not talking about
close cases here. Notices to users that they are having a work taken down should identify procedures for counter notice in as unintimidating a way as possible.

And although that doesn't solve the whole problem, counter notice is always risky. It is -- we get calls all time or e-mails all the time from people who are very frightened to engage in a process that sounds like they are opening themselves up to even more risk than they are.

Putting on my ISP host hat for a moment, as among the smallest of the SMEs in the room, small entities have unique concerns when it comes to making standardized processes, and our archive, for example, is entirely volunteer run and extremely small. And so when we get a notice that something on our site is infringing, what we get, we don't have a big forum with a lot of rigmarole. We have an e-mail and someone has to look at the e-mail and look at the work and see if it is, in fact, a work that is implicated. And through that process, we, I think have only found maybe one, maybe two actual infringing works. And so the burden on the ISP is something that should be considered for the non-Googles of the world. Maybe even for the Googles
of the world. I don't want to exclude them, but
they have a very different resource set than the
nonprofit.

Our posters are pseudonymous. It's
crucial that they be able to remain so throughout
the process. And if we are thinking of implementing
a more automated process, we have to take into
account the person power that will take on both
ends. We can't, for example, move quickly. And we
should also think about how to insure that the
system prevents false positives when possible. We
concur with several of the other speakers about
various failure points and the possibility of a
carve-out for derivative transformative works is
something that I think to be explored further.

Thanks very much.

MS. SCOFIELD: Hi. My name is Brianna Scofield.

I am from UC Berkeley School of Law. I just want
to offer an appreciation for the approach here. As
Shira mentioned, there's been a real effort to
develop an understanding of the special challenges
that face all sorts of players in the system. I'm
part of a team that's working between UC Berkeley
and Columbia University to really study notice and
takedown procedures as they affect all of these
players in the system.

We know that there's a need for a greater understanding of the landscape of 512 processes, and we have been developing a process of deep surveying and interviewing of online service providers and we've purposely included a wide variety of online service providers; small, medium, large players; connectivity search platform providers, and we are in the midst of creating a preliminary report based on what we've discussed with these players.

We'd like to support this process in whatever way we can and contribute data or other bits of information from all these players, especially as we can help the working group. One thing that we have noted so far is that the vast majority of the service providers that we've been speaking to don't currently have standardized forms. That's been mentioned already today. But a lot of providers are concerned with the costly implementation of new standards. They voiced strong concerns about insurmountable costs.

We'd like to further explore this as to realities to form notices. It might be, we don't yet know if form notices specifically are realistic for a wide variety of service providers to implement, and we know that there's a diversity and availability
to meet the costs and also a diversity of the 
considerations that each platform takes with respect 
to its individual offerings and users.

So I am here today just to say that the UC 
Berkeley and the Columbia team is happy to follow up 
with online service providers in further interviews 
in any way that will support the working group and 
the resource to the working group with specific 
questions that the working group has as they relate 
to standardization.

MR. MORRIS: Brianna, before you get away, let 
me just ask -- thank you very much for kind of 
stepping forward. Is your effort student driven, 
and thus, since we are about to be entering into a 
summer, you know, period, I mean, is your ability to 
participate effected by the summer?

MS. SCOFIELD: Absolutely not. It's not student 
driven. We have teams of TA's that help with 
various specific research questions, but Joe 
Caraganes at the American Assembly and Jennifer 
Urban at UC Berkeley, myself, I'm a research and 
policy fellow. I'm there permanently, and Kristoff 
Grosby at the American Assembly are full time staff 
ready to help.

MR. MORRIS: Thanks.
MS. PERLMUTTER: While we are waiting for whoever is next interested in taking the floor, just a couple of thoughts to put on the table at this point in time. First of all, just as what might be a reminder, might be a reassurance, might be a concern, just to say again that we are not in this particular process looking to regulate in any way. So what we are trying to do is to find ways that we can all work together to improve the existing notice and takedown system.

And that means that there are some very important arguments that people in this room have raised and may want to continue raising about potential actions that would require changes to the law that we are not going to be able to deal with in this context. And this isn't the forum that we will grapple with those, but I don't want to suggest that we are ignoring them or saying they are not important.

That's just not what this particular exercise is aimed at. Also to say that as described in the green paper on the various public notices we've issued since then after we've read the public comments we've received, we are aware that there are many other issues besides standardization and many...
of them may overlap a bit with standardization. We've heard allusions to them during the course of the afternoon, and I guess the best way to think of it is we are trying to address things one at a time and not bite off more than we can chew and get bogged down by the complexity of all of the topics.

So what we would really like to do this afternoon is to make sure we come up with a list of issues that the working group can start to address that are first of all within the mandate for this multistakeholder forum, which is improving the operation of the notice and takedown system without the need for legislation, and second, within the scope of our agreed initial topic of standardization, while recognizing there aren't completely bright lines and there might be some overlap, and also to point out as long as we are talking about the resources available to the working group and the forum as a whole, just to again remind people or tell people that weren't here for the first meeting that the PTO's office of our chief economist is going to be attending these meetings and is available to help with looking at data in any way to that might be useful and we have Amanda Fila with that office here to assist us.
I don't want to in any way interrupt or
cut off the discussion, but there's a plethora of
material and ideas and themes that have been put out
in the various presentations so far, and I'll just
list a few different things that I've heard that
maybe you might want to draw on in making
suggestions for topics or thinking about how to
organize where the working group starts.

And so in particular, when we are looking
at standardized formats, there's been discussion about
the relative impact on large versus small entities or
individuals. There's the question of
standardization across different types of services,
whether it's search or different kinds of hosting
services or any of the others that exist.
Standardization across different ISPs that may be
providing similar services or be of a similar size.
Issues about costs.

