



Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy

The Internet Infrastructure Coalition (“i2Coalition”) submits these comments in response to the October 3, 2013 Federal Register notice requesting public comment on certain issues raised by the Department of Commerce Green Paper, *Copyright Policy, Creativity, and Innovation in the Digital Economy* (the “Green Paper”). The i2Coalition’s comments are limited to the provisions of the Digital Millennium Copyright Act (“DMCA”) set out at 17 USC § 512. In the i2Coalition’s comments, this section is generically referred to as the “DMCA.” Our comments are divided into five sections: overview; general principles; preservation of the roles set out in the DMCA; elimination of legal uncertainty; and use of best practices.

1. Overview

The i2Coalition provides a global voice for the people and companies building the nuts and bolts of the Internet. We believe the continued growth of the Internet is vital for growing an environment of innovation and seek to foster success of the Internet and Internet infrastructure industry. The i2Coalition supports copyright policies that preserve the remarkable opportunities offered by a free and open Internet, while balancing the rights of rights holders of all types. Granting safe harbor to providers who comply with the DMCA’s provisions protects growing Internet infrastructure companies from burdens that would limit their ability to innovate, generate revenue, produce jobs and provide a stable infrastructure to their customers.

The i2Coalition represents a large swath of Internet infrastructure companies and related technology firms. Our membership is a collection of hundreds of companies that generated an estimated direct and indirect \$46 billion in annual revenue in 2010 with expected 20% growth in 2013, and a positive trade flow to the United States of \$9.2 billion. As an organization, we believe that the full innovative potential of the Internet can only be harnessed if its inherent openness is preserved and made available to all, not just the giants of the industry.

2. General Principles

Any review of the DMCA must take into consideration to the following principles:

- The safe harbor process set out at 17 USC § 512(c) (the “safe harbor”) has created a climate of legal stability. This allows all users of the Internet technological and creative freedom to embrace new business methods and models.
- The current notice-and-takedown process can be complicated and confusing for all parties and would benefit from simplification.
- No changes to the DMCA or its processes should be undertaken without broad consultation with all Internet stakeholders. The term “stakeholder” must be viewed broadly and include the viewpoints of all participants in Internet society, according equal weight to the viewpoints of small to medium sized creators and enterprises.
- The revisions described in the Green Paper are designed to make the notice-and-takedown procedure more efficient, not to shift the balance of responsibilities set out in the DMCA. Caution should be



exercised in using the regulatory process to make substantive changes to the underlying legislation without Congressional action.

3. Preservation of the Roles set out in the DMCA

The i2Coalition believes that any changes made to the DMCA's notice-and-take down process must keep intact the assignment of roles and responsibilities set out in it. Responsibility for identifying, policing and enforcing intellectual property rights has historically been the responsibility of the owners of these rights. The DMCA preserves this historical responsibility. The DMCA has also created an environment in which those responsible for the enforcement of rights, and possible other uses of these rights, retain the right to resolve their disagreements collaboratively or in forums specifically tasked with dispute resolution. This removes an unnecessary third party from disputes.

4. Elimination of legal uncertainty

The DMCA eliminated a measure of legal uncertainty by allowing providers who choose to comply with the provisions of the act to avoid certain liability. The decision by Congress in the DMCA, and in other acts, to allow parties to remove themselves from complicated intellectual property disputes, has assisted in the rise of the U.S. Internet infrastructure industry. Shifting the burden of policing content away from rights holders and onto Internet infrastructure providers, as has been proposed by previous commenters, would deprive many firms the freedom and flexibility they need to innovate and grow. Such a shift would place infrastructure providers in the middle of disputes that they don't have an economic interest in. In addition, these businesses are not equipped to parse the legal nuances necessary to fairly negotiate the intellectual property issues at stake.

5. Best Practices

The i2Coalition believes that DMCA stakeholders would benefit from a cooperative approach in which all collaborated on best practices to fine tune the notice-and-takedown process. Such a process would retain the balance set out in the DMCA and avoid the risk of systemic harm to the U.S. Internet infrastructure industry and its economic competitiveness. The i2Coalition has long held the position that a multistakeholder process is critical in ensuring that the Internet continues to be an engine for economic growth and innovation. Indeed, the success of the Internet is directly attributable to the success of the multistakeholder method of governance, which the U.S. has long championed. We encourage the Task Force to consider comments from any and all entities that have an interest in the DMCA process. Listening only to large enterprises, whether rights holders, or Internet providers, ignores the U.S. government's long history of supporting multistakeholderism. In particular, small and medium-sized firms would be devastated by any changes to the DMCA that fundamentally alter either safe harbor or the notice-and-take down provision. Their voices should be heard, and given equal weight.