

UNITED STATES PATENT AND TRADEMARK OFFICE

DEPARTMENT OF COMMERCE MULTISTAKEHOLDER FORUM
IMPROVING THE OPERATION OF THE DMCA NOTICE
AND TAKEDOWN POLICY

FIRST PUBLIC MEETING

Alexandria, Virginia

Thursday, March 20, 2014

A G E N D A

MORNING SESSION

Opening Remarks:

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

Welcome from NTIA:

ANGELA SIMPSON
Deputy Assistant Secretary, NTIA

"TOPICS"

Administrator:

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

Government Representatives:

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

GARRETT LEVIN
Attorney-Advisor, USPTO

JENNIFER BLANK
Attorney-Advisor, USPTO

SUSAN ALLEN
Attorney-Advisor, USPTO

JOHN MORRIS

1 Associate Administrator and Director of
2 Internet Policy, NTIA

3 AFTERNOON SESSION

4
5 Welcome from USPTO:

6 MICHELLE LEE
7 Deputy Under Secretary of Commerce for
8 Intellectual Property and Deputy Director,
9 USPTO

10 "PROCESS"

11 Administrators:

12 DARREN POGODA/GARRETT LEVIN

13
14
15 Government Representatives:

16
17 (Same as Morning Session)

18
19
20 Closing Remarks:

21
22 SHIRA PERLMUTTER

1 Chief Policy Officer and Director for
2 International Affairs, USPTO

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

4 (9:11 a.m.)

5 MS. PERLMUTTER: Good morning. I'd
6 like to welcome all of you here in Alexandria
7 and also all of you joining us today by webcast.
8 I'm Shira Perlmutter, the Chief Policy Officer
9 and Director for International Affairs here at
10 the U.S. Patent and Trademark Office.

11 And it's my pleasure to start by
12 introducing Angela Simpson, the Deputy Assistant
13 Secretary at the National Telecommunications and
14 Information Administration to deliver some
15 opening remarks.

16 MS. SIMPSON: Thank you, Shira.
17 Welcome. And it's great to see such a large
18 group here at the first meeting of the
19 multistakeholder process organized by USPTO and
20 NTIA to address the notice and takedown system
21 set up by the Digital Millenium Copyright Act.

22 Thanks both to your guests here in the

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

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

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

20 I want to take a moment to highlight
21 what, in my mind, is truly a key value in the
22 multistakeholder approach to policy development,

1 and that is that all of you, as stakeholders,
2 can develop solutions to problems at a far more
3 granular and nuanced level than Congress or any
4 regulatory process could. I'm not guaranteeing
5 that it will always be easy. But by sitting
6 down together to work through these challenges,
7 you guys can create solutions that can be both
8 effective and workable for all participants in
9 the online ecosystem.

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

1 ultimate destination.

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

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

22 We at NTIA have some experience

1 convening multistakeholder processes in the
2 privacy context, and you'll hear more about that
3 in a moment. But I can assure you of three
4 things: they're hard work, that work is much
5 more pleasant if everybody can disagree without
6 being disagreeable, and they will result in
7 genuine progress.

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

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

17 Thank you.

18 (Applause)

19 MR. MORRIS: Great. Thanks, Angie.
20 Just to, you know, follow up, I'm going to give
21 a little bit of a glimpse of the privacy
22 multistakeholder process that NTIA has helped

1 administer and facilitate over the last couple
2 of years.

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

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

1 help facilitate a conversation. But it's really
2 going to be up to you.

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

18 And, thankfully, over a couple
19 meetings, that three hundred -- group of three
20 hundred kind of winnowed down to sixty or
21 seventy different people who would come
22 regularly to the meetings, both again in person

1 and on the phone -- on the webcast. And,
2 frankly, that's -- three hundred is way too
3 large. The group that's here -- I don't know
4 how many people are on the webcast -- but the
5 group that's here is a great starting point for
6 a conversation.

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

16 Lots of people in the privacy context
17 agree that there was value in trying to make
18 progress on privacy, but frankly, they looked
19 around Washington, and they realized that if
20 they wanted to make progress on privacy, they
21 were going to need to do it themselves. It
22 really wasn't going to be coming in the near

1 term out of other policy processes in
2 Washington.

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

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

16 The industry, the online industry, a
17 number of major companies started testing the
18 code of conduct starting late last summer, and
19 I'm very pleased to report that today an
20 increasing number of companies -- you know, some
21 major companies, a lot of smaller companies --
22 are in fact implementing the Mobile Application

1 Transparency Code of Conduct.

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

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

19 So, as I said, my colleague John Verdi,
20 also another colleague, Maureen Lewis, sitting
21 in the back of the room, and I will be here
22 today and then working with you throughout the

1 process, working with PTO, and we are very happy
2 to be a resource about what's worked in another
3 context.

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

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

18 (Applause)

19 MS. PERLMUTTER: So I have to say I am
20 particularly pleased to see this full crowd here
21 today, both actual and virtual, because this
22 forum today really is an important step in the

1 work envisioned in the Green Paper that we
2 released in July.

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

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

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

22 This forum is not about policy or

1 legislative changes. It's about the practical
2 operation of the notice and takedown system
3 under the existing structure of the DMCA.

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

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

19 But as we worked on the Green Paper,
20 one specific issue -- as to one specific issue,
21 the possibility of a very different path began
22 to emerge, and that is this one. Now, the

1 notice and takedown system, set up by the DMCA,
2 was constructed as a very careful balance of
3 interests and responsibilities. But fifteen
4 years have passed since it was enacted, and it's
5 not surprising that subsequent developments have
6 given rise to certain challenges. Some calls
7 have been made -- and we saw that in the written
8 comments -- to modify the statute, but we've
9 also heard many strong views that the system
10 still works.

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

18 So what we're doing here at the
19 Department of Commerce is offering you an
20 opportunity to do just that and trying our best
21 to make it as useful as possible. So your work
22 today can set the stage for a meaningful outcome

1 for everyone.

2 And thinking about what is a successful
3 outcome, I thought I'd say a few words about
4 that. Our definition of success is, first, to
5 have a positive and constructive dialogue to be
6 able to set up that kind of atmosphere, and,
7 second, to figure out ways to improve the
8 current situation as much as we all can. And we
9 do firmly believe that this is possible to do
10 based on everything we've read and heard. If we
11 turn out to be wrong, then the only approach to
12 improvement may be through litigation and/or
13 legislation. But it does make sense to first
14 try this potentially more productive
15 alternative.

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

22 As this forum moves forward, we do ask

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

14 And, of course, we're aware that there
15 are several very important copyright discussions
16 going on in other government venues, notably the
17 Copyright Office, the Hill, and the IP
18 Enforcement Coordinator's Office, and I'm glad
19 to see that we do have officials from these
20 venues in the room with us today. I see the
21 Registrar of Copyrights and Joe Keeley just joined
22 us. And I did want to say our process is

1 intended to be complementary to all of their
2 work, and we look forward to continuing to
3 collaborate with them in looking for solutions.

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

12 So these topics, which we'll put up on
13 the screen for you to see in a minute, are
14 essentially a straw man. They're designed to be
15 simply a starting point for discussion. We are
16 not in any way endorsing or committed to them.
17 And if you agree that the forum should address
18 these topics in its future work, that's great,
19 and maybe we can move on to process. If you
20 don't agree, please propose specific and
21 constructive changes, deletions, additions,
22 whatever you want.

1 And just to be clear, we don't see
2 today as the time to discuss positions on the
3 topics, but rather to decide which topics are
4 appropriate for taking up in this
5 multistakeholder forum and ones on which you
6 think progress may be made.

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

14 So, once again, we'll present you with
15 a suggested approach for comment and potential
16 changes. Finding a process that actually works
17 and can produce a result in a reasonable period
18 of time will be critical, and that will only be
19 possible if the stakeholders step up and commit
20 time and energy, within reasonable limits, of
21 course, with a goal of achieving some outcomes
22 by the end of the year.

1 So with that, let me introduce Darren
2 Pogoda from the USPTO who will explain our
3 thoughts in more detail and shepherd the day's
4 discussion. Thank you.

5 (Applause)

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

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

20 Shira and myself are joined today by
21 our colleagues Garrett Levin, Jenny Blank, Susan
22 Allen, from the USPTO, and John Morris, who is

1 up on the stage from NTIA, and also from NTIA
2 but not up on the stage, Maureen Lewis and John
3 Verdi, both in the room, and we all look forward
4 to a productive day.

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

13 But we thought that opening the meeting
14 by just having me walk up here onto the stage
15 and saying "discuss" might prove a little to
16 casual. Accordingly, we've thought -- we
17 decided that it would be helpful to provide a
18 starting point for everyone, a conversation
19 starter where we identify potential topics and
20 then, under those topics, identify different
21 issues and questions that this process could
22 eventually provide answers to.

1 To be clear, what you will see in the
2 slides that we'll be presenting is
3 not something that we have manufactured out of
4 whole cloth. It is reflective of the public
5 record that we have gathered and analyzed to
6 date, and it provides our thoughts and ideas on
7 how we can proceed constructively as well as
8 suggestions for organizing the overall process
9 in a practical and productive manner. Again, it
10 is not intended to be an exhaustive list, but
11 just a good place to start. It is open to your
12 changes and edits and ideas.

13 Before we begin, I just wanted to offer
14 a few administrative points about actual
15 participation in today's meeting. For those in
16 the room, you can see that we have microphones
17 set up on either side of me. So to the extent
18 people present here want to participate in the
19 discussion, we would kindly ask that you come up
20 to the microphones, that you directly face your
21 colleagues in the audience and address them as
22 opposed to addressing myself or my government

1 colleagues up here on the stage. I, as sort of
2 the MC/Administrator, will recognize you and
3 then invite your remarks.

4 For those watching on the webcast who
5 want to participate, you can participate as
6 well, and you can use a phone bridge that we
7 have set up for today's event. The number for
8 that is 1-800-369-3319. The passcode is
9 1981439. If you weren't able to write that
10 down, it's okay. The number and the passcode
11 information is actually posted on the Livestream
12 site where we are providing -- where people can
13 access the webcast for this event. Once you
14 dial in and enter the passcode, you would press
15 *1 and an operator would place you in a queue in
16 order for you to participate via the phone
17 bridge.

18 A couple more administrative points.
19 We would ask all participants, however you're
20 participating, to identify yourselves by name
21 and organization. And if you are an attorney,
22 to identify who you represent, if anyone. This

1 will not only be helpful for me as your MC, but
2 also for the public record we are creating here,
3 the archive for the webcast, the transcript, but
4 also just so people here can get to know one
5 another at the initial meeting.

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

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

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

1 discrete topics.