Issues about certainty on the one hand from
getting a lot of detailed information versus the burden
of having to provide that information, and then issues
that have been raised I think on both sides about
potential chilling impact, both on individual creators
when they are looking to make a claim and also the
chilling impact on users and what are some ways to
address that on both sides so that we don't have
inappropriate chills, shall we put it that way.

And then we've had a lot of discussion on
automated systems and maybe the relationship between
the use of the benefits from automated systems and
how automated systems can or cannot deal with the
potential fair use claims. And then my final
thought as I look over notes I've jotted is
questions about notices and counter notices and the
extent to which both of them need to be, the use of
both need help in a way, need greater clarity and
transparency from both sides, and clarity,
transparency and efforts to guard against abuse.
And here I realize I might be touching on a topic
that is often one of the overlapping topics.

So I throw these things out for you and
hope that we can start having also a bit of a
discussion of how do we formulate some issues for
the working group to start with, again emphasizing
that all we want at this point is to have a working
group, start having discussions about what can and
can't be done, how it would work and what the impact
would be without reaching conclusions, but having
that discussion at a very practical level, and then
letting this larger group listen to the fruit of
that discussion and see where we want to go from there.

And again, also understanding that between one meeting and another one 6 weeks later, we are not going to have solutions to all these questions. But it would be nice if we could figure out how to formulate them in a way to permit progress to begin to be made. So I'll be quiet and open the floor to all of you.

MS. GRANT: Maryanne Grant from the Motion Picture Association. She actually addressed things that Sherry was just talking about. We've mentioned today quite a lot of times the ACNS system, and I thought it might help to use that as an example for some of the things that might be technically important for this kind of an approach of which then go against and directly to what Ben was talking about, it needs to be efficient and effective. So old ACNS was basically a notice sent to somebody like a e-mail that would arrive in somebody's e-mail box and be opened and looked at manually and dealt with manually. And that is still supported by the new ACNS, but the new ACNS is four different kinds of messages.

And the first one is a notice that goes to
somebody like had a website or an ISP. It goes to
something. The second one is a response from that
recipient that says, "I got your notice." So you
should know immediately through an automated system
ideally the thing got received, and it was okay, and
the message was okay. The third one says, "What
happened to my notice? What happened to my notice one,
two, three, four, five," or "What happened to the
notices I sent you last month," for example, and the
fourth one is the reply to that saying, "Here is what
happened."

So if, you know, you think about that, that
actually gives the sender a complete life cycle as to
what happened with their stuff and also gives the
opportunity for the recipient to reply in an automated
way or in a manual way, which again is still supported
by the system. So that's one thing I think it was
important. We don't want to give the impression
it's only about sending notices to people. It's
also about getting a response back.

A second thing which I think is important to
mention is that the notices that go in the ACNS
system contain a summary of the evidence that
actually proves that this is an infringement, which
in the case of peer to peer would be a cash value or
something like that. So it gives an opportunity to
actually tell the recipient, "This is I think why I
think this is infringing and for them to take the work out,"
and figure it out for themselves because it's a standard
way of reporting that information. So I think
that's another important piece.

The third piece that it is again to be intended
for automated systems so you can do it at scale, but
again, if you want to do the onesie twosie thing for
the smaller rights holder, it's perfectly
possible to do that and still use the right type
of format which is an input form that you would use for
e-mail or something like that.

I think the fourth thing which is important is
about verification. I think if we can be sure in
the message itself that this thing has been verified
and there's a case that the person is making and the
claimant is making, that is something I think which
should be comforting to both sides.

First of all, the claimant has to make the
case, and secondly, the person who receives it has to
know the case has been made. And so those are some key
points that I wanted to mention about ACNS, and we can
go into more detail and see how something like that
might work in this particular situation and provide
a sort of mechanism that would help both sides of the
equation and drive us to the efficiency side so that
we can then focus more quickly on the effectiveness
side of it, too.

MR. HALPERT: Jim Halpert. One thing you may
not know is that the ACNS is not actually a 512 notice and takedown
system. It's an accommodation that a variety of service
providers and universities have made out of the good
faith to accommodate concerns about peer to peer
infringement, which are not properly the subject of
512(c) notices, but may nonetheless offer a useful
model to apply in the 512(c) context.

I want to raise one consideration. I think
that there are a number of ideas, for example, some
of the behaviors that Sandra's presentation
described people evading notices, ideas about
standardizing notices, figuring out perhaps certain
areas which are not appropriate for standardized
notices. Perhaps remixes is an example. There are
some that are more controversial.

I think there's a good deal that we can
work on in a consensus way here. There's an important
additional consideration for the Internet service
providers and data center operators who are big. They
are not like Deviant Art or others, but in the world
of the Internet, there's a lot of hosting that happens in various different levels, and you have entities that control data centers, for example, that can't do individualized takedowns.

They get millions of notices from copyright trolls and threats to be sued, noticed about content that should properly be directed to the actual website operator. They also get millions of notices about peer-to-peer infringement outside of the copyright alert system. And it is important to those sorts of companies that this standardized notice include some additional statement under penalty of perjury that the notice is actually properly addressed through this system, because these sorts of behaviors need to stop.

They are not what the people in this room are engaged in, and I think there's pretty broad agreement by big users of the systems that these actually can slow down responses as well as by small providers as well, and in some cases, the entire copyright complaint and systems for big ISPs can be crashed by these trolls who get frustrated and send enormous numbers of notices in. And if this is truly to benefit all sides, I think we need to address that issue as well.

I know, Ben, when you gave your first
presentation at the first meeting, you said
this is a side issue. This is a total side issue
from the perspective of what the MPAA is doing in
enforcement, but actually operationally is
burdensome and diverts resources from responding to
real legitimate takedown requests and other sorts of
complaints about user behavior that big ISPs
receive.

