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

SECOND PUBLIC MEETING

MAY 8, 2014

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

DAVID BROWER CENTER

2150 ALLSTON WAY, BERKELEY, CA 94704

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY KRISHANNA DERITA

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P R O C E E D I N G S

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MS. PERLMUTTER: There was this anticipatory hush falling over the room. I thought that meant it was good to get started.

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

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

1 standardization in the notice and takedown system
2 and also to create a smaller working group to
3 examine these issues from an operational and
4 technical perspective.

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

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

25 So what we'll do is start by hearing from the

1 presenters in the order that they are listed, which
2 is alphabetical, in case you were wondering. And if
3 anyone has specific questions about the content of
4 any of the presentations, please feel free to raise
5 them immediately after that presentation. But we
6 would ask that any general points or comments or
7 areas of disagreement or agreement be held until
8 after the presentations.

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

22 And if we can begin by making progress with
23 respect to standardization, we can then discuss which
24 other issues this forum is ready to take up when,
25 whether in plenary or in the working group, including

1 the issues that were identified earlier in the green
2 paper process. Towards the end of the discussion
3 period, we will turn to identifying the initial tasks
4 of the working group. So keep this in mind as a goal
5 as we continue throughout the afternoon.

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

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

21 Just to remind you, we are looking
22 for participants who have practical and operational
23 expertise rather than legal and policy expertise for
24 this initial topic. And any results in the working
25 group or any developments in the working group will

1 be taken back to this plenary forum for full
2 consideration by everyone. And don't worry, that
3 will include the lawyers for those of you who are
4 nervous.

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

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

23 So what we are suggesting -- and this came
24 out of the discussion on March 20th as well -- is that
25 we would hold working group meetings on the same day

1 as plenary sessions of the forum as well as in
2 between, but with flexibility, then, for the working
3 group to determine how best to structure the in-between
4 meetings. So at least we will economize on
5 everyone's time. There will be one day where
6 meetings will take place and the working group can
7 decide how to communicate and interact and make
8 progress in between. We do encourage in-person
9 meetings because we have found that they are
10 generally the best way to interact productively.
11 But we do understand there may need to be other
12 options for at least some participants.

13 And one thing that may help, we do think that
14 the use of alternates which we said would be possible
15 for different constituencies should help so that you
16 could have one representative in an east coast
17 meeting and one in a west coast meeting and take
18 turns; however you would want to structure it. And
19 at this point, we do seem to have a general
20 consensus that we should proceed with only one
21 working group. On March 20th, we had talked about
22 different working groups on different topics and
23 then the tasks and compositions of the working group
24 may vary over time, depending on what we are doing
25 then.

1 So I'll stop there by saying we are very
2 excited about this project now getting off the
3 ground, and I thank everyone here for your
4 participation. We do think this is a great
5 opportunity to demonstrate that consensus solutions
6 can be found for operational issues involved in
7 online copyright without the need for legislation.
8 So I very much look forward to learn from today's
9 conversation. So I'd like to give the floor to John
10 Morris, who is the associate administrator and director
11 of Internet policy for NTIA.

12 MR. MORRIS: Great. Thank you.

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

21 So some of you may be a little bit less
22 familiar with my own agency, but much more
23 importantly with the multiple stakeholder approach
24 that this effort is really trying to use to make
25 progress on DMCA notice and takedown.

1 So just very briefly, my agency, the National
2 Telecommunications and Information Administration
3 is much smaller, much less well known than PTO. But
4 we are the primary advisors of the president on
5 information and Internet policy issues. So just as
6 PTO, you know, addresses the whole broad ranges of
7 issues in the intellectual properties basis, my
8 agency looks at the whole broad range of issues in
9 the Internet policy space. And the multiple
10 stakeholder process is an approach to Internet
11 policy making that the administration has used
12 really in a very broad range of areas. I mean,
13 ranging from Internet governance issues related to
14 ICANN; Internet Corporation Unassigned Name and
15 Numbers to Consumer Privacy.

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

1 very broad range of industries or situations,
2 stakeholders can really tailor rules and other
3 policies to the specific situation. And certainly
4 not consumer privacy spaces. We've found that that
5 can be effective to really focus in on specific
6 situations.