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

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

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

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

22 And then, assuming we can accomplish

1 that task, we would, in the second session, move
2 on to the process and framework of how we would
3 go about addressing those issues.

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

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

21 So just delving into Topic 1 a little
22 bit, some of the questions that might help

1 facilitate a discussion that we've come up with:

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

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

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

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

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

21 In what other ways can best practices
22 be developed to increase operational efficiency,

1 including reducing the volume of notices,
2 through cooperation, communications, and
3 technology?

4 Should there be different solutions for
5 different types of stakeholders?

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

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

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

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

19 Would the establishment of right holder
20 points of contact be a valuable tool for those
21 users who believe their files have been removed
22 in error or for other purposes?

1 What role can educational efforts play,
2 including with assisting users in understanding
3 why content has been taken down and the
4 available options (for example, counter
5 notices)?

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

10 Should there be different solutions for
11 different types of stakeholders?

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

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

20 In what ways can specific best
21 practices be developed to address the needs and
22 problems faced by individuals and SME users?

1 We have also had the idea of a data
2 analytics support, and this would be -- involved
3 the USPTO's Office of the Chief Economist who
4 would be available to provide support on data-
5 related questions.

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

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

18 And the main point to take away from
19 there is what we thought might be a constructive
20 starting point was to identify working groups
21 for each of those topics that were identified in
22 the morning session here, and then to have a

1 discussion about how those working groups might
2 work and what they would cover, what their
3 composition would be, meeting logistics, all
4 kinds of stuff like that.

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

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

15 But, again, this is a stakeholder-
16 driven process. You know, whatever it is people
17 want to address or not address or discuss or
18 whatever points they want to raise, please feel
19 free to do so. So to the extent anyone wants to
20 start addressing these topics, the microphones
21 are here, and I think we should start having
22 those discussions now.

1 MR. YOKUBAITIS: I don't mind starting
2 off the dance. Is this on?

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

6 MR. YOKUBAITIS: Thank you. Ron
7 Yokubaitis. I'm from Austin, Texas. And down
8 in Austin, we run several Internet companies.
9 Data Foundry is a data center company, and the
10 -- but the one I want to talk to is our
11 Giganews. It's a Usenet provider. It's the
12 Internet before the Web, and it's still a
13 massive global network, and we've been running
14 Usenet servers for outsourcing to broadband
15 ISPs, cable companies, telephones, and
16 individuals. We have customers, both commercial
17 and residential, in 215 countries. So -- But
18 we're a small company, fifty-something people,
19 down in Austin, Texas.

20 We can leverage high volume server
21 infrastructure, collocated in data centers
22 around the world from Europe, multi-major

1 cities, to Asia, to North America. South
2 America we reach through Miami.

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

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

21 But in this process -- and I'd love to
22 see something standard because just one standard

1 notice, we, again, adapt our software to pick
2 those cells out, find it, delete it -- but
3 there's no talk about the big problem, and that
4 is these rights holders don't brand their
5 cattle.

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

14 I was at a copyright discussion in Hong
15 Kong three years ago, and they had an NBC
16 Universal guy, they had a telephone guy there,
17 and the guy asked the question in the back and
18 the NBC guy liked it so much about a particular
19 movie, he said, here, I'll send you a free copy
20 of a DVD for asking such a good question. And I
21 said, there's the problem. They're all mad at
22 us because someone's giving it away, but here

1 he's giving it away, and that person is going to
2 take that DVD and lend it.

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

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

22 And these are powerful companies, I

1 know. They own, you know, a tremendous amount
2 here. But, please, y'all -- and I know you got
3 a coat on to come up here -- make them brand
4 their cattle, and if we can have the
5 standardized notice procedure I'd really like
6 it.

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

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

15 As a reminder, we are trying to
16 identify the topics that this group is going to
17 try to come to some resolution on, some outcome
18 on by the end of the year. And the first
19 question we put up there -- and that was, would
20 the use of standardized notice formats or
21 templates help improve the day-to-day technical
22 operation of the system? -- you know, if we

1 invite people's thoughts on this, how they think
2 that might work.

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

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

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

19 Many of the issues that are on your
20 list, which is an extraordinarily long list, are
21 going to be more difficult, and I would suggest
22 that we think hard about triage and success and

1 the process working well.

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

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

20 We are very much concerned about
21 controlling piracy, but we're also innovators
22 and we drive the technologies, the platforms,

1 the architectures that make the Internet work.
2 And in whatever it is that this group decides to
3 do, that balance needs to be maintained. We
4 need to keep track of the fact that the
5 solutions for piracy are important, but it's not
6 solutions at any cost. It's solutions that make
7 sense and are rational.

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

18 Last point, and then I'll stop, which
19 is extraordinarily ambitious process you have
20 set out and I applaud your ambition. We, at
21 least, have bandwidth issues in being able to
22 cover all this, and it's going to be very hard

1 for many people, many of the organizations, many
2 of the companies in this room to keep up with
3 this. We are not dedicating a resource to this
4 process. We are not in a position to do that.
5 I'm sure others are not either.

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

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

19 MR. BAND: I'm Jonathan Band
20 representing CCIA, and I agree with a lot that
21 Emery said, which is always a troubling
22 phenomenon. But I definitely agree on the

1 notion that this was a -- what's been outlined
2 is sort of a very ambitious agenda that will
3 pose very serious bandwidth problems for people.

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

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

13 It seems to me that overall, if you're
14 saying, you know, is the system efficient, I
15 think it's -- certainly, for many people it's
16 very efficient, and especially to the extent
17 you've raised the concern about volume. Well,
18 that would indeed -- indicate that it's very,
19 very efficient, that it's very easy for many
20 rights holders to submit many takedown notices,
21 so that suggests -- and there's very quick
22 response to that. That all would suggest that

1 it's -- the system, as working for at least many
2 players, is very efficient and maybe too
3 efficient. Maybe we need to make it less
4 efficient from that perspective.

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

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

16 But I think there's still a lot of very
17 basic facts that we don't know about, sort of
18 the precise process by which a lot of notices
19 are generated, sort of the automatic process and
20 how much does that software cost, how much does
21 it cost to run. You know, that can really be
22 important if we're trying to say, well, how can

1 we make that kind of -- To the extent that we're
2 saying there's a problem for the small rights
3 holders, well, if they could have some of the
4 tools, then things could work better for them.
5 But how much -- what are the tools and how much
6 do they cost and how much do they cost to run?

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

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

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

21 MR. POGODA: Thank you, Jonathan.

22 MR. von LOHMANN: Fred von Lohmann from

1 Google. I just wanted to very quickly also
2 endorse the topics that are currently shown on
3 the slide here as great areas for possible
4 improvement.

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

17 And I'd also say that on the second
18 bullet point on the slide regarding trusted
19 submitter programs, that's another area where
20 Google has put a lot of effort in in the last
21 several years, and we've also seen very
22 immediate and tangible improvements that have

1 been delivered as a result of that. And it was
2 our suspicion four years ago when we started the
3 process that probably the vast majority of
4 notices that we received are submitted by a very
5 small number of submitters. And, in fact, to
6 take Google Search as an example, today we get
7 over 95 percent of all the notices that we
8 receive from members of our trusted copyright
9 removal program, which constitutes, you know,
10 something less than a hundred entities
11 altogether. So it gives you a clear idea that
12 by focusing there on volumes and efficiencies,
13 you can make a big difference.

14 And I'll finally end by echoing what
15 Jon Band had just said, that for all of these
16 topics, I would encourage us to add fact-
17 gathering as an important additional point. On
18 this issue, in particular, I know Professor
19 Jennifer Urban at Berkeley is actually in the
20 process right now of putting together a survey
21 that was sent out to service providers asking
22 very concrete and important factual questions

1 like do you use a web forum? Do you receive
2 takedowns as emails? What percentage? How do
3 you operate that? These kinds of basic factual
4 questions are things that, frankly, I think,
5 have been missing. Because, of course, there
6 are tens of thousands of service providers, and
7 we still don't know the details of how many
8 notices do they see, how do they process them,
9 did they already have web forms, all these kinds
10 of very basic operational questions.

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

14 MR. POGODA: Thank you.

15 MR. LEHMAN: Hi. I'm Bruce Lehman.
16 I'm here today, actually, for Visual Artists
17 and, specifically, the Artists Rights Society,
18 which represents the copyright interests of over
19 80,000 fine artists. Also, I've had some
20 personal experience with the notice and takedown
21 system because I function, with one of my hats,
22 as basically a pro bono general counsel for a

1 small publishing company, so I have a little
2 idea of how it works myself.

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

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

10 Secondly, and this is a, you know, very
11 important observation, we can't have a one-size-
12 fits-all system because there are, you know,
13 huge differences in various categories of
14 stakeholders. And those differences --
15 Obviously, the most significant difference is in
16 the size of the stakeholding enterprise.
17 Obviously, the one hundred trusted parties that
18 Google has an understanding with are, generally
19 speaking, large companies that can take care of
20 themselves, or trade associations, what have
21 you. But in my work with Visual Artists, one of
22 the problems is that virtually every visual

1 artists in the world is basically a sole
2 proprietor. To the extent that they file income
3 tax returns in the United States, they identify
4 themselves as sole proprietors. They're not
5 really even small businesses. And so the burden
6 of any kind of copyright enforcement,
7 compliance, so on and so forth is very hard on
8 these people because they have to take care of
9 themselves.

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

16 The Artists Rights Society members are
17 fine artists, but there are lots of other
18 categories of creators, and particularly in the
19 visual arts world, that aren't fine artists.
20 And, in fact, those are the ones who are most
21 negatively affected probably by unauthorized
22 taking of their works, particularly in a digital

1 context, and I'm speaking here of commercial
2 illustrators and so on. I also work a lot with
3 them and with the Medical Illustrators
4 Association.

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

15 But the primary problem and the primary
16 use of the notice and takedown provision by the
17 Artists Rights Society, which has a pretty good
18 system of dealing with this, is when you have --
19 and you can imagine this -- when you have
20 posters and that sort of thing that are being
21 sold on the Internet through an entity such as
22 eBay. Now, I use eBay because Ebay is very good

1 to work with, is my understanding, and do a
2 great job. And that, I think, is an important
3 point, and that is that there are large
4 enterprises that already do have good business
5 practices and are very conscientious. The
6 problem tends to be more with other people.
7 And, of course, you'll never really resolve that
8 completely because you'll always have renegades
9 and so on. But I think that's an issue that
10 might be looked at.

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

22 And, also, to the extent that a code of

1 best practices can be developed, that is at
2 least a foot in the door of trying to reach the
3 less organized, smaller entities that are a
4 conduit for the distribution of unauthorized
5 works on the Internet.