So I'd like to, if possible, amend your
list, Shira, to suggest that the forum also be able
to take account of troll behavior or deter troll
behavior. And with that, I think we can see some
genuine enthusiasm by some of the big ISPs and data
center operators and working constructively for win
wins and other players in this environment.

MS. PERLMUTTER: How are you defining what is
troll behavior? And as part of that question, it's
a question we've been discussing in the patent
context for a while, and I guess I ask that partly
because my understanding of what a lot of the issues
were with what's being called copyright troll
behavior has to do with the subpoena to get the
identity of the alleged infringer, which is not
really notice and takedown issue, or just threatens
to bring lawsuits, which also isn't necessarily
notice and takedown. So I want to make sure.

MR. HALPERT: It's typically a request to get the identity of users in order to sue them, and the entities that do this have very particular business models that involve sending threatening messages and trying to get users to respond to those. The volume of the request that ISPs receive from these folks is enormous. And the goal is to be able to file as many lawsuits as possible. Some of these trolls don't have the rights that they are asserting in findings by magistrate judges in a number of cases and this is a business model that really operates on fear and intimidation.

MS. PERLMUTTER: And I understand the concern. I guess the question is I'm still trying to understand exactly how it relates to notice and takedown.

MR. HALPERT: These entities are sending purported 512(c) notices that are really designed to obtain to provide a predicate to obtain the identity of a peer to peer or allegedly a peer to peer infringing user and they submit the 512(c) notice as the gateway then to be able to go to court because you need to supply that as to part of your 512(h) subpoena.
There are also others who want takedowns and aim enormous volumes of these notices at data center operators who respond that they can't do anything about the notice, and they nonetheless continue to receive hundreds and thousands or millions of notices from these entities. And at some point, that's a waste of resources because each of these has to be reviewed and it slows down the response.

For example, the complaint about the material that's just reappeared. I would like to prioritize responses to recalcitrant repeat infringers, but they get all these other notices that they have to process. So if it's possible to address that issue not directly, but indirectly through the form, I think that will be a helpful thing to facilitate agreement and quicker responses.

MR. WATTLES: So you could put together a list of trusted people?

MR. HALPERT: I'm not proposing that. One could do that, I guess.

MR. WATTLES: Why not? I mean, these systems work very well and efficiently if you have trusted people.

MS. PERLMUTTER: I think we need everyone to be
on the mic so that it's on the record, and also, one other, again, caution is given the time we have and what we are trying to accomplish here, rather than discussing what solutions should be, if we can focus a little more on identifying what the issue would be on the table to move forward, thank you. There's so much to talk about.

    MR. HALPERT: Thank you for accommodating this request to add one more issue to what's a good list for us to chew on.

    MS. PERLMUTTER: Let's open to other comments if there are those who have.

    MR. VON LOHMAN: For those of you who are listening in, I would add, I would propose two concrete measures for the working group to potentially take up. Based on what I have heard everyone discuss today and what I think, I think I hear as some common ground. And so it seems to me that we've heard a number of people talk about the value of standard notices, particularly the things that can be submitted through web form or other somewhat standardized technical channels. So I think it makes sense to have the working group explore what I would consider to be basically a menu of options.
I think Brianna has mentioned that many, probably a majority, probably a vast majority of 60,000 service providers out there currently don't have web forms or other standard technical approaches, and I fully expect as time goes on more and more of them will. Right? Because as volumes go up, as sites grow larger, it's only a matter of time before the DMCA traffic gets to a point where you really don't want to be getting notices by fax and e-mail because that will destroy your resources very quickly without actually getting the issues solved.

So I'm reminded a little bit of the rule in the open source communities where there are a number of open source items you can choose from, but the one thing open source licensing will agree on, please, God, whatever you do is don't write a new open source license. Choose from the menu of options that have basically already become widely understood.

I think there's some efficiency to be gained with an approach, like that if we could develop a menu of option based on some of the best practices that different service providers have already engineered, that would include smaller service providers as well as larger ones. So that
as the 60,000 plus service providers reach the point in their maturity that we really should do something to automate or make more sufficient our process, what should we do? They won't invent a new form that's completely different than the forms that the rights holders have already optimized into their system.

So that I think that is a concrete reachable goal for a working group to develop; a menu of options like that based on the best practices that many of the providers in this room have developed, and of course we want to solicit the views of smaller service providers who are not able to join us here.

The second thing I would suggest as a concrete goal for the working group in this area is figuring out how we can get benefits of automated scalable enforcement tools into the hands of individual and smaller rights holders. And I think we need to think about, we need to get more information about what obstacles are standing between us and that goal. I don't know what it is. Maybe the enforcement vendors are worried that the volume is not big enough, and so maybe they don't want to be. It's inefficient for them to find clients who don't
have enough volume. If that's the case, maybe we
can talk about some way to aggregating volume so
that it is worth it for the vendors to be in these
businesses.

Maybe there are. I think it was -- there
was a question asked earlier today is there any way
that the existing systems that have been developed by
MPAA or RIAA made available or made useful for
smaller submitters from the service providers point of
view? That would be great because the larger
submitters already have a lot of these systems that
make it more sufficient for both sides. It would be
great if we could let smaller creators get benefit
of that. So I would add that to the list of something
concrete that the working group can explore. Can we
make those tools available? If not, what are the
actual obstacles between us and that goal?

MS. SCHECHLER: To Fred's point, I think it
would be great if we could talk about what kinds of
tools, API's, et cetera could use on both sides.
We've heard there are some small ISPs that are also
looking for tools. I think that would be a good
topic of conversation in working groups.