7 So that's really kind of the theory behind the
8 approach to policy making that we are trying to
9 pursue here. Whether you just, as you know, a final
10 word on the multistakeholder process is actually
11 hard work, though, because it, you know, you don't
12 just have Congress telling you what to do or
13 legislature telling you what to do. It's really,
14 you know, you guys need to, you know, collaborate
15 with other stakeholders and often collaborate with
16 stakeholders that in the past you've primarily
17 argued with. So we need to keep arguing, but some
18 of those arguments aside, and try to really see if
19 we can find some common ground.

20 So you will need to listen hard to everyone's
21 views and you will need to work hard to stay focused
22 on the topic at hand, but you know, most
23 importantly, you need to be respectful of the
24 perspectives and views that all the different
25 stakeholders bring. So that's the approach that we

1 are trying to pursue here. And let me just hand it
2 over now to PTO's Darren Pogoda, who is going to be
3 our Master of ceremonies. I think he's going to do
4 a great job.

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

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

1 did for the first meeting.

2 For those watching via the webcast who want
3 to participate, we have set up a phone bridge just like
4 we did last time. I'll repeat that number here and the
5 passcode as well, but it's on the agenda we posted and
6 I will -- it's also on the webcast site itself. But
7 I'll say it. That number, if you want to call and
8 participate, is 1-800-369-3319. The passcode is
9 1981439, and you will press star one if you want to
10 participate. And the phone bridge operator will place
11 you in the queue and we will be alerted here in the
12 room that there's someone on the line who has a
13 question or wants to participate with commentary in
14 some way.

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

24 So without further ado, we have a list of
25 formal presenters and we are doing this in

1 alphabetical order. So the first up on the list is
2 Sandra Aistars from the Copyright Alliance, and I
3 will turn it over to her.

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

15 We conducted conversations with a number
16 of individuals and particular in depth conversations
17 with five individuals who represent five diverse
18 areas of creativity and who have in depth experience,
19 hands-on experience with the DMCA notice of takedown
20 process in their own areas. Those five folks
21 represent independent artists and small businesses
22 in the Indie film maker world, Indie music world,
23 Indie label world, graphic artists and novelists as
24 well. Three of them are here today with me, and I
25 believe two others are on the phone watching live

1 stream. So thank you for all of your participation
2 and advice and consultation.

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

17 And I think that's a valuable thing to
18 keep in mind as we go through the process. I think
19 it's important in terms of perspective to understand
20 that artists and creators really don't want to be
21 engaged in these sorts of enforcement exercises.
22 There's no upside for them in terms of their
23 creativity and their personal work and their personal,
24 you know, growth and expression as individuals, and
25 you know, their goal is to see a system where users

1 are educated, where their interaction with site
2 operators is seamless and polite and professional,
3 is efficient and effective. These are the ways that
4 artists reach their audience and conduct their
5 business.

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

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

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

25 And finally, we talked about the

1 standardization of an announcement that could be
2 provided to users at the end of the process when
3 content has been taken down from a site. An
4 announcement that would be neutral in tone and non-
5 stigmatizing with respect to the artist and
6 educational with respect to the copyright issues.

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

13 We recognize also that accuracy of notices is
14 very important and completeness of notices is very
15 important. And so standardization to help artists
16 and creators be able to quickly use the process
17 might help. And again, we are interested in
18 developing systems that make sure the interaction
19 that people engage in both in terms of artists and
20 creators engaging with websites, but also users
21 engaging with artists and users that all these are
22 positive and not stigmatizing for any party and that
23 there's adequate information exchanged so that the
24 people can have useful exchanges and facilitate
25 finding one another and communicating with one

1 another as is necessary for the process involved in
2 notices and takedown. And perhaps counter notice
3 process, but that that information not be shared in
4 a very public way that exposes people's private data
5 to the rest of the world.

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

15 We recognize that those requirements are
16 as a result of the DMCA notice and takedown process
17 itself, but we believe that this sort of imbalance
18 between the type of information being sought from a
19 user of a site during the upload process, if nothing
20 else, is likely resulting in users not thinking
21 carefully before uploading copyrighted works and not
22 quite analyzing whether they do have the rights that
23 they need, not perhaps thinking through all of the
24 consequences of uploading a work to which they don't
25 have the rights. And so for educational purposes,

1 and to reduce the overall number of improperly posted
2 works, we would suggest finding some way to
3 harmonize those two processes.

