

Submission of American Commitment, Center for Individual Freedom, Digital Liberty, Discovery Institute, Frontiers of Freedom, and Property Rights Alliance Regarding the Patent and Trademark Office and The National Telecommunications and Information Administration's Request for Comments on the *Department of Commerce Green Paper: Copyright Policy, Creativity, and Information in the Digital Economy*.

We would like to thank the Patent and Trademark Office and the National Telecommunications and Information Administration for the opportunity to contribute comments regarding the *Department of Commerce Green Paper: Copyright Policy, Creativity, and Information in the Digital Economy*. We look forward to being active participants in the discussion.

I. INTRODUCTION

Copyright enables and encourages experimentation and innovation, and provides both content creators and distributors the certainty they need to invest billions of dollars in entertainment and knowledge based products and services, which create jobs across the country. Indeed, the core copyright industries added \$931 billion to U.S. gross domestic product in 2010, representing 6.36 percent of the U.S. economy, according to the International Intellectual Property Association. This translated to 5.1 million jobs, or almost 4 percent of the entire US workforce.¹

Copyright's driving force in innovation is apparent on the Internet, where the creative community is introducing new products, services and business models every day to meet consumer demand. As the U.S. economy continues to become more knowledge based, respecting intellectual and digitally based property only grows in importance if American industry is to compete nationally and abroad.

At this point, we would like to contribute our thoughts on two of the topics raised in the Federal Register notice: (1) **whether and how the government can facilitate the**

¹ <http://www.iipa.com/pdf/2011CopyrightIndustriesFactSheet.PDF>

further development of a robust online licensing environment, and (2) establishing a multistakeholder dialogue on improving the operation of the notice and takedown system for removing infringing content from the Internet under the Digital Millennium Copyright Act (DMCA).

II. WHETHER AND HOW THE GOVERNMENT CAN FACILITATE THE FURTHER DEVELOPMENT OF A ROBUST ONLINE LICENSING ENVIRONMENT

The legal online marketplace for digital content is growing at an incredible rate, with content creators experimenting and innovating at every turn. Seemingly every week, existing stakeholders and new entrants announce a new service, business model or market development. Recent examples include iTunes Radio; Google Play; HBO Go; Hulu; Ultraviolet; and Netflix's production of original content such as "*House of Cards*" and "*Orange is the New Black*" and their discussions with cable operators to embed the Netflix app directly on set-top-boxes . Additionally, Amazon is developing an original series: "*Alpha House*."

Given this demonstrable innovation and experimentation, we agree with the intimation in the Federal Register notice that governmental intervention in private sector negotiations and business models for the online distribution of content is unnecessary. The Internet is a powerful tool for the facilitation of free markets. At the moment, government involvement should focus on protecting the intellectual property rights that enable the private sector to enter into a variety of tailored contractual relationships in the online marketplace, rather than on intervening in the relationships themselves.

Critical to continued online growth is deterring illegal websites, which diminish the capacity of the legitimate digital marketplace to flourish. Whether you are a content creator or a distributor, both of which spend substantial resources to create and deliver

their product, competing with businesses built on theft is unsustainable. Piracy is not a legitimate market force and distorts the value of the products and services knowledge based industries invest billions in creating.

III. ESTABLISHING A MULTISTAKEHOLDER DIALOGUE ON IMPROVING THE OPERATION OF THE NOTICE AND TAKEDOWN SYSTEM FOR REMOVING INFRINGING CONTENT FROM THE INTERNET UNDER THE DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA)

The DMCA notice and takedown system was intended to be a quick, cost effective, and efficient tool for removing infringing content from the Internet. One of its mechanisms for doing so was by encouraging collaboration in the Internet ecosystem through creation of a safe harbor for intermediaries – such as ISPs and websites—that act in good faith to remove infringing content. Unfortunately, significant work remains. According to the recent NetNames study, “absolute infringing bandwidth use increased [in North America, Europe, and Asia-Pacific] by 159.3% between 2010 and 2012 ... This figure represents 23.8% of the total bandwidth used by all internet users, residential and commercial, in these three regions.”²

The NTIA and PTO could help by further encouraging voluntary, market based initiatives. A good example of the private sector cooperation envisioned by the DMCA is the Copyright Alert System (CAS), a partnership between the major ISPs and the movie and music industries, which alerts consumers that they have accessed illegal content and helps guide them to legal content sources in a non-intrusive manner. The CAS demonstrates that stakeholders in the digital economy can collaborate to achieve potentially meaningful results. As such, content creators, internet service providers,

² <http://www.netnames.com/digital-piracy-sizing-piracy-universe>

search engines and other stakeholders should continue to collaborate and develop private sector, market based solutions to minimize the promotion of illegally distributed content.

IV. CONCLUSION

The online marketplace is flourishing. The best thing government can do to ensure it continues to grow is enforce the intellectual property rights that underpin that marketplace and facilitate collaboration between content creators and distributors. If content creators and distributors are assured their work won't be co-opted, and if all players in the ecosystem work together to make it harder for thieves to benefit from the Internet's legitimate infrastructure, the communications and technology industries boats will collectively lift on the rising tide. Businesses will be rewarded based on the quality of the products and services they create and consumers will benefit from an increasingly dynamic marketplace for digital content.

Respectfully,

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