Jim also made me think about should we
have conversations or discussions about the
different types of service providers that claim
512 status? And perhaps not for the initial
conversation on standardization, but when you look
at what Sandra showed us for that service provider
and all those gazillion pop ups and how hard it was
to get there, I don't know the site, but my guess
is that they are not the sites that 512(c) was
intended to protect. So perhaps we can have some of
those conversations if they led to those,
great. But at least it will bring us to a common
understanding of who's protected.

MR. HALPERT: Is there a mic that I can use?
I think we can give some thought to best practices
about presentation of the notice about, of the
copyright notice that's typically on most service
providers' front web page rather than buried further
in, and we can give some thought to that at least as
a best practice and it would be, for a point that
somebody made earlier, it may have been
Deviant Art, those best practices can become
standards; that we would keep them at a high level
and talk about when an anonymous service provider
who was using the system like Mike and that would
help to separate some of the sheep from the goats,
service providers who really aren't serious about
this system.

MS. AISTARS: Following up. Sandra Aistars from the Copyright Alliance. Following on some of the comments that folks have recently been making, I saw certain themes coming up in all of our presentations regardless of which perspective we were representing. And to me, the ones that came through loudly throughout the day were the importance of educating people of their responsibilities, whether that's the artists sending the takedown notice or the initial uploader of the work.

The importance of having neutral non-intimidating non-stigmatizing language in various parts of the process so that you are not chilling people in their expression, whether it's an artist or whether it's a mash up artist being afraid to send a counter notice. Different types of claims exist, and there may be need to treat different types of claims differently in a standardized process. An interest in facilitating flow in communication while still maintaining privacy between the parties; an interest in controlling costs; making plugins easy to implement by sites, making them easy to find and use for notice senders,
making the whole process standard and predictable
and as neutral as possible.

So to me, some of the issues that
seems to suggest we could find common ground on are
to maybe look at the whole process as, you know,
step-by-step process from upload to notice to counter
notice to, you know, announcement that the work has
been removed from various databases, that would allow
you to track the work or track the notice, you know,
have some information about the life cycle of the work
on a particular site and see what can be standardized
throughout that life cycle, taking into account all
of these themes that we've identified throughout the
day from our, you know, particular perspectives as
participants in the ecosystem here.

To me, it did seem to make sense to perhaps
take a look at issues raised by Transformative Works
separately from issues raised by completely, you know,
clearly infringing works where you uploaded the entire
file and there's really no question whether it's
infringing or not infringing, because it's the
entire work.

And, finally, I agree and appreciate
Fred's comments and suggestion that we find some way
to help smaller entities on the user side also take
advantage of the trusted sender process. And that's something we'd be interested in working towards with all of you.

MR. SHEFFNER: Ben Sheffner from the MPAA. Three brief points. The first is a correction. In my presentation earlier, I cited statistics about the 52 million plus takedown notices and I mentioned there were corresponding to those 52 million were eight counter notices. I'm actually informed that corresponded to an earlier number. The actual total for those 52 million was 10 counter notices. Since this is being recorded and transcribed, I want to go correct the record.

The second was about, there's been several comments about how SMEs smaller, medium-sized enterprises can participate in some of these automated systems and one thing that I neglected to mention before that I should have, and again, this isn't about notice and takedown, but about a closely analogous system, I mentioned that it is primarily a project of the major motion picture studios, record labels and ISPs.

It also has participation by independent artists on both the movie and the music side through their respective trade associations. So on the
movie and television side, the Independent Film and Television Alliance, IFTA participates. On the music side, A2IM, which represents independent artists and records participates through the auspices of the RIAA. So while individuals themselves might have some trouble using some of these automated systems, they often band together through their own respective organizations and can better participate in some of these automated systems.

And, lastly, and I don't mean to be a downer because again, we do fully support this process, but I do think it's fair to point out some of the limits of simply improving the DMCA process. I take it that everyone who submitted presentations today and who bothered to show up here and sit through all the presentations this afternoon are acting in good faith whether it's from the copyright owner perspective or the ISP perspective.

But there's lots of people that aren't in the room. The trolls, the copyright trolls that Jim Halpert was just talking about, they didn't bother to show up. The representatives of the cyber lockers whose business model is totally dependent on piracy, they have no interest in showing up because they have no interest in improving the DMCA process.
If the DMCA process was improved to the extent that it was actually effective, not merely efficient, they wouldn't have a business model so again, we support these efforts, but I do think it's necessary to recognize that again this is not by itself going to solve the piracy problem. It's going to take steps beyond simply making the DMCA process more efficient. Thank you.

MS. MCSHERRY: I just want to say I've been in the room with the copyright trolls, and I, for one, am very happy they are not here.

So I just want to introduce, this is Corynne McSherry from the Electronic Frontier Foundation. I want to make three points. One is I want to introduce a couple notes of caution. So I'm hearing a lot of appreciation for automated tools and trying to spread the reach of automated tools, and automated tools can be fine when they are used appropriately.

But I think we need to be cautious in our embrace of them because automated tools are also very easy to automatically abuse to takedown content improperly. We see this over and over with Content ID. Again, I'm not saying we need to reject it at this point, but I think we need to keep that note of caution and
keep that cautious approach as we go forward.

The other thing I would like to suggest is that we make very clear in whatever the outcome of this, when we actually get to the point of best practices, imagine, that going forward, that we make abundantly clear that just because you don't comply with the best practices does not mean you are a bad guy. We don't because I think commenters said this earlier, what can happen is that once you formulate best practices, if you happen to deviate from them, that can end up being used against you in a court of public opinion or a court of law. So I think we want to be very clear that that's not how this is going to proceed.