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

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

24 So you don't actually have an idea of whether
25 the work has been removed, with one exception, which

1 is when you go to the website and find that you are
2 being listed on the chilling effect site as an artist
3 that sent a notice for content to be removed, and
4 sadly, a lot of artists find that being listed on
5 such a database with such a title is stigmatizing
6 and it implies that by exercising their legal rights
7 under the DMCA notice and takedown process, on
8 purely legitimate grounds, they are being
9 stigmatized as being interested in somehow chilling
10 the free speech and expression of others, which as
11 artists, they are clearly not interested in doing.
12 And you know, find it offensive to be labeled in
13 that fashion.

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

21 So just to walk you through some of the
22 illustrations of some of the things that we've found
23 and that we are talking about, this is a quick
24 illustration of the differences and requirements
25 between uploading and issuing a takedown notice.

1 So on the left-hand side, you see the
2 upload screen from -- this is from YouTube -- and
3 there's really nothing required with regard to
4 information from the uploader of content circled in
5 red at the bottom of the screen. The only reference
6 to copyright information is under the heading "Help
7 and Suggestions," and the suggestion is that you
8 should try not to violate the copyright rights of
9 others. And if you are interested, you can click to
10 get to another screen to get further information
11 about what that means. I suspect that very few people
12 actually, you know, read the small print at the very
13 bottom of the screen and that fewer still take that
14 helpful suggestion and click on the link to go and
15 get further copyright information before deciding
16 whether they thought the, you know, proper rights to
17 upload the content that they are seeking to upload.
18 On the right-hand side, you have the same parallel
19 process for the takedown screen.

20 So you see there's a variety of information
21 being sought from the artist issuing a takedown
22 notice, including, you know, what's the issue, are
23 you an individual, a company, an agent, what are you
24 seeking to remove, warnings about, you know, personal
25 information that will be posted when the content is

1 removed; personal information sought about the
2 individual, not the company. And then the DMCA
3 required statements on the bottom under penalty of
4 perjury.

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

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

18 The second kind of set of boxes is an
19 attempt to parallel similar sorts of assertions as
20 an artist makes in the takedown process, instead of
21 referring to the DMCA where suggesting an
22 acknowledgment that the Copyright Act provides for
23 certain protections and that there are certain
24 penalties that go along with violating such
25 protections, and that the user is aware of those and

1 it's aware of the terms of service at the site, and
2 you know, has agreed to all of those things before
3 uploading content.

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

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

24 Moving on to the next screen, it tells you that
25 you should go get step-by-step instructions which

1 will explain that you should go back to the site,
2 stream the contents and click to get to the spot
3 where you can report the content as being
4 inappropriate. As you follow those instructions,
5 another full-screen ad appears. Ironically, in this
6 instance, the ad is for the community of St. Mary
7 virgin. For your assistance, maybe you can spend a
8 little bit more time on the pirate site, watch a few
9 more sex ads.

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

21 And when you hit the "Report Abuse" button,
22 yet another full-screen ad pops up. If you ignore that
23 ad, you can get to the forum to fill out to report
24 abuse. That form itself is nonstandard. It has a
25 variety of boxes that you have to fill out, a Captcha

1 code that you have to enter. Once you've filled all
2 that out, nothing actually happens except that you
3 can watch more ads. And in this case, they are for
4 Downy, the US Army, Panera, Lean Cuisine, Febreze,
5 Pampers, Microsoft, Bounty, PNG. And you can visit
6 TruthAboutOnlineSluts.com website.

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

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

25 You get a statement that says, "The video

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

16 I'm not denying that there are instances
17 where inaccurate takedown notices are sent. I'm not
18 denying that there are instances where even false,
19 and you know, wrong-headed takedown notices are sent.
20 But those, by all accounts, including accounts of, you
21 know, large sites and operators like Google are the
22 vast, vast minority of instances. And so the response
23 that we get from artists is that they feel fatigued,
24 they feel dispirited. They feel demoralized by these
25 sorts of responses when they are sending in

1 absolutely valid notice and exercising their valid
2 DMCA rights and asserting their copyright over work
3 of their own creation.