6 So I have a -- And by the way, the idea
7 of the trusted representative of rights holders
8 is an excellent idea. And here, again, to the
9 extent that collective organizations,
10 associations of small rights holders can be
11 developed, then they can perform that function.
12 It's kind of hard to do that, but that is
13 obviously one way to go.

14 I just have some final suggestions on
15 how one might proceed in this process. My
16 impression is that you want to have -- you
17 actually want to get people together to develop
18 solutions, to talk about things. And, also, my
19 impression is that it is intended, beyond this
20 meeting, that there be sort of smaller groups or
21 discussions outside this context that then would
22 come back.

1 And by the way, this is not something
2 completely new. Back both -- You know, I've
3 been involved in this for many years, both in
4 the development of the 1976 Copyright Act and
5 then the development of the DMCA here at this
6 office, and we used that procedure quite
7 effectively to get groups to talk with one
8 another.

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

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

22 So, you know, you can have different

1 affinity groups representing both different
2 classes of creators, at least, by basically
3 their size -- are they small or big? -- and
4 then, obviously, according to the subject matter
5 of their creativity. And then if those
6 committees or groups can work together, then
7 they can sort of develop at least sort of
8 coherent positions on things.

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

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

22 To the extent that best practices are

1 developed, there might ultimately even be a
2 system of certification and certification marks
3 which would identify, for all involved in the
4 digital environment, really who is meeting these
5 standards. Those are my observations.

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

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

17 I also see that we do have someone on
18 the phone bridge, and I just want that person to
19 know that I recognize you're there and we'll get
20 to you. We've had some people in the room who
21 have been waiting a little bit, so -- but I did
22 want to state that. Please.

1 MS. CLEARY: Good morning. My name is
2 Susan Cleary. I'm Vice President and General
3 Counsel for the Independent Film and Television
4 Alliance. We represent over 150 independent
5 production and distribution companies.

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

20 So we need, obviously, templates. We
21 need a more efficient system. We did work with
22 the IPEC office to work on best practices, as

1 everybody knows, for payment processors.
2 Practically speaking, let me tell you how that
3 worked out for us.

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

13 The volume that gets coordinated, we
14 actually send that out to our members if they
15 need the template, and we have all the contact
16 information, and we forward that on to them.
17 It's a little bit harder because how many ISPs
18 are listed in the Copyright Office, agent
19 service of process? Hundreds and hundreds and
20 hundreds of them. And so coordinating with
21 American Express, Visa and MasterCard and PayPal
22 might be -- and Discover might be a little bit

1 easier because we had top, top line formatting.

2 But one of the points I would like to
3 make is that perhaps having these templates that
4 are accepted by the ISPs would actually lessen
5 what they're calling "misuse of notices." Yes,
6 we need metrics because ISPs, big and small, are
7 coming up and claiming that there's this huge
8 problem with misuse of notices. And quite
9 frankly, are you lumping misuse of notices, are
10 you lumping inaccurate notices, notices that had
11 five points out of the six required in the DMCA?
12 What is the problem? Are they small rights
13 holders, or are the individual artists not able
14 to locate the exact URL for where the infringing
15 copy is for each and every copy that's
16 infringing? That's really the problem here.

17 And so we really need to focus on something
18 that makes that process more efficient, look at
19 what we've already done in the past. And, you
20 know, just in general, the SMEs, again, are big
21 on content, but they don't have as many
22 resources. They might have somebody manually

1 searching the web. They might not be able to
2 take advantage of technology. Technology is
3 expensive. Branding our cattle is extremely
4 expensive. We might only have fifty head of
5 cattle on our very small ranch, and, you know,
6 you get a price break once you get a hundred
7 heads of cattle. So, you know, that's a great
8 analogy, and the ISPs, big and small, need to
9 come to the table.

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

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

19 MR. SNEAD: Okay. I'm David Snead.
20 I'm the co-founder and the public policy chair
21 of the Internet Infrastructure Coalition. We're
22 a group of about ninety small to medium --

1 mostly small to medium-size businesses,
2 including Data Foundry and Giganews, although I
3 don't think we represent their cattle ranches.

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

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

21 MR. POGODA: Thank you. John, can we
22 maybe try and patch through the caller? Okay.

1 I would just ask the caller, I believe you are
2 going to be -- your audio will be live in the
3 room now, so if you could just identify your
4 name and who you're with, please.

5 MR. BULLOCK: Yes. My name is Eric
6 Bullock. I'm from DMCA Solutions. Can you hear
7 me?

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

10 MR. BULLOCK: Yeah. No, thank you.
11 One other point to be made is while we're
12 talking about the templates and such for notice
13 to online service providers, I think it's going
14 to be important that we also have tools and
15 databases provided by the government such as the
16 online Service Provider Directory kept by the
17 Copyright Office.

18 Today, small -- We service many small-
19 to medium-size companies. And in order to
20 notify the host -- to notify the online service
21 provider, we need to know who the registered
22 agent is to receive such notification. And,

1 unfortunately, the infrastructure and the tools
2 provided -- basically, today, there is a
3 directory that is not a database but rather just
4 an alphabetical list of these online service
5 providers.

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

12 And, unfortunately, if you talk to the
13 Copyright Office right now, there's basically
14 one person who works through the Library of
15 Congress, I believe, who's tasked with the job
16 of organizing the registered agents for each one
17 of these online service providers. And it does
18 not exist in a database today. It is
19 essentially just an alphabetical directory, and
20 the actual mechanics of organizing the names are
21 somewhat whimsical. So the way that companies
22 are listed aren't necessarily even by domain

1 names. So when you have to look up a company,
2 it becomes very difficult.

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

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

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

21 And we'll go back to some comments from
22 the room.

1 MS. AISTARS: My name is Sandra
2 Aistars, and I'm the CEO of the Copyright
3 Alliance. The Copyright Alliance has a very
4 broad membership, but what we do most frequently
5 is speak for small and independent creators and
6 small businesses who typically don't have a
7 voice in policy debates in D.C. So I want to
8 echo some of the comments that Bruce Lehman made
9 about the importance of including these sorts of
10 participants in the conversations, and I'm very
11 pleased that we have the opportunity to
12 participate.

13 Echoing what Bruce said, it's important
14 to ensure that as we develop any standardized
15 processes, we are cognizant of the differences
16 in business models, differences in ability to
17 carry out the processes that are put in place
18 that various participants in the marketplace
19 will have. Whether those differences occur
20 because of the type of work that they're
21 producing as a photographer or as a visual
22 artist in the graphic arts or in the fine arts

1 field, for instance, or, you know, because
2 they're an author, you know, their work may
3 simply be infringed in a different way than an
4 author in the film/audio-visual fields might be
5 infringed. So that's one point that I'd like to
6 keep in mind.

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

14 And I think it's important to start
15 with something like standardized notices and
16 opening up the trusted participant process to a
17 broader array of senders. But I think a lot of
18 these other issues that have been identified are
19 all interrelated, and as we make progress on one
20 of these topics, I think we might find that
21 progress on other topics becomes easier as we
22 understand both the policy and the procedural,

1 both opportunities and challenges that exist as
2 we sit and make progress together.

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

12 It must seem to you that we're not
13 doing anything to protect our rights because the
14 infringement problem is so difficult and so
15 challenging. But rest assured, virtually every
16 type of work that's distributed online is
17 distributed in some protected format, so if the
18 cattle are indeed branded, the problem is that
19 those protected formats are typically hacked,
20 the brands are removed, the metadata that goes,
21 for instance, with a photograph is typically
22 stripped off as it's loaded up onto a website,

1 and that's why the problem is so challenging.

2 And so one of the things that might
3 also make the lives of small website operators
4 easier is if we start looking at some of the
5 technologies that have been developed by larger
6 website operators or entities like Google with
7 content ID and seeing whether there's some way
8 that we can adopt those technologies, perhaps in
9 the reposting context, so that if, in some
10 situation, we've at least identified that a file
11 has been posted once and it's the exact same
12 file being sought to be reposted.

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

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

22 MR. GREEN: David Green, NBC Universal.

1 I just wanted to make a couple points.

2 One is, a couple slides down, there's
3 discussion of should there be different
4 solutions for different types of stakeholders,
5 and I think that's something that's already
6 emerged as a theme that in terms of efficiency,
7 there may be a particular notice that works very
8 well for ISPs, but that notice may not work for
9 search engines. That kind of notice might not
10 work for cloud services. So as we begin to
11 think about these issues, clumping them around
12 what kind of service provider it is may be a
13 more efficient way of dealing with the questions
14 of efficiency.

15 The other point I'd make is John talked
16 about the model of the privacy multistakeholder
17 forum. There was another important model which
18 is what led to the Copyright Alert System, and
19 there are several grizzled veterans of those
20 negotiations. But those were between ISPs and
21 rights holders. They also included the smaller
22 movie companies and independent records. And

1 what we found there was gathering in a group to
2 solve a host of problems was a very efficient
3 way of addressing this and included things like
4 what kind of notices would be easiest to send
5 for the content holders, easiest to process for
6 the ISPs, and that, as Sandra was talking about,
7 led us to be able to talk about things like
8 volume of notices, all the things that are in
9 here.

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

19 MR. POGODA: Thank you. So I think
20 that's a nice natural break point. If you have
21 some thoughts, and I see a lot of people do,
22 please hold them. Don't forget them.

1 We have some coffee and some water in
2 the back of the room, no easy feat for a
3 government agency to provide, but we managed it.
4 And there's a cafeteria directly behind you
5 straight back, as well, if you need a quick
6 snack.

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

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

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

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

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

1 as well, which you've seen.

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

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

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

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

1 things off the list.

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

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

1 and Topic 2.

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

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

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

17 The first is we endorse what appears to
18 be an emerging consensus that at least the first
19 topic of discussion be focused around generating
20 some form of standardized notices. We think
21 that's helpful. We think it does improve the
22 efficiency of the process.

1 We and our members were, in fact, some
2 of the first to help develop some of these
3 standardized notice forms and worked with
4 service providers who developed APIs, you know,
5 for example, that provided for the submission of
6 notices through XML forms, so we do think that's
7 a good first step. Not the only step, but the
8 first topic that should be focused on.

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

15 The point of the DMCA is not simply to
16 provide a framework for the generation of tens
17 of millions of notices. The point of the DMCA
18 is to decrease the amount of online
19 infringement. And any process that talks about
20 improving the operation of the DMCA has to look
21 at ways to improve the effectiveness as measured
22 by reducing the level of online infringement.

1 And let me just give an analogy to
2 suggest what I'm talking about. If there's a
3 high crime area of a city, lots of muggings and
4 beatings and things going on and the police
5 chief comes up and says, you know, we've
6 addressed this problem, we have arrested a
7 thousand people in this four-block area last
8 month, that's nice, that's interesting, but it
9 doesn't really tell you what you want to know,
10 which is did the level of crime actually go
11 down. Again, it's about effectiveness, not
12 simply efficiency.