And finally, I think that, while I appreciate that we are talking here about a particular problem and a particular issue, and so this isn't going to be the forum to solve piracy. It's also not going to be the forum to solve takedown abuse. But with respect to the latter, I think that it would be helpful if the discussions that are going to proceed on that particular issue of takedown abuse could happen relatively closely in time. I'm not sure what the plan is. Because I think what that says to the world is we are trying to make this process
better for everybody, the takedown process, but that includes taking seriously the problem of abuse.

And we are going to sort of move forward on both of these issues relatively closely in time and that sort of responds to I think a lot of different constituencies who are looking at this process and wondering if their concerns are going to be taken into account or not. That's my suggestion. Thanks.

MR. MURPHY: Hello. My name is Tom Murphy. I am an entrepreneur who has worked at many music technology companies in the Bay Area over the last 20 years. I'm an aspiring musician and I'm currently on the board of the local chapter of the recording academy. So I speak with lots of artists about the issues that are facing them on a daily basis and technology is clearly at the forefront.

So I thank you all for your time today and for allowing me to be here as well. I'm speaking as an individual who has observed most of the sides of the fence from creating tools to distributing content to creating it to consuming it.

And over the course of the day, I've seen a few trends that I'd like to mention for the working group to consider, and the first one is that we are all creators, and whether you are a musician who
creates their piece of work to try to earn a living, or you are a remixer posting onto a public site for social media sharing and communication, for us to consider the other sides of the fence as we try to look at these solutions, that we are focused on the concept of takedown and very closely related is the concept of put up.

And I think Sandra brought a very good point of simple parody that if we are putting rules in place or standards in place about how we do this DMCA takedown process, that to be mindful that this process actually begins with the posting in the first place. And so we should take a look at that. And if the poster is also the creator, that may create some other discussions. And while people may disagree with that premise, perhaps for the sake of finding solutions, we start with that.

The second issue that I think has come up and come up over and over again that I feel is important to continue to discuss is just the mention of repeatedly is mentioned a common language that ignorance of the law is not an excuse to break it. And it seems that there are lots of different questions both on the creators and in the takedown process of what's fair use and what's derivative
work. And part of our challenge is we need to 
educate the people using these tools as well. At 
least some small subset of these abuses and these 
uses of resources and time. The more that people 
understand their place in this process, the more 
they will be attempting to provide reputable uses 
for it. And some people might not post if they 
actually realize that there are consequences.

The third issue that I think is important is a 
concept of metadata of attribution, and we've had 
discussions on both sides about when notices are 
placed, is the appropriate person identified 
properly? We've also voiced concerns of people's 
anonymity and free speech and those need to be 
considered comprehensively because much of the 
abuses happen when there isn't the ability to 
communicate and negotiate.

And I think that a number of people voiced 
various good examples many times, this process is 
the only one that people feel available to them, 
because they didn't know who to contact. They didn't 
know how to contact them. They didn't know how to 
negotiate. In that, the next question simply becomes, 
so if we begin collecting information and storing it, 
who has it? Where does it go? What do we do with
it? We have a system like the ACNS that seems like a very good start. If we talk about the concepts of globalized centralized system, what are the repercussions of that and how do we protect that?

I think those are the comments I think are important and also to recognize that while we've brought many industry leaders who represent large amount of copyright holders, at the end of the day, we are talking about people creating something and then deciding what is done with that. And most of those people are a much smaller scale businesses and individuals that need to be considered.

And so while we've talked about automated tools versus individual tools, really automated tools are simply serving larger organizations who have collectively chosen to represent individuals, and copyright is something that is very well defined and protected in this country for individuals and we should always keep in mind who these people are. Not just the abusers. Thank you.

MS. POTEAT: My name is Hannah Poteat and I'm a solo attorney in San Francisco. I mostly do privacy and Internet law. And I represent a lot of small businesses, start-ups, that are really just getting started trying to figure out what they are supposed
to be doing and trying to do it right.

And there have been a lot of questions about, Tom, you were just talking about gathering information and how do we talk to the people that might have the rights that we want to use? The information that we are supposed to have is the information of the DMCA agent. And the DMCA agent is the person that you contact on the provider's side, and that's supposed to be the person that handles the takedown or whatever and may be able to contact the person that put things up if the rights holder wants it to come down. And then that process can happen.

And so as we are talking about standardization, I feel like the very first place that we need to start is standardization of the copyright agent registration process, because section 512 only protects those sites that have a registered copyright agent, and that process, that form, is kind of a mess. There's no way to change the name on the registered agent page. If you have your agent registered and you need to move on...somebody, you know, who was the registered agent moves on and then somebody else is now there, it's kind of a mess.

There's a backlog of 15 years at the copyright office of copyright agents that have built
up and that is a process that needs to be automated. It needs, or not automated, it needs a standardized form. It needs an easily searchable form that you can search not just by name, not just by company, not just by e-mail address. You need to be able to search it on different fields. The company that has that page registered needs to be able to change it. It needs to have the authority to change it.

That's where we need to start, I think, because the ISP is the nexus when we are talking about takedowns and counter notices and who talks to whom. The provider is the sender right there. And once we get there, their piece worked out, I think things become a lot easier. Anyway, that's my piece.

MS. KAROBONIK: Hi. Teri KaroboniK. New Media Rights. I think a lot of interesting concepts and directions have been brought forward today, but in order to organize them in an efficient way, I think it might be helpful for the vast majority of people in this room to take off our lawyer hat and look at it for what it is. Ultimately it's a system. So it might be helpful to take these concepts and inputs, outputs, and internal system. So maybe let's start with what outputs do we ultimately need to get those outputs? What inputs to do we need put
in? And then bridge the gap, what type of
technology and what type of standardized forms?
It's just an interesting way of organizing it that
will hopefully make it a little bit more efficient.