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

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

22 MR. HALPERT: Jim Halpert from the Internet
23 Council. And that was a very interesting and quite
24 compelling presentation, Sandra, but one feature of
25 it I think would not be workable. And I think there

1 are significant First Amendment type issues that are
2 posed by people who post content to identify
3 themselves.

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

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

24 MS. PERLMUTTER: Why don't I suggest, since it
25 was a very specific comment, why don't you have a

1 chance to respond and I guess my suggestion is maybe
2 just in terms of figuring out how we make it through
3 everyone's presentations, we could make sort of
4 specific questions about things that maybe weren't
5 clear to you or you didn't understand and save most
6 of the rest of the discussion for after.

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

22 Certainly the intent is not to have First
23 Amendment concerns implicated in any fashion. And we
24 are equally concerned that we not have user
25 information published by, you know, upload user

1 information published in some public forum as we are
2 that we not have private information about artists
3 who are issuing takedown notices published in some
4 public forum. So I think the concerns are intertwined,
5 and there should be a way to work through those
6 concerns in parallel.

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

9 MS. PERLMUTTER: Can it be online?

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

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

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

25 So I'm here as Deviant Art, and we will

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

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

1 vital and vibrant Internet.

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

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

22 So there's an intention behind each post
23 as a statement of the singular presentation of a work
24 of art. Some of you might argue about that. But
25 that's certainly the intention of the post. Two

1 point five billion monthly page views, which is
2 actually quite few. 65 million monthly unique
3 visitors, of which 40 percent are US bound, and all
4 of this ranks us as one of the top 250 websites in
5 the world by traffic. More people visited Deviant
6 Art in 30 days than visit all of the world's museums
7 in a year. And actually, that statistic can be
8 brought down to around 12 or 13 days. But it just
9 doesn't sound the same.

10 So you know, we are big, but in this
11 context, we are small. So the DMCA works on Deviant
12 Art. And of a fashion. You know, we have a very
13 accessible copyright policy. It appears at the
14 bottom of every single page. We don't hit people
15 with ads, which may make you happy. We wouldn't
16 do that. We view that as insulting. We have an
17 online guided DMCA takedown notice that's really
18 very easy to fill out, and it has a plain English
19 guidance along the way. We have the same sort of
20 corollary type forum for a counter notice. We have,
21 you know, administrative support that's quite
22 efficient. All of our takedowns typically occur
23 within two business days or less. And, you know,
24 unfortunately, though, it requires an 11-page manual
25 to train our staff to do it. There's a great deal

1 of nuance involved. And it's really quite
2 complicated and it's not an easy, hey, it's your
3 week to do this, hop on board and here is some
4 training. It takes quite a bit of
5 manpower for us to do it.

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

15 So we find that using the notice and
16 takedown process of the DMCA in our forms really
17 requires of the artist that they have an intention
18 to make that kind of demand. Our biggest, biggest
19 challenge in this whole process is fair use. And
20 it's a really, really serious issue in the arts and
21 a deep, deep concern when you are talking about
22 automation. You know, it's obviously poorly defined.
23 Most of you are lawyers, I would expect, so I don't
24 need to go through with any sort of proof of concept
25 on that notion. Anyone literally can, you know,

1 rustle up some kind of fair use claim with a good
2 faith belief on both sides of the coin, both in
3 terms of a takedown and in terms of a counter notice.
4 That makes it essentially nonfunctional. And the
5 counter notice is a dreadfully intimidating thing.

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

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

1 know, we think that there's, in that sense, hope.

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

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

21 Copyright policy and practice has to be
22 responsive to the fact that it is about cultural
23 expression to the same extent that it promotes
24 commercial use. And I've seen many of the
25 submissions here harp very strongly on commercial

1 impact and just sort of slide over cultural impact.
2 And it's very important not to do that. It really
3 is.

4 You know, I think we've learned and I hope
5 we've learned that the Internet and the web are more
6 than just, you know, another form of the DVD or the
7 CD, that it's just like another distribution
8 platform. What the heck? We'll figure it out.
9 We'll make some dough. The integrity required to
10 maintain an open and unconstrained communication
11 through the Internet is vital to our culture. And
12 the small guys like us are the ones who are the
13 grass roots of that. We are the ones who create
14 that vibrancy. We are the ones who bubble that up.