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

1 notices.

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

13 There were 25 million notices in the
14 categories, basically non-web video user-
15 generated content, so you're left with basically
16 notices to search and to cyberlockers. Of those
17 25 million notices that were sent, there were a
18 grand total of eight counter notices sent in
19 response. Again, that suggests that when you
20 look at the number of incorrect or abusive
21 notices, in perspective, it's actually a
22 minuscule percentage of the total.

1 So, again, I'm not suggesting that we
2 don't talk about that topic at all, but let's
3 not let it -- let's devote the amount of
4 resources to it in proportion to the problem
5 that actually exists and not just be swayed by a
6 few anecdotes. Thank you.

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

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

22 There is a real issue in terms of

1 volume. This hurts copyright owners as well as
2 the service providers that receive this if, for
3 example, the notice and takedown avenue to
4 report these notices is crashed by an entity
5 that's being paid on a model where they want to
6 send more notices.

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

15 I don't think that these are outliers.
16 They're actually real, practical problems in
17 terms of managing these structures. And it's
18 important that, as we think about mechanisms
19 that are going to work better, we think about
20 disincentives or incentives for rights owners to
21 use positive, workable methods to deliver notice
22 and, ideally, for the rights owner -- where it's

1 scalable, for the rights owner to do so, to send
2 the notice itself.

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

15 MR. POGODA: Thank you.

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

20 MR. POGODA: I'm sorry to interrupt.

21 MS. PAULSON: Yeah.

22 MR. POGODA: Could you just speak a

1 little closer to the mic --

2 MS. PAULSON: Sorry.

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

5 MS. PAULSON: Better?

6 MR. POGODA: Yes.

7 MS. PAULSON: Okay. Michelle Paulson
8 with the Wikimedia Foundation. I'm going to try
9 to limit my comments to the two subtopics here.

10 Basically, the Wikimedia Foundation is
11 the non-profit that runs Wikipedia as well as a
12 number of other online collaborative projects.
13 Our user community is made up of both reusers of
14 work and rights holders, so both interests are
15 really -- have play within our organization.

16 We really do endorse having
17 standardized notice and takedown procedures as
18 one of the main topics that we first, I think,
19 embrace. I think that it would be a good
20 building place to just start where we can build
21 consensus, and I think it will have the most
22 real impact on a lot of the other topics that

1 are going to be happening hopefully in the
2 coming months.

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

16 As far as the trusted user and verified
17 user systems that, say, Google has been using,
18 while we think that it would be very helpful to
19 use as a model, I don't think it's going to be
20 necessarily as helpful for smaller organizations
21 like the Foundation where we don't actually have
22 the same numbers of repeat infringers. And,

1 also, our user community wouldn't really endorse
2 having just trusted partners that we wouldn't
3 take the time to individually evaluate every
4 notice that came in and scrutinize it. Our user
5 base is very sensitive to that.

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

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

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

1 directly to those people around the world.
2 Right now, we have around 20 million products on
3 our site. I have been at Etsy for over seven
4 years. I came on board as the seventeenth
5 employee, and the DMCA is critical to our
6 success.

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

15 But I have to say, I do think that
16 there is sort of a standardized form right now.
17 I think that it's very clear what people need to
18 include in these takedowns. And when Etsy
19 receives a takedown notice, we take things very,
20 very seriously. So -- And when we receive a
21 takedown notice that is absent certain
22 information we requested from the individual

1 person, we help to walk them through. I think
2 there is education that needs to happen. I do
3 think that standardized forms could help.

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

18 And another thing that I think that
19 needs to be addressed, and I haven't seen many
20 people talk about this, is the issue of
21 trademarks. I've seen, you know, a fine line
22 between a copyright and a trademark, especially

1 when you're a small ISP and it's commerce and
2 people will say -- will give me a notice about
3 trademarks instead of about a DMCA takedown
4 notice because there is no counter notice
5 procedure, because a small ISP like Etsy, who is
6 offering a very small barrier to entry for
7 people to start businesses, could be held liable
8 for trademark issues as well.

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

11 Thank you.

12 MR. POGODA: Thank you.

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

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

1 sizes and resources.

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

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

21 I think there's issues with people
22 being confused or intimidated by the 512 process

1 itself, and also there's questions of what
2 happens with the layers of process that get
3 added on top of the statutory process as well.
4 And when you have standardized systems that are
5 dealt with with parties that are used to dealing
6 with each other very often, oftentimes they
7 don't accommodate or account for people who are
8 not used to or not accustomed to that system.

9 MR. POGODA: Thank you.

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

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

17 I think the PTO has done a nice job
18 here of laying out what's a fairly comprehensive
19 list of possible topics that one could discuss
20 with respect to the operation of the DMCA. I
21 think, just in terms of resource intensiveness
22 and getting an appropriate range of parties to

1 participate in the process, it would be almost
2 impossible to tackle all of those
3 simultaneously. Certainly, I know that groups
4 like ours are not heavily staffed to do
5 something like that. I suspect, even within
6 industry, that's largely true. We've heard that
7 this morning.

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

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

22 You know, there isn't any sort of

1 judicial intervention. And the more and more
2 the system is automated, the more it is the case
3 that if someone sends a takedown notice, right
4 or wrong, that content is probably coming down.
5 As a result, it is certainly attractive for
6 folks that want something taken down or want
7 something to disappear from the Internet for
8 whatever reason.

9 CDT did a report a few years ago about
10 the misuse of the process in the political
11 context where campaigns that objected to a
12 particular campaign ad or would like to see it
13 disappear -- excuse me, it's not so much done by
14 campaigns, but news organizations wanting to
15 appear neutral in campaigns would often cause
16 political ads, during the heat of a campaign, to
17 be taken down under the process. So, you know,
18 in that kind of context, there is real potential
19 for the system to have an impact on free
20 expression, and I think that's a very
21 significant set of interests that is worthy of
22 consideration in the process.

1 You know, it may be true that counter
2 notices are a relatively small percentage of the
3 overall notices that are getting sent. But,
4 again, as we've heard today, it's often the case
5 that parties don't, for whatever reason, submit
6 counter notices. I don't think we can
7 necessarily assume that all the notices that
8 were sent and weren't counter noticed were valid
9 notices in the first place.

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

18 MR. GLAZIER: Good morning. Mitch
19 Glazier with the Recording Industry Association.
20 Thank you for holding this meeting and for this
21 process. We certainly think that the
22 multistakeholder process focusing on pragmatic

1 and practical solutions is the right way to go
2 right now.

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

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

17 If you can only look at one percent of
18 one of the top sites or services responsible for
19 a huge amount of infringement, and therefore,
20 because you can only look at that amount, you
21 can only send notices on that amount, you by
22 definition cannot be very effective in trying to

1 actually, even on a daily basis if you have to,
2 within the construct of the notice and takedown
3 system, actually achieve any kind of real
4 success in finding that sweet spot where search
5 and notice is commensurate with the amount of
6 infringement. And so we hope, within the bucket
7 of efficiency and efficacy, we can look at those
8 search and takedown notice limits.

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

19 In the same way, the other side of that
20 is what is done for malware today, could there
21 be some warning or some notice to a consumer
22 informing them that the site that they're about

1 to go to has received a high number of notices,
2 whatever that right level is, communicated in an
3 objective and neutral way.

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

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

17 And lastly, on branding, we certainly
18 are willing to talk about branding and metadata
19 and cheap, efficient ways of identifying full-
20 length commercial recordings so that a system
21 between the copyright owner and the provider
22 that works on both sides could be efficient so

1 that those who want to use that sort of system
2 could use it in an effective way.

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

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

10 MR. POGODA: Thank you.

11 MR. ADLER: I'm Alan Adler with the
12 Association of American Publishers. I think all
13 of these topics certainly are -- do warrant
14 consideration in this process, but I think there
15 has been a realization, as I see the way the PTO
16 has at least preliminarily shaped some of these
17 issues, that some of these topics are going to
18 present more difficulties than others given the
19 premise of this forum, which is that we're
20 supposed to be dealing with trying to come up
21 with a consensus of solutions to issues to
22 improve the way notice and takedown works

1 without the need for legislation. Some of these
2 issues are going to present more difficult
3 issues than others unless you sort of cabin them
4 according to that premise from the start.

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

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

21 But I think, for example, when one
22 looks at Topic 2, you could see that that's an

1 issue that if you tried to discuss those issues
2 of inaccuracies and abuse of the process in
3 their fullest scope, you're going to run into
4 the situation where the stakeholders are going
5 to have to deal with the fact that there are
6 going to be disputes over whether or not some of
7 the court decisions that have been key -- for
8 example, in interpreting the way 512(f) material
9 misrepresentation standards apply, what the
10 meaning is of "substantial compliance" with
11 respect to notifications under 512 -- and that's
12 going to just bog down the process, I think.

13 People are always going to be in a
14 situation where they will disagree about whether
15 or not courts got it right in particular cases.
16 So as a general rule of thumb, I would urge that
17 we try to look at those issues for which it's
18 not going to be necessary for people to debate
19 the way court decisions have been applied to
20 particular issues in order to see whether or not
21 people agree whether they got it wrong or right.

22 Having said that, one of those areas I

1 think has not been mentioned so far, but I think
2 it's critical to any discussion under Topic 1,
3 and that's the issue of whether or not there are
4 ways in which best practices can be developed to
5 deal with the question of the repeat infringer
6 policy requirements of Section 512.

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

21 MR. POGODA: Thank you. I think we
22 have one speaker coming up now. One second,

1 Jonathan.

2 A reminder for any people on the
3 webcast, you can participate by phone. There's
4 nobody in the queue right now. But if you are
5 and you've dialed into that number, just press
6 *1 and you'll be placed in the queue by the
7 operator.

8 Jonathan, please go ahead.

9 MR. BAND: Jonathan Band, still
10 representing CCIA.

11 (Laughter)

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

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

22 It seems that, again, in terms of what

1 we're all doing here trying to make the DMCA
2 work better, it's sort of one of these premises
3 that we just sort of jumped over, but I think it
4 needs to be said, that certainly from the
5 perspective of a lot of my clients -- both CCIA,
6 it's members, and other clients -- is that the
7 DMCA is working really, really well.

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

21 And then just building on the point
22 that David Sohn raised about the sort of misuse

1 or abuse in the political context, even though,
2 again, that hasn't happened a lot, it has
3 happened, and in terms of undermining the
4 credibility -- the public credibility of the
5 DMCA, I mean, those instances have, I think,
6 really harmed the credibility of the DMCA in
7 public perception. Because, you know, that's
8 when the DMCA really becomes very visible when,
9 you know, a McCain campaign ad is pulled down a
10 couple of days before the election. That really
11 gets people's attention.