MS. PERLMUTTER: Just trying to come up with
constructs to put out there to help move the
conversation on. So these are just my thoughts that
I have been jotting down listening to all of you and
haven't shown to anyone up here from my office and
the NTIA. So I mean, maybe one way to approach all
of this is to say the working group would start with
two big issues. Overall issues.

And one would be standardization of forms
that are offered by ISPs for right holders to use to
give notice, and that could include web forms and what
elements are included in web forms, the placement and
accessibility. So that question of whether it's
presented in a place that's easy to find or buried
somewhere with lots of pop up ads, and those kinds
of problems.

And then also the availability of this
special trusted sender type of status, how do you
get that status and who can it be made available to?
And then the second big picture being the
availability to smaller submitters of automated
tools of various kinds, as Fred had suggested, and
what I think would be important, and this is just --
I'm throwing this out again as a straw man for
comments, but I think when you look at either of
those big picture or basket type of issues, we would
need to take into account a number of points, and I
think both Sandra and Corynne have made these points
in different ways.

So one is the possible different
treatment of different types of claims so that we
wouldn't necessarily assume that all of these
standardized processes or automated processes should
work the same way for transformative uses as opposed
to identical copies of work. So that should be one
work. So that should be one of the elements that
should be kept in mind as you look at these issues.
Minimizing abuse on all sides is another issue to
keep in mind. Are there ways to minimize abuse when
you are looking at standardization? Enhancing
opportunities for communication while minimizing the
impact on privacy.

So I think there's some interesting ideas
about allowing the person who posted the content and
the person who is claiming rights to be able to have
a conversation without at the same time necessarily
making identities public and there's obviously
sensitivities about that on both sides.

Fourth, avoiding an undue chill on anyone who
is exercising their legal rights again on both
to sides, and fifth, in looking at these big picture
standards related issues, are there ways to inhibit
troll like behavior as we consider them? And I
think, you know, I put this out for comment. Feel
free to reject it or add to it, but I think we also
need to keep in mind, first of all, that the message
should be clear that no one is saying that because
we are first looking at standardization issues that
we think that's the answer to everything. And we
will move onto other issues.

I think the decision at the last meeting was
just that we would start there and this is a start and
once we have made some progress, we'll see where we go
from there. And second very important point that
Corynne raised about being careful about what the
meaning of best practices is, we don't have necessarily
a pre-determined decision on what exactly the format
of any outcome of this forum will be.

Best practices seems like a potential way
to go because obviously not everyone is in the room,
whether trolls or anyone else, and if we could have
some agreement on best practices could capture something about what is working currently as well as what isn't working, that could be very helpful. But obviously we would all need to agree on that, and also think about what we mean by best practices and how they will be used. I say that's an issue to keep in mind for discussion as we move forward. So with those comments and suggestions, again, the floor is yours.

MR. WATTLIES: Josh Wattles with Deviant Art.

Having been responsible for putting together an automated form and how difficult that was and providing what many people refer to as plain English explanations of something that isn't in plain English, so how can you explain it in plain English, we would welcome having combined intelligence. You know, having available a standard mechanism is more than just a physical thing.

It's also linguistic. It's also having in the room people who participate who have the smarts, bottom line, to produce that kind of document because it's not easy. So I think one of the things a working group can do is draw on intelligence and bring that in. And you know, as you were talking, you know, it would seem to me this sort of, you know, like the Verisign
system, you know, instead of thinking about best practices, you might think about some sort of seal system. You know, so that you take it away from the notion of practices and just bring it into a voluntary compliance. Like we have chosen to be this way because that's what we've chosen to do, you know, rather than this notion of imposing a standard that you would expect everybody to gather around. So you know, that sometimes works, that system.

I'm not saying that it's something we would want or not want. I would expect that my actual clients, Deviant Art, complies with just about everything we want to have complied with, but that conceptually is an approach that might be helpful in getting over some of the stuff. But having a think tank approach to producing a way to communicate these quite complicated things, I think might be very good.

MR. HALPERT: I love the idea of Deviant Art being compliant in all aspects. It's been very helpful, and I stood up to make a comment that's aimed in the exact same direction. I do suggest, Shira, your list, which is great, for the smaller providers, that are not, smaller service providers and smaller artists who may not be up to using an automated data dump type of system to communicate in
bulk, it may be also worthwhile working on a
standard very simple understandable notice process
that would be easy to use.

There was a discussion about mobile apps, I
think, in Vicki's presentation in the context that
John is well aware of, of the multistakeholder process
on mobile privacy notices. We are working on right
now on standard wizards to generate privacy notices
that very small players can use and that can be pushed
out through trade associations.

And so the -- or could also be pushed out
through innovation hubs or wherever anyone would want
to do it. But I think having things that are plug in
like per Sandra's suggestion and that are easily picked
up by entities that don't necessarily have lawyers and
with the consequences of using it explain clearly to
them so that they are not promising to do things that
they can't do, this can have a bigger effect than some
broad sort of statement that a few trade associations
make that they support some sort of process.

So I think we may want to, as part of the
smaller entities using the standardized forms, also think
about automated notice, also think about a standard
notice and takedown process for those smaller entities
to follow that smaller companies that wouldn't even
be able to implement that sort of, or accept notices in that form could follow or for that matter couldn't provide data in that form. And so if we add that to our list, I think it will serve the transparency purpose, Josh, that you were describing, and also catch in a good way a whole lot of smaller players who might not have the voice to. Thanks.

MS. AISTARS: This is more of a question for the ISPs in the room playing off of that last comment because I do think the best way to gain implementation is not by having people sign on and say, "Yes, we are going to do this," but by making it so easy and so practical and so readily available that people actually are compelled to do it because it's the best approach for everyone. And so the question would be, you know, if you develop something that say you were a blogger and you used Word Press, that fits readily as a plugin into Word Press, how does that work on the, you know, processing of the notice side?