15 This is what you can use it for. You can
16 use it to create a flash mob, to overturn a president
17 if that's what you'd like to do. Gee, we didn't think
18 of that when we built it. We thought there would be
19 a bunch of people talking about what they had for
20 lunch. So you know, we really need to be really
21 careful when you regulate in this area. But I do
22 think these interests can be harmonized, and I think
23 they are, and I think that's a great thing.

24 So you know, we are in Berkeley. I went
25 to school here a long, long time ago. Back when,

1 you know, when you said you don't need a weatherman
2 to know which way the wind blows was sort of fresh.
3 And you know, you don't need a weatherman to see
4 which way the wind blows when you see all of these
5 folks and all of you folks getting together to come
6 up with some best practices stuff. And this is
7 pretty much, I think, where we are headed. You
8 know, a standardization for DMCA forms that's data-
9 fed, that sounds like a really great thing. Right?

10 A uniform build would be great. If we
11 could create a uniform build that could be implemented
12 by the SMEs, don't create a uniform build that can't be
13 implemented, which means it's got to be available,
14 cheap, easy, not difficult and fit in prevailing
15 forms of data management. Used by small users. You
16 know, our engineers refuse to use third party
17 software, period. You know, they think they are
18 smart. They can build it better. As a result, we
19 have lots of things -- well, no. As a result, we
20 don't have lots of things. But you know, but you
21 need to be conscious of that in designing these
22 things.

23 Fast-tracked automated takedowns, that
24 makes a lot of sense, but many ISPs are completely
25 unable to do that. It's a very actually complicated

1 piece of engineering to be able to pull that off,
2 and the way in which different data set vary
3 tremendously. So it's a great idea. I think it's
4 going to be a real tough thing to accomplish.

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

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

24 Kudos to the Google YouTube team for what
25 they've been able to accomplish in this area, but

1 it's only because there's a monetization structure
2 behind it. That's the only thing that provides
3 validity for it. And it's a specific type of
4 monetization structure and it's a specific type of
5 monetized structure and ISPs who are SMEs don't want
6 to engage in. They don't want to engage in that
7 business structure. So I think that's a major issue.

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

21 And I think it would be great if we had a
22 carve-out if the use of the work
23 is partial or derivative. Certainly on our site,
24 that is a very strong predominant theme. And it's,
25 on YouTube it is as well, and other video sites.

1 It's a really critical issue. And I would love to
2 see in terms of private practice, in terms of best
3 practices, some sort of mediated result in those
4 situations so that you are not forced to the
5 Draconian takedown path and that some sort of
6 amelioration, some sort of discussion, something can
7 occur.

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

19 EAST BAY RAY: A short question. East Bay Ray.
20 I'm in the band Dead Kennedys and we've been a small
21 business for 30 years. And the thing that I liked
22 was the confer and discuss between the artists. I
23 mean, we've been, you know, had people use our
24 stuff, you know, in other bands and hip hop bands
25 and they call us up and say, "We want to use this

1 piece of music and is that all right?" And we work
2 out a deal. I was wondering, on this art thing, is
3 that kind of what you guys encourage? Is it like,
4 you know, YouTube? Go back to us and we'll host
5 it? That works pretty well?

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

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

18 MR. WATTLES: There's that form of initial
19 presentation, and because we are a social network
20 and we have varying communication tools, you can
21 always communicate with the person that posted the
22 work directly, and that's a tremendous advantage for
23 us. And I would suggest for all artists. You know,
24 to be in environments where communication tools are
25 provided. So you know, and just on this anonymity

1 issue, we do permit anonymous participation on
2 Deviant Art. It's critical to the way in which
3 artists function in all of the arts. Absolutely
4 critical. But because we have these communication
5 tools, it's two anonymous people communicating with
6 each other. So it kind of works out.

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

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

14 So I'm here on behalf of the Electronic
15 Frontier Foundation where I am the intellectual
16 property director, but I'm going to talk about some
17 public interest principals that EFF came up with
18 along with some other public interest groups that we
19 think should be incorporated as we start talking
20 about how we might standardize the notice of
21 takedown process and make it a little bit more
22 efficient for everybody. So that's EFF, New Media
23 Rights, Public Knowledge, Center for Democracy and
24 Technology, and the American Library Association.
25 And all of us are groups that engage with the DMCA

1 in a lot of different kinds of ways.