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

22 MR. POGODA: Thank you.

1 MS. OTORI: Huawa Otori with The
2 Internet Association. We represent sort of a
3 broad range of leading Internet companies based
4 here in the U.S.

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

14 And I know, just in terms of best
15 practices and moving forward, one point that's
16 under this topic as well is the technology
17 aspect, and our companies have been, you know,
18 great leaders and sort of on the forefront of
19 providing technological solutions to making the
20 notice and takedown process both more efficient
21 and effective. So in terms of moving along with
22 best practices, that would be something to look

1 to as well.

2 And one more point. I think something
3 that hasn't been raised yet, just in terms of
4 transparency, a lot of our companies are, you
5 know, also putting out transparency reports and
6 how they are working with this notice and
7 takedown system. So if everyone in the
8 ecosystem could do more on transparency, I think
9 that's something that could be beneficial to
10 this process as well.

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

16 I commend the task force for taking a
17 look at that issue. I think rule of law's
18 important. That's certainly true in the
19 takedown notice context. I think, in looking at
20 that, not only do we need to keep a point that
21 Ben Sheffner made about the very high efficacy
22 rate of some takedown notice senders, also I

1 think we just need to maintain perspective that
2 lurking in the background of all this is a
3 problem that we're not going to be talking about
4 and that's unlawful uses of the Internet
5 generally. There's a big problem there. It is
6 not one that we should try to solve in this
7 forum, and I commend the task force for not
8 trying to introduce it. But the abuses of the
9 takedown process, to the extent they exist, are
10 a minor part of a much bigger problem and we
11 should keep that in perspective as we discuss
12 them.

13 I do think we can make some useful
14 progress on some of those issues. For example,
15 we just heard about the CDT study about
16 takedowns related to advertisements from
17 political campaigns, and David's right, most of
18 the incidents documented involve a candidate
19 making use of news footage in a campaign video
20 that appeared to associate the newscaster with
21 the campaign, which, you know, is a potential --
22 potentially undermines the efficacy of the

1 newscaster's speech. Moreover, that study
2 focused mostly on takedowns from YouTube during
3 the 2008 campaign season. At that time,
4 YouTube's terms of service to upload a video
5 that contained potential third-party content,
6 you had to represent that you either owned all
7 the copyrights in that content or that you had
8 the owner's permission.

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

1 really fully put those in the abuse category.

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

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

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

19 (Laughter)

20 Please, sir.

21 MR. RAE: Casey Rae from Future of
22 Music Coalition. It's really great that all of

1 these topics have been flagged. They're all
2 definitely worthy of exploration.

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

21 The interesting thing about that is
22 when we're exploring that conversation, you

1 know, we sometimes talk about what is and what
2 isn't working. I think the proper framework
3 would be what -- how to honor the intent of the
4 statute while keeping in mind the specific needs
5 of both sides of the SME universe, the
6 innovators and the content creators and the
7 rights holders. I don't know exactly how to do
8 that, but I would definitely welcome further
9 discussion about that specific topic.

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

21 Once upon a time, those users simply
22 weren't licensed, but we have mechanisms to

1 collect and distribute revenue from that
2 activity. So we have to -- I know it's outside
3 of the purview of this conversation, but we have
4 to be mindful of the licensing environment and
5 the evolution of the space, because once upon a
6 time that was just a new innovation that entered
7 the marketplace, and now it's big business for
8 major industry players and independents.

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

21 Now, I don't know if we can solve that,
22 but it would be very interesting, if we get to

1 that area, to hear what everyone else has to say
2 about SMEs on each side.

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

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

12 Please.

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

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

17 (Laughter)

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

22 MR. POGODA: Yes.

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

19 Now, ideally, whoever drafts curricula
20 or guidelines for curricula, the Department of
21 Education or State Boards of Education, would
22 actually see that this topic is included,

1 particularly since it's almost impossible to
2 speak of education today without speaking of the
3 use of the Internet, and it's a tool that
4 practically every student from elementary school
5 to Ph.D. candidacy uses. But that's a very big
6 challenge.

7 I do think that with regard to the
8 organizations that are represented here that
9 there is a role, and actually the PTO already
10 plays a role on the Patent side in that it has a
11 fairly active program of reaching out to
12 independent inventors to educate them about the
13 patent system. I don't see anything like that,
14 particularly on the Copyright side. And so I
15 think one of the things that could be considered
16 as an outcome of this, particularly if best
17 practices are developed and certification marks
18 are developed and things of that nature, is that
19 the USPTO and the Copyright Office, which are
20 the places that members of the public go if
21 they're looking for something and they want a
22 sense of, well, this is really the truth -- Of

1 course, a lot people don't trust the government.
2 But I do find that, actually, the PTO has a lot
3 of credibility with the independent inventor
4 community. I suspect the Copyright Office does
5 with the creator community. And I think that
6 these two offices could be much more aggressive
7 and active in not only providing information,
8 but ultimately, as this process goes forward,
9 play a role in its roll-out.

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

17 And I know -- I'm pretty sure the PTO
18 -- For example, right now, you know, we have a
19 big problem with invention development
20 companies. You know, you see these late night
21 on television, these people, well, you know, you
22 invent something and you can pay me \$20,000 and

1 I'll -- you know, all of a sudden you'll become
2 rich because I'm going to develop your
3 invention. So there are a lot of scams that go
4 on there. But I do believe the PTO has a list
5 of reputable companies, so they play a role in
6 trying to educate people, when they contact the
7 PTO, as to what is legitimate and what is not.

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

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

1 MR. LEVIN: Hi, everyone. Garrett
2 Levin from the Patent and Trademark Office.
3 Thanks, everyone, for a really productive
4 conversation so far.

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

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

21 So we'd love to hear thoughts on that.
22 We can do that now. We can break for lunch and

1 then come back and pick up with that discussion
2 and then go into a discussion of process,
3 however folks want to play it. But, please, I
4 welcome you to come on back up to the
5 microphones, and I see someone else is on the
6 phone as well.

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

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

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

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

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

21 This is Corryne McSherry from the
22 Electronic Frontier Foundation, and I just want

1 to stress what I think I heard from CDT, CCIA,
2 and PK, which is that we want to resist the
3 notion that takedown abuse should not be an
4 important part of the dialogue, and I want to
5 just mention briefly three reasons why.

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

17 Secondly, I want to disagree with Mr.
18 Adler's notion that takedown abuse isn't a good
19 topic for a sort of best practices conversation.
20 I think the opposite is true. I think that
21 there's actually a great deal that well-meaning
22 people who care about protecting fair use

1 online, which I think most people in this room
2 would say that they do, cannot actually do a
3 great deal to make sure fair use is protected
4 without the need to consult any judicial
5 decisions whatsoever.

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

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

21 MS. McSHERRY: Thank you.

22 MR. BERROYA: I'm Jon Berroya with ESA.

1 First of all, I want to just thank everyone who
2 is involved in the process of setting up this
3 multistakeholder dialogue. We are also very
4 enthusiastic about the fact that this is
5 occurring and that we're having an opportunity,
6 along with all of you, to participate in what I
7 think will be a very productive dialogue
8 ultimately.

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

18 I can tell you, from our own anecdotal
19 experience, and I think our general counsel,
20 Christian Genetski, mentioned during the
21 December meeting that when we did a comparison
22 between sites that are problem sites, one that

1 offers an API for us to use to send notices and
2 one that we see a similar amount of infringement
3 on, but offers no such API, the latency of
4 infringement, that is, the amount of time a
5 particular infringing file is available on those
6 sites, skyrockets when there is no easy way of
7 reporting the notice and to confirm whether or
8 not that notice is being received and action is
9 being taken on it.

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

16 I also just, in that same context, want
17 to address sort of the tone of conversation.
18 One of the prior speakers mentioned, you know,
19 the creators on one side and the innovators on
20 the other side. Our industry, and many
21 industries that are represented in this room,
22 see themselves as both creators and innovators,

1 and I'm not sure that it's helpful to the
2 dialogue to try and put people in one category
3 or the other because what we're coming towards,
4 or what we're supposed to be coming towards, is
5 a solution that really benefits everyone in the
6 room, which is a DMCA process or a process that
7 is a voluntary agreement maybe layered on top of
8 the DMCA that results in a more effective
9 solution that really reduces the burden on
10 everyone and increases the benefit to everyone.

11 Thank you.

12 MR. POGODA: Thank you. Please.

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

22 And I think there's a good reason,

1 first of all, to tackle something that's a
2 relatively discrete topic on which there's a
3 win-win proposition for all sides, users, rights
4 owners, and service providers. And I think in
5 doing -- in simplifying and doing work that can
6 scale and can work for all different sorts of
7 users, one can come up with something that does
8 bridge a lot of different gaps. There may need
9 to be some modification for smaller users. But
10 it's not clear to me that if we tackle a
11 discrete part of one of these issues that were
12 put forward and then try to approach it from the
13 perspective of both sophisticated entities on
14 all sides and smaller entities, that we can't
15 come up with something that would be effective
16 and would build trust, and then it would be
17 possible to address some of the other issues on
18 this list if there's sufficient incentive on all
19 sides to do so. But trying to be ambitious in a
20 multistakeholder process, particularly when
21 you're starting on the first topic, as John
22 Verdi, I think, can attest, having masterfully

1 managed the NTIA process, is really I think a
2 recipe for failure.

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

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

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

19 MR. POGODA: Thank you. Sandra.

20 MS. AISTARS: Sandra Aistars, Copyright
21 Alliance. I wanted to add one maybe nuance to
22 the standardized notice and template discussion

1 that we've been having and then also respond to
2 some of the comments about inaccurate or abusive
3 notices and some of the perceptions that people
4 have been expressing about, you know, feeling
5 bullied by the counter notice process.

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

12 One thing that I've heard from numerous
13 independent artists with whom we work is that,
14 especially some, you know, perhaps more
15 questionable websites will bury the contact
16 information and make it particularly difficult
17 to send a notice to the website, sometimes
18 sending you through seven, eight different
19 screens before you can actually deliver the
20 notice, delivering various pop-up screens in
21 between, you know, filling out the information
22 that you're requested to fill out. And so

1 that's the sort of behavior that we'd want to
2 discourage because, obviously, that leads people
3 to give up in sending their notices and makes
4 the whole system even more ineffective and
5 inefficient.