Maybe that's a question for the working group to look into and for engineers who have to actually act on the notices they received to look into, but I guess from our, or creative thinking about how one would achieve compliance, that would
be one method is just to shoot for something that
is easy and compelling rather than something that
you are kind of regulating and forcing people to do.

MR. MCNELIS: Brian McNelis from Los Angeles
again. And thanks everybody for your input. One of
the things that struck me and one of the suggestions
I have there's been a lot of talk of laymen's
language in explaining these issues to people on
both sides, and I think that is really, really
important, and I would ask that, you know, we look
at what the actual intent or what the outcome is
that we are trying to achieve with this process in
looking at that language.

And I think that, you know, words like
consent and permission and respect for the people
that are creating are the kind of things that we
really want to look at as the cornerstone for the
outcomes that we hope to achieve and protecting the
works by people who are putting their life and their
love and their labor into these practices.

And I hope that as we evaluate that language,
we look at the outcome that we are looking to get is
to be fair to everyone like we are in this room and
in our conduct here, which is today it's consent and
it's respect and it's permission and I hope that
those values come through as the working group moves forward. Thank you.

MS. PERLMUTTER: We are just trying to figure out the best way to use our remaining time. All right. I think we have a concept of some big picture issues and then considerations to apply to those issues and we will work on trying to write that up in a helpful way. If anyone else still wants to jump in, please feel free to do so.

The next question is how to institute the working group? And at our first meeting on March 20th, there was a strong feeling that the group should be essentially self selecting so that we wouldn't impose any artificial numbers on what groups should be represented by how many people or anything like that.

And so we had asked everyone to think about who should be in the working group. We would like it to be representative, I mean, it needs to be representative to have legitimacy and to be able to achieve something here. And at the same time, we also do understand that not everyone will have the time to do it and there will also be, as I said, opportunities to be alternates who could cover other meetings. What we'd like to do is to get some
statement of some volunteers to be on the working
group. There's obviously a lot of brain power and
experience in this room that we'd really like to
draw on. And if we could get some initial
indications of who would be willing to serve on that
group and help out with this project that would be
fantastic.

And then what we will do is if there are
people who are not in the room who will want to join
or people in the room who still want to think about
it a little bit, we will contact, but why don't we
start by getting a sense of who we might have ready
to serve and then we'll talk a little bit about
process going forward as well.

EAST BAY RAY: How many meetings are we talking
about?

MS. PERLMUTTER: The concept had been we would
have the plenary forum which is this group
essentially and the ones who were there on
March 20th. Maybe more people on the east coast in
addition to the ones out there would meet
approximately every six weeks and alternate between
California and Washington.

What we thought we would do is have that
this session will always be essentially half a day
and the other half a day for the working group so
that that could all be done in one day, but we will
need the working group to meet in between to meet in
some way in between so that they can report on
progress and their discussions in thinking to the
plenary session so we can move things forward. So
we don't have a definite number in mind, but there
would have to be sufficient interaction in order to
make some sort of report on where things stand on
status and progress to this larger group.

MR. MORRIS: And certainly while meetings would
be great to have in person, the working group can
certainly meet by conference call if persons are on
the opposite side of the country.

MS. PERLMUTTER: One things we suggested before
we do think the working group be an off the record
Chatham House group conversation where people's comments aren't
Attributed and made public. By then the report will be made
public, so everyone will know what they are saying to all of
us and then we will be able to decide what to do
with that. And again, they are not empowered to
make conclusions. They are empowered to look at the
issues and try to move things along from a technical
perspective and tell us where the discussions have
gotten for us to make decisions in this forum.
MS. AISTARS: Do you intend to -- the question was whether the USPTO intends to have like a rapporteur or somebody to help facilitate those working group meetings.

MS. PERLMUTTER: We were not planning to serve as either a rapporteur or a facilitator to facilitate the meetings. We were hoping that that would be done in the group and that maybe there could be a facilitator coordinator chosen or two or the group. We will probably send someone there from the PTO or NTIA to observe but not lead in any way. We wanted that to be a private function, essentially.

So I think there's a tremendous amount of material here where I really see a lot of ways that this could develop in positive directions, and so we hope we can count on those in the room and your colleagues to participate. And to help you know, delve further in discussions into some of the issues that have been raised here today. So I feel like if I ask for hands, everyone is going to be very shy.

I'm trying to think of the best way to do this. Maybe what we should do is we will pass around and get names. And let me reassure those who
are participating by webcast or those who are not
here but will hear reports is that please, if in the
next week you decide you would like to participate
in a working group, please let us know. We will
also look at the list to try to make sure it is
representative, and if it seems to be missing
important groups, we will also try to reach out and
drum up more interest and ask you to find others who
can participate.

MR. MORRIS: Since Jim Halpert stepped out of
the room, I think we should volunteer him to be a
chief coordinator. You know, we could let him know
when he comes back.

MS. MCSHERRY: I know there's several other
public interest groups that will want to join in as well.

MS. PERLMUTTER: If people, it's not that we
are looking to give a hard deadline, but because we
want to get the working group started in the next
couple of weeks, in the next couple of weeks, we
will publicize this, I think we've already
publicized that we are looking for volunteers for the
working group, if in the next week people could get
back to us with names of others that they want to
add, it's not that it's not possible ever to add
anyone else, but we'd like to have a starting group to begin
the process.

MS. MCSHERRY: It's been effective in the
past when specific questions come up that there's
expertise needed. I mean, I work with a lot of
Internet companies that probably wouldn't
participate as a regular member, but I think offer a
unique perspective. So if there's some balance
between being a working group member and active, I
think with some of the working groups there's like a
drafting committee versus working group member
versus invited expert. So thinking about maybe
different relationships could be useful even if
everyone is not going to be in the room.