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

20 And so, and also some of us represent small
21 creators who want a takedown system as well, want an
22 efficient takedown system, but also want a fair
23 process. So we got together and tried to think about
24 what are some ways that, as we go forward with this
25 conversation, what are some principals that we should

1 pay attention to if we came up with standardized
2 forms or anything like that to limit abuse of the
3 notice and takedown system.

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

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

20 If the person who is targeted by an improper
21 takedown decides to fight back, now you are in
22 litigation and now it's expensive. So they are a bad
23 idea. And even if there aren't that many of them
24 compared to the actual takedowns that are actually
25 sent, nonetheless, even if it's a small percentage

1 given how many takedowns are sent, that's still a
2 lot of speech. So as we think about what we are
3 doing going forward, we should from the get go include
4 consideration of how to make sure that those improper
5 takedowns don't happen. Let's make that part of the
6 system better, too, or more efficient.

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

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

23 Accuracy and completeness. All 512 elements.
24 A takedown notice should identify each allegedly
25 infringing work. What does that mean? Well, what

1 this means is that sometimes there's more than one
2 work in, say, a remix video or something like that.
3 So if you are the user and you have been targeted by
4 a takedown, you are not sure of who is complaining.
5 And depending on who is complaining, you might make
6 a different calculation as to whether it's
7 appropriate to fight back or not. But often, from
8 our perspective, we hear from users and they are not
9 really sure exactly what work is being complained
10 about. And if you only used it for two seconds
11 versus something else, that might matter to you.

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

23 It should include a 512(f) warning. What
24 I mean by that, a shorthand for a warning that many,
25 many ISPs do require. But it should be in everybody

1 single one. A reminder that improper notice can
2 subject you to liability. Again, this is common for
3 many ISPs, but it's not universal. It reminds the
4 sender to be careful. Take the extra step and make sure
5 they are sending it to the right person and targeting
6 the right content.

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

19 Secondly, we think the standardization process
20 could be a really valuable opportunity for more
21 transparency, and I think that's been a trend that
22 we've seen more and more people and more and more
23 companies over the past years interested in a
24 transparent Internet understanding exactly what the
25 works are in a variety of ways. We think that kind

1 of idea should be built into this process.

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

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

21 Now, we know that relatively few people
22 counter notice. There's a lot of reasons for that.
23 One reason is people are doing infringing things and
24 they shouldn't counter notice. But sometimes people
25 who have legitimate reason to counter notice don't.

1 And it's because they find it hard and intimidating
2 and they don't know how to do it. And again, let's
3 clearly identify the work that's infringed so people can
4 figure that out.

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

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

23 Some service providers already automatically
24 forward takedown notices to sites like Chilling Effects,
25 which I understand can feel uncomfortable for some

1 people. But Chilling Effects is designed to be a
2 research site. To find out, it was created to find
3 out if the DMCA was chilling lawful speech or not.
4 And the way to figure that out, it's not to say that
5 every takedown notice chills lawful speech. It's to
6 say if we don't create databases to understand how
7 the DMCA notice and takedown system is being used, we
8 can't ever learn whether it's having that effect or not.

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

17 And another thing that we see all too
18 often is that when people do get their courage up,
19 submit to the jurisdiction of a court, take the
20 risk, submit the counter notice and it turns out
21 that they aren't sued, and so therefore the content
22 could go back up, right, the ten to 14 days has
23 passed and there's been no lawsuit so the content
24 could go back up, it doesn't because the service
25 provider doesn't get around to it. They don't have

1 time. They don't have the resources. And so the
2 content stays down even longer than it should.

3 And when you've got content that was
4 improperly taken down, that may potentially be timely,
5 that makes a potentially bad situation even worse. So
6 why don't we make the reposting process as automatic
7 as the takedown process. Again, assuming that there's
8 been a counter notice and no lawsuit's been filed and
9 everybody has followed the rules.

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

19 So what we've come up with so far is our
20 principles shouldn't be written, sort of taken and
21 written in stone. What is written in stone is that
22 we think a guiding theme for our dialogue, not the
23 only one, but one of them has to be that as we go
24 forward with this process as we come up with
25 standards, we should always be thinking about

1 whether we are limiting collateral damage to lawful
2 speech.