6 The second point about how notices are
7 delivered and responded to, I'm harkening back
8 to a discussion last week before the Judiciary
9 Subcommittee on Courts, Intellectual Property,
10 and Internet, where Maria Schneider, testifying
11 for the Recording Academy, was speaking about
12 the fact that when she, as an artist, is issuing
13 a takedown notice, there's all sorts of steps
14 that she has to go through to issue that notice.
15 But when somebody's actually uploading content
16 onto a site, there's not a similar sort of
17 document or checklist that a person is led
18 through to make them think about what they're
19 doing as they're uploading content. So,
20 perhaps, that's another useful exercise that --
21 or useful kind of standardized document that we
22 could seek to develop to help educate the

1 uploader community so that, really, content that
2 shouldn't be posted isn't posted.

3 Another thing that Maria mentioned when
4 she testified was -- and this goes to kind of
5 the feeling intimidated, feeling bullied aspect
6 of things -- on the artist's side, she mentioned
7 the fact that when she issues a takedown notice,
8 that oftentimes the content is removed and a
9 legend is placed on the site that says, you
10 know, sorry, content no longer available, it was
11 removed by Maria Schneider, unhappy face. That
12 is, you know, obviously, particularly
13 uncomfortable when the identifying name is your
14 name, an individual artist. It's less
15 difficult, I think, for a large corporate entity
16 to be named as the copyright owner who has
17 removed the content. But if you're talking
18 about an individual artist that's identified by
19 name, I think that is perhaps, you know, more
20 intimidating, more likely to discourage the
21 individual artist from exercising their
22 individual rights.

1 So perhaps thinking about how to more
2 neutrally state why a piece of content is no
3 longer available on a site would be another
4 appropriate thing to consider as we develop
5 these sort of standardized templates. Thanks.

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

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

20 So the reason why I think it would be
21 good for a process like this to start out with
22 standard notices -- and the two Johns, Morris

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

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

21 The agenda, as you have laid it out, is
22 extraordinarily ambitious in my opinion. It's

1 more ambitious than at least we have the
2 bandwidth to cope with. So thank you.

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

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

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

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

15 AUDIENCE MEMBER: Restaurant list?

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

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

22 MS. PERLMUTTER: Welcome back from the

1 lunch break. I hope everyone managed to sustain
2 themselves, and we're glad to see a lot of you
3 back for the discussion of process, which, of
4 course, is slightly less sexy than the
5 discussion of substance, but at least as
6 important. So we're looking forward to that and
7 glad you're all here.

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

14 MS. LEE: Thank you, Shira, and good
15 afternoon to everybody. I'd like to thank Shira
16 and her team and all of you for the hard work
17 and our colleagues at the National
18 Telecommunications and Information
19 Administration for all the work that you've put
20 into assembling another important public event
21 on copyright and innovation in the digital
22 economy. And welcome back from lunch, everyone.

1 I'm glad you're sticking around because we have
2 some good discussion that is still to come. I'd
3 also like to thank those of you participating
4 via webcast for being part of today's events.

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

15 Today's meeting marks an important
16 milestone in our ongoing work on critical
17 digital copyright issues. This process began in
18 April 2010 with the launch of the Internet
19 Policy Task Force, which, after significant
20 public input, produced the 2013 Green Paper on
21 Copyright, Policy, Creativity and Innovation in
22 the Digital Economy.

1 The Green Paper identified areas where
2 we thought the Department of Commerce could do
3 more work to help improve the copyright
4 environment. One of those areas is improving
5 the operation of the DMCA notice and takedown
6 system which is now over fifteen years old. As
7 we explained in the Green Paper, those who use
8 the system, including rights holders, online
9 service providers, and consumers, have pointed
10 out ways in which the system's operation can
11 become unwieldy and burdensome. So we decided
12 to convene a forum where you, the stakeholders,
13 who actually use the system, could find
14 agreement on improvements that benefit everyone.

15

16 Today's meeting is when we at the
17 Department of Commerce step back and let you
18 begin this important collaborative effort.
19 We're here to facilitate that conversation. But
20 the ultimate results of this process rests in
21 your hands. We urge you to take that goal
22 seriously. This is a golden opportunity to find

1 common ground and make meaningful improvements.

2 I don't need to belabor the economic
3 and cultural importance of either copyright
4 protection or the Internet as a means of
5 disseminating information. You wouldn't be here
6 today if you didn't already share that
7 understanding. We remain fully committed to the
8 vision then Commerce Secretary Gary Locke
9 articulated in 2010 of finding "the sweet spot
10 on Internet policy - one that ensures the
11 Internet remains an engine of creativity and
12 innovation and a place where we do a better job
13 protecting against piracy of copyrighted works."
14 As you carry your work forward through this
15 multistakeholder forum, I encourage you to be
16 guided by that same goal.

17 We're pleased by the attendance today,
18 both in this room and via our webcast, and more
19 broadly, the significant interest all of you
20 have demonstrated in this process through your
21 input during our public comments and other
22 discussions and initiatives that have occurred

1 since the publication of the Green Paper. You
2 have our thanks for your constructive and
3 meaningful participation as this process moves
4 forward.

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

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

16 (Applause)

17 MR. POGODA: Good afternoon, everyone.
18 Thank you for coming back on time from your
19 lunch break. I just want to -- a few
20 administrative points before we kind of jump
21 into stuff.

22 One, for anyone watching on the

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

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

15 (Laughter)

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

18 So I thought that we would begin by
19 sort of, hopefully, finishing up kind of the
20 Topic discussion and then moving into some more
21 of the Process discussion. Along those lines, I
22 think that there is -- me and my colleagues

1 think that there is a fair degree of consensus
2 in the room that we can sort of begin the larger
3 multistakeholder process by addressing the
4 standardized notice formats and templates and
5 also how other potential issues might be
6 addressed after that. We think there is some
7 consensus in the room for that, but we're not
8 the final arbiters of what has or has not really
9 been decided.

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

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

20 And without prejudicing the ability to
21 sort of change anything, we'll move into a
22 discussion of -- a little bit of the Process

1 discussion, the process and framework by which
2 this group will go about identifying either that
3 issue or other issues that may arise as work
4 goes forward. And so I'm going to do sort of a
5 dry run, kind of a just-the-facts-Joe-Friday
6 presentation like I did this morning in a moment
7 just so we can walk through it.

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

20 But given the apparent consensus that,
21 initially, at least, we'll be focusing on kind
22 of one primary topic, you can just imagine in

1 your head, you know, amend this to suggest one
2 working group instead of multiple ones. So you,
3 hopefully, are beginning to see just how much
4 easier this is than legislation.

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

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

21 So, again, for the plenary sessions,
22 meet approximately every six weeks, alternate

1 between here and San Jose. Those events would,
2 just like this one, be open to the public. They
3 would be webcast with a chance for in-person --
4 obviously, in-person and remote participation as
5 well. And then at the larger plenary sessions,
6 there would be discussions and decisions made at
7 the larger plenary sessions on any
8 recommendations or proposals that may have come
9 from the smaller working groups. As I said
10 before, one working group per topic.

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

22 It's possible the government might be

1 able to send people to sort of observe those
2 meetings, but we really wouldn't in any way be
3 able to kind of or want to actively participate
4 in them. We would encourage the participation
5 of participants who possess operational
6 experience in sort of the day-to-day technical
7 functioning of the notice and takedown system.

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

19 Any working groups would report the
20 results and recommendations that came from their
21 work to the larger plenary session, but they
22 would not be responsible for making any final

1 decisions. The work of the working group would
2 be governed by Chatham House Rule. And it's not
3 "Rules." We actually went back and forth on
4 this. It's one rule. So just in case anyone
5 thinks that's a typo, look it up. For those not
6 familiar with that rule, the meeting content
7 could be reported, but there would be no
8 identity or affiliation of any speakers who
9 actually said a particular thing. And, finally,
10 nothing would be agreed to until everything is
11 agreed to.

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

1 community.

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

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

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

20 MR. FRIED: Hi. I'm Neil Fried with
21 the MPAA. Just to revisit the idea of maybe
22 organizing the working groups by service. If we

1 seem to be coming to a consensus that there may
2 be a very small number of initial issues,
3 perhaps maybe even one as a starting issue, it
4 might make more sense to do this, again, by
5 service, so they can be tailored to the specific
6 issues for each service. It also might be more
7 efficient than having a working group of the
8 whole. If we have only one issue, it would seem
9 that everybody would be in one working group.

10 The other additional benefit is that as
11 we add issues over time, we could add those
12 issues into the existing working groups rather
13 than to have to form entirely new working groups
14 for new issues. So I just offer that to the
15 crowd.

16 MR. POGODA: Thank you.

17 MR. BAND: Jonathan Band, CCIA. So I
18 think, given that we're talking about one topic
19 at this point, it probably -- I'm not sure it
20 makes sense to have like a plenary. I think
21 just kind of having a working group that focuses
22 on the topic that we were talking about before,

1 sort of the template for notice, you know,
2 standardized template for notice, having a
3 working group that just kind of gets together
4 and works on that, and then they see where they
5 come to, and then -- That seems to me to make
6 more sense than having sort of a plenary and
7 then a working group. I think just one working
8 group that sort of charges ahead on the one
9 issue is the most efficient way to go.

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

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

17 MR. LEHMAN: Well, I guess the thing
18 that concerned me about when you outlined the
19 makeup of the groups was I think you had only
20 like three to four representatives of rights
21 holders there. Well, you know, these templates
22 are going to be used for -- For example, in the

1 visual arts, which I'm involved with, you know,
2 I think that's a much different subject matter
3 than sound recordings or than literary works
4 generally and -- or computer software, for that
5 matter, and I think if you just have three or
6 four people, you're going to have a hard time
7 having the interested parties represented. So I
8 think you should have -- If you're only going to
9 have one meeting, I think you should have more.

10 And then the final thing I would say is
11 that when I looked at that list, you had
12 basically representatives of the service
13 providers, and then you had rights holders, and
14 then you had people who represented, I guess,
15 the user or public interest community, whatever,
16 and I think that's imbalanced. Because I think,
17 as a practical matter, keep in mind -- This is
18 something that was seemed to have been lost
19 sight of this morning. The reason that we have
20 notice and takedown is because of an exception
21 to normal copyright liability, and that is that
22 Internet service providers have a safe harbor.

1 That's why we have the notice and takedown.

2 Like so many of these things, it seems to
3 be automatically something's put in that
4 actually it all of a sudden becomes right, all
5 of a sudden the copyright law becomes more for
6 people that want to use anything they want
7 without any restrictions rather than for what
8 it's supposed to be about under Article 1,
9 Section 8 of the Constitution and under the
10 statute, which is exclusive rights of the actual
11 creator.