MS. PERLMUTTER: It's a good point. Certainly
the working group should feel free at any point to
invite people to present. There will also be
opportunities to present to the forum as a whole and
obviously within the working group, it may make
sense at various time to choose a few people to be a
drafting group or something like that. So good
point that there could be different roles at
different times and we don't want to be rigid about
it. We are looking for the best way to make some
progress.

So I think a smaller group that can talk
informally among themselves and involve a lot of people who actually have hands-on knowledge of working with the process would be fantastic. And we can also offer if it's useful that we could make available a call in number for at least the initial call to start off the working group and figure out what the process would be for the working group going forward. So we are getting the list.

Since we are trying to alternate Northern California and DC, the next meeting of the forum for the larger group will be in Washington or Alexandria and so we've needed to book our conference room so that we can have it. So we've booked it for June 20th. And so the idea would be that the working group would be able to report on what the status is, where they've gotten with some of these issues at that point for consideration and discussion by the forum as a whole.

So that will be the goal of trying to have achieved something even if it is either a clarifying or an expansion of the issues for discussion or a prioritization or a decision as to what additional input would be useful. So we'd just like to get a report on the results of the conversations in the working group by that time. So that's essentially
the goal for the next session.

MR. HALPERT: So that's Friday, the 20th of June?

MR. POGODA: Yes.

MR. MORRIS: So let me jump in. And having worked in the privacy context with a number of the multistakeholder efforts, I think the working group or the drafting group can perform a whole bunch of different functions in terms of, you know, both eventually I certainly hope to go get to a point where you are actually drafting, you know, specific texts, specific points, specific suggestions or ideas, but also, really providing feedback to Shira and Darren and kind of all of us about topics that you have kind of encountered that you are finding really hard to figure out. And that maybe would benefit from a larger discussion with a larger group.

So I mean, to some extent, I think one thing, I mean, after a working group can get organized, one thing to do is to, you know, dig in and kind of start identifying, you know, the various topics that you guys want to grapple with. And that may end up leading to suggested agenda items that then the meeting in June you might suggest to us a couple weeks in advance
that, you know, addressing this topic would be a
really useful thing to have as a conversation.

MS. PERLMUTTER: Any other thoughts? Comments?
questions? I mean, essentially we have a great
assortment of expertise on these issues in the room
and who were there on March 20th in Alexandria. So
we are very eager to see what can be accomplish with
all of you putting your minds together and seeing
where it can lead us.

MR. BRADLEY: Mike Bradley. Just a question
about the communication. Mike Bradley with the
Writer's Union. You mentioned that you will be
communicating with all of us in the group. Are you
going to be sending out notices, summaries from the
group to the entire list that you have sent the
announcements about this to or are you going to make
some kind of e-mail list available to the working
group?

MS. PERLMUTTER: I think we will do that for
the working group itself. I think we need to
circulate contact information for everyone on the
working group to figure out the best means for you
to meet or communicate with each other, and then we
will continue to have our regular e-mail alerts to
the bigger group about meetings and presentations
and whatever report the working group is going to be making.

MR. MORRIS: Just to jump in, I heard a slightly different question and I'm not sure whether I heard right. But to the extent that you are asking will there be a report out to the entire group on every communications that the small group has, I would think probably not. I think the small group is going to need to have some back and forth and ideas may get floated. That then, you know, a week later they come back and discuss further without kind of having a big huge group discussion.

MS. PERLMUTTER: If at any point it seems that things, there's a feeling arising that things should be handled differently, we will discuss it at the next meeting. This is again a fluid and evolving process. We are looking for the best ways we know to proceed given prior discussions that have led to something fruitful, including the NTIA processes.

MR. MORRIS: You know, let me kind of jump in again to say, I mean, based on the number of NTIA processes, we really have found that, and my perception is that in this room, there are people from all sides of the issues who actually are interested in making progress and that's really kind
of the most important result from these meetings is that there's an interest in making progress.

And given that, it's my experience that, you know, there doesn't need to be kind of a government person, you know, trying to lead your progress that, in fact, you guys will make better progress if we just get out of the way, which doesn't mean that we can't, you know, come in, I mean, if anyone wants to kind of flag an issue to us, and you know, we can help facilitate by getting someone else into the room to address an issue that, you know, maybe the working group doesn't have a particular stakeholder, well, we might be able to help get that stakeholder to come and join the conversation.

So I mean, we are happy to be helpful, but I think that it actually, you know, I don't think you guys need us to make some progress and I think it's probably better you just go make progress without us and come back.

MS. PERLMUTTER: Any other questions?

Comments? Thoughts? Thank you. It's been a really interesting afternoon from our perspective and we will be sending out alerts. We will be putting together the working group and communicating with
them to set up the initial meet and then leave it to
them to organize it to be able to report back on the
20th as to what they've done and what
they've discussed.

And so other than that, I think all we'd
like to do is thank everyone who made today possible.
So in particular, the Berkeley Center for Law and
Technology for helping us arrange this lovely venue
here which I actually hadn't known before. To Laurie
Brown from the Dave Brower Center with helping us, and
of course to our own team who don't seem to be in the
room. Hollis Robinson who have coordinated all of
this from the website registration, logistics. Thanks
to all of you for coming and being participants and
investing the time. Thank you.

(Meeting was concluded at 5:38 p.m.)
CERTIFICATE OF REPORTER

I, Krishanna Derita, do hereby certify that the foregoing proceedings were stenographically reported and transcribed by me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, not financially or otherwise interested in the outcome in the action.

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