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

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

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

24 Of the many public interest organizations,
25 we are really one of the few that gets to see the

1 entire picture of small organizations. We work
2 with small creators who need to deal with DMCA takedown
3 notices. We also work with small creators who have
4 had their work taken down and don't know what to do.
5 We also are increasingly working with two to three
6 people user-generated content sites that need to
7 implement the DMCA and need to figure out how to do
8 it with the resources they actually have.

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

14 At New Media Rights, we have seen that
15 accurate, complete and transparent takedown notices
16 make a huge difference. They are, quite frankly,
17 good for everyone involved. We've often seen them
18 even lead to out of court dialogues between content
19 holders and small creators that produce better videos
20 and even better apps and really great licensing deals.
21 So we want to enable conversations, the conversations
22 that the DMCA was supposed to enable in the first
23 place. But unfortunately, notices aren't complete
24 most of the time. We've seen many incomplete notices
25 passed on to creators and we are seeing primarily three

1 points of failure where the system breaks down where
2 certain pieces of information aren't delivered. And
3 I want to share some of those stories.

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

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

1 sent a fraudulent takedown notice.

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

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

25 These are the very points of failure that the

1 DMCA was supposed to prevent. And it still can.
2 Very easily if users receive complete takedown
3 notices as part of a standardized takedown process.
4 In addition to the solutions above, it's also key
5 that the principle of accuracy and completeness
6 extend to a standardized takedown form that
7 explains in plain English what the core allegation
8 made in the DMCA down notices mean, specifically to
9 help prevent specious and malicious DMCA takedown
10 notices.

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

19 To give you an example of an abusive
20 takedown that this language could have helped
21 prevent, I'd like to share one of the stories that
22 we helped on directly. In January, 2012, we helped
23 Jonathan McIntosh with the takedown of his video,
24 Buffy versus Edward. Buffy versus Edward is a
25 mashup of almost the entire -- bits of the

1 entire series of Buffy the Vampire Slayer as well as
2 bits of Edward from the Twilight saga movies. This
3 movie is a highly transformative work; in fact, so
4 transformative that the copyright office called it a
5 shining example of fair use as it's used in
6 copyright classes and media studies classes across
7 the country to teach what fair use is and what fair
8 use is supposed to be.

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

21 Without plain language warnings, these types,
22 even though there are a very small percentage, they
23 will continue. And they are, again, a huge waste of
24 everyone's resources. We've seen many cases, including
25 those by smaller content owners, who might not be

1 experts in copyright law and might not understand
2 what it means to send a DMCA takedown notice, and
3 instead think they can use it to silence the critics.

4 Over the years, we've helped several
5 bloggers who have had their posts taken down through
6 the DMCA often for short but unflattering but properly
7 sourced quotes from public figures. We've even seen
8 takedowns of completely legitimate materials by a
9 third party, and this was a really odd case because
10 it adversely affected the individual sending the
11 takedowns, search results in Google for their name.
12 Again, not what the DMCA is supposed to be used for.
13 And we believe that if there were plain language warnings
14 in place this type of behavior, especially failing to
15 consider fair use actually has consequences, many of
16 these malicious takedowns would not be filed at all,
17 saving, again, saving us all valuable time and resources.

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

1 requests, both from large and small content owners
2 with increasing efficiency.

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

11 MR. POGODA: Any specific questions? You can
12 come up.

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

19 I just want to give one quick anecdote. On
20 YouTube, my film was uploaded in its entirety. I
21 rightfully sent a takedown and the film was taken down
22 temporarily. Someone filed a counter notice, and I
23 don't have the deep pockets to go to court to, you
24 know, protect my rights, so basically I had no
25 alternative. I just had to let it go and my film was

1 put back on line in its entirety. So it cuts both
2 ways.

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

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

16 It's true. I talk to people all the time
17 and they think, not to name names obviously because
18 it's privileged, but people will sometimes say, "I'm
19 sure that that's a fair use," and I will say, "Well,
20 no. It's not. Or maybe, but I'm not sure I'd stand
21 on that one." And it's a hard one. It can be
22 difficult for folks. We just need to make sure that
23 where it is clearly a fair use and deserves to be, a
24 counter notice would be the right approach, that they
25 have that option, but I think that's a fair point.