12 And so it seems to me that the Internet
13 service provider -- And by the way, that
14 exception was put in for them so that they would
15 not have liability, is all about non-liability,
16 non-obligation to rights holders. And so I have
17 to say, I think your description was grossly
18 unfair and that this is unbalanced from the get-
19 go in that it represents very much an anti-
20 rights-holders bias -- I hope that's not the
21 case, but that's the way I see it -- if you have
22 that limited number of people involved. And,

1 particularly, I don't want the visual artists to
2 be represented by the Motion Picture
3 Association. I'm sorry, I don't. We have lots
4 of problems sometimes with motion picture
5 associations -- companies, because they use our
6 stuff. You know, there's a Frank Stella picture
7 -- painting in one of their movies. And so I
8 think you have vastly too few people in slots
9 for the rights holder community.

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

15 So, first, I think -- I wanted to be
16 clear that what we thought we were hearing this
17 morning and the way we are proposing to proceed
18 was not to say there will only be one issue ever
19 discussed in this process. It was to say what
20 we heard emerging was a consensus that we should
21 start with that one issue and then we would see
22 where that went, that it may be that in

1 discussing that one issue, some other topics on
2 the list may end up coming up and be part of
3 that discussion. It may be that we'll make
4 progress on that one issue and then decide to
5 proceed to another issue.

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

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

13 MS. PERLMUTTER: Let me just finish,
14 Bruce, and then --

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

17 MS. PERLMUTTER: If I can just finish.
18 And then, of course, we could expand to other
19 issues or other working groups if necessary.

20 In terms of working group versus
21 plenary, in that if we start with just one issue
22 then we don't need both, we saw them as having

1 very different functions. So we saw the working
2 group as an opportunity for real daily
3 operations people to sit in a room and talk
4 about what's possible and how technology could
5 be used and try to achieve something very
6 practical and be able to do it under Chatham
7 House Rule, but then be able -- then have to
8 come back to the plenary where we would have
9 complete transparency and the ability for
10 everyone to look at how that discussion had
11 proceeded and see whether it was something that
12 was appropriate, and that, of course, would be
13 public in a webcast.

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

22 And then, finally, in terms of the

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

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

18 Have I missed anything? No. I think
19 the point was just -- You know, it's very hard
20 -- Since we want this to be a pragmatic,
21 practical discussion that's more technical than
22 policy, that it was much more likely that

1 something could be accomplished with, you know,
2 a group of no more than fifteen people sitting
3 in a small room as opposed to seventy-five in
4 this room, and then having as a sort of
5 ensurance of transparency and consensus by and
6 from the bigger group, that coming back to the
7 plenary to bring back whatever the results of
8 the discussion were. So that was the thinking.

9 And, again, happy to change it, but I
10 just wanted to make that clear.

11 MR. POGODA: Go ahead.

12 MS. TUSHNET: Rebecca Tushnet, the
13 Organization for Transformative Works. So,
14 actually, I want to sort of partially, believe
15 it or not, endorse the concept that we might
16 need more categories here and affinity groups
17 might be the way to go there. But, you know,
18 the kinds of information that are important are
19 going to differ a fair amount across works and
20 across categories. And I think that's also true
21 for the user group representatives, too. So,
22 you know, people who have sales websites, people

1 who have art websites, people who have text-
2 based websites all have very different
3 relationships. So I think it is important to
4 keep that in mind.

5 MR. POGODA: Thank you. Victoria.

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

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

22 And then, also, with respect to the

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

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

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

21 Certainly, the tech companies are more
22 and more based in Santa Monica, California, and

1 in Venice and in Marina Del Rey there is a huge
2 explosion of tech companies down there and
3 representatives are there. And, also, SMEs for
4 many of the rights holders groups are based in
5 Los Angeles. Just a thought.

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

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

18 So I think, at the outset, to try it,
19 maybe have a self-selection of who wants to do
20 x, y, and z. See how that works. If there are
21 problems, we can revisit it at that point. But
22 I wouldn't want such a good attempt to do the

1 right thing to be criticized because they
2 weren't part of the process.

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

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

19 MR. POGODA: Thank you.

20 MR. YOKUBAITIS: Ron Yokubaitis again.
21 I'll get my Giganews hat on and Usenet provider.
22 So Usenet is far older than the Web and it takes

1 a different -- there's some things you can do
2 easier in takedown on Usenet and some things
3 that are harder. So I wanted to support -- I'm
4 not trying -- Vulcanization, I realize, we can
5 get pretty spread out. But I think kind of the
6 interest would be helpful.

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

21 But I would love to have that more
22 tighter group, and I believe it's Ms.

1 Perlmutter, that, you know, you were suggesting
2 is kind of a workable way. And in the smaller
3 group, you could get over the rough spots and
4 get that out of the way and get down to the
5 operational details of what we can hammer out
6 and then keep the speech free that you may not
7 want to do in the plenary, because, look, we've
8 already worked this out. The rough edges are
9 gone. We got out -- vented anything we needed
10 to vent. And then we come to some kind of
11 workable hypothesis, hopefully, solutions.

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

19 I think it starts to be onerous on a
20 smaller company, and we've had a lady here
21 earlier. We're a small company with massive
22 volumes and global reach, but we're still a

1 small company, so we don't have a half a person
2 extra. So we are interested in making it more
3 efficient, too, and automated, and we've written
4 a lot of software to automate it, but one
5 copyright troll? Oh, God. There's no penalty
6 for sending us a false notice or -- because you
7 send us a valid notice. Well, we find it, on
8 average, with going through fifty percent of the
9 postings. We only have over 40 billion
10 postings, so you're searching to find it. You
11 find it, take it down, go to the next one.

12 But when you get a false notice, you
13 look through all 40 billion. Well, you know,
14 they'll sue you for a billion, though you've
15 only got one, so you send the search back two
16 more times. So we search three times. So we're
17 processing all that time, processor for a waste,
18 and it's not there. Well, we say it's not
19 there. We do get as high as seven or eight
20 percent. Periodically, someone will have three-
21 quarters of one month, something went wrong.
22 But we do have as high as seven, eight percent.

1 And when we were comparing a few
2 volumes -- And we're extremely high, if not
3 probably one of the highest volumes of DMCA
4 notices, due to, say, someone posts a music
5 file, it has to be broken up into pieces. We
6 get a notice for each piece, and it can appear
7 to be on our servers if one piece is left. So
8 we have to process each piece. So that's
9 unique.

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

20 MR. POGODA: Thank you.

21 MR. HALPERT: Jim Halpert, Internet
22 Commerce Coalition. It seems to me that we've

1 heard a bunch of different perspectives that may
2 require modifying the approach of the notice
3 form -- that's what we're talking about -- and
4 it seems to me that structuring this toward
5 efficiency, it might not be a bad idea to have
6 an initial discussion.

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

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

18 And to have a mixture of operational
19 people, probably starting with a separate
20 meeting of operational people, to recognize that
21 a lot of those folks are going to be on the West
22 Coast -- some of them, though -- Ron's in Texas

1 -- and to allow some remote connection or way to
2 communicate so that it's not just a face-to-face
3 meeting, there's some sort of videoconferencing
4 capability or audio conferencing capability, to
5 have a reporter of that discussion, and then to
6 take that back to the plenary or to another
7 group of folks who would start to draft based on
8 that feedback.

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

20 That way, there's general progress on
21 the core set of principles, but they're then
22 adapted to different contexts. And I think that

1 that is a way of working moving forward, would
2 lessen the load on the smaller providers having
3 to go through meetings, you know, starting
4 through scratch, running through all the
5 processes, but to have meetings that spread out
6 and then report back to the committee of the
7 whole with some modifications adapted to the
8 particularities, particularly the SME
9 constituencies, but perhaps other technical
10 frameworks.

11 I don't think this is a success if
12 there are repeated meetings over a course of a
13 year, every three weeks or six weeks, for
14 technical people who've got jobs to do
15 otherwise. I do really like the idea that we
16 heard about doing a bunch of these meetings in
17 California because Los Angeles and Silicon
18 Valley, we'll cover a lot of the different
19 constituencies. I don't think that Los Angeles
20 should be the only location by any means. I
21 think it should probably move back and forth for
22 those technical discussions. And then the

1 larger plenary could be held here, but with
2 people reporting in on what was learned in the
3 subgroups.

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

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

17 MS. AISTARS: Sandra Aistars, Copyright
18 Alliance. I actually endorse what Jim just
19 suggested in terms of at least a beginning
20 structure. I think it's very useful to start
21 any session with information gathering in a
22 constructive way, sharing experiences in terms

1 of what has worked and what has been
2 challenging, so that everybody goes into the
3 process not, as Shira pointed out in the
4 beginning of this session, in sort of a
5 posturing or advocacy way, but truly in a
6 rolling-up-your-sleeves and sharing experiences
7 and challenges mode. I think that will inform
8 the dialogue far better and set whatever working
9 groups we then feel are necessary off on a
10 better path to achieve success.

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

21 And so rather than exclude people, you
22 know, from participating, I would take an open

1 door policy from the beginning and make sure
2 that anyone who wants to take part can take
3 part. And I think we'll end up in a fine place,
4 judging from the participation that we have now
5 and, you know, how constructively everyone has
6 participated today.

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

1 their constituency.

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

22 MR. LEVIN: So just to build off of

1 Jim's comment on the idea of kind of having some
2 -- starting with some technical subgroups to
3 really talk about the operational practical
4 issues, we'd be interested in kind of hearing
5 ideas on how to actually implement that, when
6 that meeting should take place, who's going to
7 kind of provide the technical people to discuss
8 those practical issues, and, you know, how it
9 would work into the overall meeting structure.

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

18 And we've heard some good ideas, some
19 good suggestions building off of what we've put
20 up here, including the suggestion that to the
21 extent we have working groups, that they be
22 self-selected, which is something that I think

1 makes some sense. But we'd like to kind of dig
2 a little bit deeper and hear what folks have to
3 say about maybe this idea of having the next
4 meeting, whenever that takes place, be a real
5 technical discussion that kind of hones in on
6 the problems with non-standard forms and focuses
7 on -- potentially could be used to identify
8 whether there are -- whether it makes sense to
9 then split up into affinity groups focused on
10 different concerns raised by -- that different
11 right holders have, different concerns that are
12 raised based on the type of service receiving
13 the notice, things like that. So we'd love to
14 open it back up for that -- or just keep it
15 open, since it never closed.

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

20 One is I agree with the point that
21 Shira made, which is that the progress in this
22 area is most likely to happen in small groups.

1 If you get a big group together like this, the
2 notion that you'll have a day-long productive
3 discussion that's going to yield concrete
4 results is unlikely. But when you get smaller
5 groups together, I think you can actually make
6 some progress.

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

15 The technical discussion, get the
16 issues on the table, what do people mean when
17 they say insufficient standardization. Are we
18 really talking about just a template and, you
19 know, do you put the first name first or the
20 first name last, and, you know, what words do
21 you use, or are you talking about
22 standardization of technical formats, are you

1 talking about other things. Get the issues on
2 the table that people feel are deficient in this
3 area so that we can then figure out how best to
4 sort through them to figure out how best to
5 break those down into individual groups to
6 really sort of tackle those issues.

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

20 I know Joe is sitting there. I think
21 that his timetable probably wants to figure out
22 more in the next nine months than just whether

1 or not we can agree on standardization of
2 notices. So I think a meeting that would get
3 the standardization issues on the table,
4 identify, I think, to some extent, the issues
5 themselves will self-select. You'll identify
6 where there are differences of views about how
7 to handle notices, what the technical details
8 are, what the service-type details are, what
9 those groups would be.

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

18 MR. LEVIN: Thanks, Troy.

19 MR. POGODA: Thank you.

20 MR. LEVIN: So building off of that,
21 would other folks in the room -- can we get
22 consensus around this idea of having the next

1 meeting of this group be that kind of technical
2 discussion? Now that we've kind of come to
3 consensus about the initial topic as a starting
4 point, should the next meeting be six weeks from
5 now and here or in California? Should it focus
6 on the exact kinds of things that Troy was
7 talking about and that Jim mentioned before of
8 laying the table or what the real practical
9 operational issues are in lack of
10 standardization?

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

1 MR. POGODA: Jonathan.

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

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

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

1 weeks, I think that's going to be much more
2 difficult for them.

3 But one thing that -- I'm not
4 completely sure I understand this whole issue of
5 affinity groups, and I think it's dangerous,
6 especially to the extent that we're talking --
7 The whole point is to try to come up with sort
8 of a simple standardized template before we
9 start breaking it off and saying, okay, well,
10 there's going to be one template for search and
11 another template for hosting and another
12 template for other social media platforms, and
13 start vulcanizing it, as someone suggested. I
14 think it's better to start off with -- Let's see
15 if there is a way to come up with one standard
16 template that would be across platforms and
17 across different kinds of work, so whether it's,
18 you know, motion pictures or sound recordings or
19 photographs. Now, maybe that's completely
20 unrealistic and maybe it really does need to be
21 fine tuned. But I would think that, at least
22 initially, you certainly do have -- you know,

1 there are platforms that do have -- or there are
2 companies that have multiple -- that offer
3 multiple services on which different kinds of
4 works are uploaded, and they seem to have a
5 uniform template, at least within that company.
6 So it seems that it is perhaps possible to have
7 more standardization.

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

1 that would need to be decided.

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

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

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

20 (Laughter)

21 So thank you. And, you know, we had
22 all decided we weren't going to really say

1 anything today, but it's impossible not to join
2 in in the discussion.

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

12 In terms of our having put up a very
13 ambitious agenda, I agree, it does look like an
14 ambitious agenda if you sort of take off each
15 thing that's up there. But, again, just to
16 explain a little bit. This was really an
17 attempt to boil down the issues that were raised
18 in a hundred different comments submitted to us
19 in the public comment process and to try to fit
20 them into just a few categories and phrase
21 questions in a way that could accommodate people
22 raising any of the issues that they had raised

1 in their comments. So don't take it as
2 something that would be a list to be ticked off
3 in this process. And there's a lot of overlap
4 also between them. But I think they're sort of
5 useful to bear in mind as we proceed, because
6 they do summarize a bit and boil down the issues
7 that have been raised if you haven't had a
8 chance to read all hundred comments. We did
9 read them all, and we did try to make sure they
10 fit.

11 And then just one last point, and then
12 I think what we'll probably do is take a ten-
13 minute break and come back, just to say, also,
14 as we think about this, I don't think we should
15 see it as our task to set up a process now that
16 will endure for the rest of the year. I think
17 what we want to do is set up a process to start
18 with, see how it goes, and then we will keep
19 adapting it as we see where we are. So it may
20 be that this process doesn't work for some
21 reason or it works very well and we finish one
22 piece of it and then we want to set up a

1 different piece in a different way. So I think
2 we should just keep an open mind and we should
3 be talking about what we're going to do right
4 now in the near term, and then we will, as we
5 go, decide what the next step is.

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

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

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

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

21 So what we had in mind was to hold the
22 next meeting of the forum during kind of that

1 May 8th/May 12th time period, do it in
2 California at a location to be determined and
3 announced soon, and have that meeting focus on
4 the technical details of the problems and
5 successes in the area of standardization of
6 notices in terms of problems that exist as a
7 result of lack of standardization, successes
8 that have been achieved through standardization,
9 both in terms of standard forms for notices as
10 well as kind of technical standards for
11 acceptance of notices, processing of notices.

12 And kind of picking up on something
13 that Jim said, we'd really like that meeting to
14 incorporate lessons learned from SMEs, have the
15 small and medium service providers, rights
16 holders, come to that meeting, provide
17 information, educate the rest of the group on
18 the challenges that they face and the successes
19 that they've seen so that they can then kind of
20 -- you know, that their resource output is to
21 come to that meeting, educate the group, and
22 then the group will move forward in a kind of

1 open, self-selected working group process to
2 kind of develop ideas and solutions that could
3 then be brought back later both to the larger
4 group which would also incorporate those SMEs.

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

17 With respect to the meeting, the May
18 8th/May 12th meeting, the idea would be that
19 folks would submit kind of presentations that
20 they would like to make on the problems and
21 successes, two weeks in advance submit them to
22 the PTO. The PTO would then make those

1 available to the rest of the group so people can
2 see them in advance and be prepared to discuss
3 them. And that way it will allow us to not have
4 to spend a ton of time going through the
5 presentations and presenting them for the first
6 time, but rather people will have some
7 familiarity with them and can really roll up
8 their sleeves at the start. The presenters
9 could walk through them quickly, for those who
10 have not had a chance to look at them, and those
11 who have looked at them can react to them.

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

1 working group.

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

6 (Laughter)

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

9 (Laughter)

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

12 MR. LEHMAN: I have a question.

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

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

21 MR. LEVIN: Yeah. We'd use the same
22 setup that we're doing today, which will be it

1 will be webcast and then it will be the
2 opportunity for remote participation via phone
3 bridge -- moderator, phone bridge, the way we've
4 operated it today.

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

7 MS. OTORI: Huawa Otori, The Internet
8 Association. So one question for you guys
9 before I continue. So the plan for the next
10 time in about six weeks is to have a technical
11 presentation and then figure out the working
12 groups from there. I know we've been having a
13 conversation about the working group and how
14 that would work with the overall plenary -- the
15 broader plenary group. So I guess an alternate
16 proposal would be for, once the working group
17 does begin and the process is started in that
18 way, having the working group meet at least
19 maybe every six weeks so that way, you know,
20 there's work being done at a reasonable time
21 frame. And then having the plenary groups meet
22 when necessary, whenever the working groups have

1 made significant progress in whatever it is that
2 they're discussing for that time.

3 And then, also, I wanted to address the
4 conversations that have been occurring about
5 sort of splitting the working groups in terms of
6 service. Our member companies offer, as you
7 guys know, a broad range of services, and often
8 there's overlap in the groups that would result
9 in splitting it up by service. And, you know,
10 it's problematic in that it seems inconsistent
11 with how the DMCA is currently drafted. So it
12 would make sense to focus on issue and not
13 necessarily by service. Thank you.

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

19 MS. PERLMUTTER: And just to emphasize
20 again, you know, all of this is going to be
21 constantly a work in progress, so we are not at
22 all ruling out discussing all the other topics.

1 We think there are other topics that need to be
2 discussed. It's just that we'll see to what
3 extent they're discussed in the context of the
4 first topic. We'll see what the level of
5 productiveness and positive work is at the end
6 of making some progress with the first topic,
7 and then we'll figure out how to move on from
8 there, whether it's in the same kind of working
9 group format or not. So this is the initial
10 work plan, and we'll keep discussing where we go
11 from there.

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

15 I would just like to put up the last
16 slide for just once second. I'd like to direct
17 you -- I think we're going to use that -- If you
18 haven't yet signed up for them, please do sign
19 up for our Copyright Alerts at enews.uspto.gov.
20 It's the last subscription selection. You can
21 just put in your email address. PTO is going to
22 be using that going forward to make sure that

1 information is available. And the two websites
2 listed there will contain information about this
3 process going forward. The website you use to
4 sign up to attend this event or watch it on
5 webcast, we're going to continue to use that
6 website as a repository for information
7 throughout this process to announce new meeting
8 dates and things like that. But if you ever
9 have any questions about what's going on, where
10 the next event is, what the plan is, you know,
11 you should feel free to reach out and folks are
12 always available and willing to discuss. So
13 thanks a lot.

14 Now here's Shira.

15 MS. PERLMUTTER: I think this is the
16 first time I've gotten to be both the first and
17 the last speaker at a public meeting like this.
18 I do want to say thank you, a very sincere thank
19 you, to everyone who's participated, both in
20 person and virtually, for the time you've spent
21 and the commitment to the goals of this process.
22 I have to say, I really found these discussions

1 not only very helpful and informative but really
2 marked by an extremely positive and cooperative
3 spirit, which to me is the most important thing
4 we could have achieved today.

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

15 I do want to thank the team that worked
16 to put today's event on because, even though it
17 seemed very easy, it only seemed easy because of
18 all the work that went on behind the scenes.
19 So, in particular, I would like to thank Darren
20 for his hard work as the MC because I know how
21 tiring that is; everyone on the dais for their
22 great work, and they've all been introduced;

1 also, from the PTO, Alain Lapter, who is in the
2 front row here; our NTIA colleagues, John
3 Morris, who, unfortunately, had to leave early,
4 John Verdi, and Maureen Lewis; and then, again
5 from USPTO, Hollis Robinson and Linda Taylor;
6 from our own Global IP Academy in the back, Mark
7 Rein and the production team and Tim Luepke and
8 the conference services staff here at our
9 terrific facility.

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

12 (Applause)

13 I'm sorry. I especially wanted to
14 mention Garrett Levin, who has taken the lead in
15 pulling together this event and our prior Green
16 Paper conference. And I have to say Garrett has
17 been an absolutely fantastic partner working,
18 certainly for me personally, throughout the
19 whole Green Paper process. And if I sound a bit
20 sentimental, it's because, as some of you may
21 know, tomorrow is Garrett's last day at the PTO.
22 So this is a bit of his swan song. I think he's

1 just coming in tomorrow to clean up. And I have
2 to say it's a huge loss for us, but the good
3 news is that he's leaving not to go anywhere
4 inconsistent with our goals, but to join the
5 Senate Judiciary Staff, and so he will still be
6 working on intellectual property issues in the
7 public interest, which we're very happy about,
8 and I wanted to say thank you to Garrett and
9 wish him well.

10 (Applause)

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

13 (2:34 p.m.)

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