1 People who send counter notices should be held
2 accountable as well. Make sure they are doing it
3 right, too.

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

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

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

22 So with that in mind, I wanted to run
23 through the way Google tries to address those
24 challenges today in hopes that that might help
25 inform the discussion. And I completely agree with

1 Josh that I don't mean at all to suggest that our
2 way is the way everyone should do it. I recognize,
3 I agree completely with Josh when he says that what
4 large service providers are capable of doing is very
5 different from what smaller service providers are doing.

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

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

24 So let me start with the web form which we
25 internally call troubleshooter form. The URL is on

1 the slide. Perhaps the easiest way to find it is
2 search in a search engine for Google DMCA. It's the
3 top result on Google and also on Bing, and I haven't
4 checked all the others, but I trust a search will
5 turn up this link quite reliably. The web form is
6 not just for DMCA notices.

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

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

1 there," this form is intended to get you to the form
2 you need to get to, to get that addressed.

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

10 So I think this was something that Sandra's
11 presentation and Corynne's presentation, I think
12 pointed toward as a helpful thing, feedback to the
13 submitters. So we try to do that. We also, the web
14 form also accepts DMCA counter notices, which we do
15 try to notify users when we receive takedowns, DMCA
16 takedowns for content that was uploaded by the user.

17 We attempt to notify the user when we receive a
18 DMCA notice. And in that, we include a link that
19 explains the counter notice process as well. But
20 the web form is another path to accomplish that.

21 So here is a screen shot of the web form.
22 Obviously any of you can take a look at it directly
23 on your own computers. As I described, sort of
24 starts with a "Which product did you find the
25 content on that you would like to remove?"

1 And after you answer, you know, a number of
2 questions, the design is to try to basically get you
3 to the right forum, answer the right questions. We
4 then -- there's a link at the bottom which says use
5 this forum and given the fact that in the above, "I've
6 answered the questions to demonstrate that I have a
7 copyright removal and et cetera et cetera," that
8 will send you to the appropriate DMCA takedown
9 forum.

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

25 And to give you one example of a situation

1 where this comes up raises some of the difficult
2 copyright questions, one of the interactive questions
3 that you can come to in the course of submitting a
4 copyright takedown is, is the content you want to
5 remove a picture of you?

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

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

25 So that's one example of one of the ways in

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

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

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

24 And it was our suspicion that that community
25 might have needs that were somewhat distinct from the

1 needs of the individual rights holders. And so we
2 looked into that. We suspected that probably this
3 was an 80/20 rule. That probably if we thought about
4 it, 80 percent of the notices we got were probably
5 from 20 percent of the submitters. It turns out we
6 were wrong, but only wrong in that it's more like a
7 99/1 rule than an 80/20 rule and today the vast
8 majority, well more than 90 percent of the notices we
9 receive are from a very small numbering of submitters.
10 On the order of less than a hundred submitters
11 probably account for more than 90 percent of the
12 notices we received. So we were, I think our
13 supposition, our guess was right.

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

23 The way this works is it is basically the
24 same web form that I just showed you. But it has some
25 important changes that allow much faster more automated

1 submission. So for example, if you are part of the
2 trusted submitter program, when you go to that web form,
3 the version of that web form you will see will not have
4 a Captcha on it. You will not have to tick the
5 required, the statutorily required statements because
6 you will done that when you applied.

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

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

23 There are also some higher daily safety
24 limits. So as with any web form, the goal here is to
25 make sure that an accident does not occur where

1 suddenly we get millions of URL's that get processed
2 and then after the fact someone says, "Oops. That was
3 a misconfiguration." And we are put in the position to
4 back that out. So we have some safety limit on the web
5 for the trusted submitter program. Those are much
6 higher, and when the submitters come to us and say, "We
7 need more," we accommodate those needs and increase
8 those as necessary.

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

17 So here is just a list of the actual fields in
18 the TCRP form for those who are interested in again
19 the technical standardization form. I won't run
20 through all of these other than to focus on this one
21 in particular which some looks very interesting in
22 Corynne's presentation, she mentioned the importance
23 of having someplace where you know what the work
24 that is alleged to have been infringed, like what
25 that is.

1 And we do have a field for that. We say
2 where can we see an authorized example. And the goal
3 here is in the event someone has to review to figure
4 out, you said there was infringing content on this
5 page, maybe you said infringing photograph on this
6 page, well, maybe when we go to the page to evaluate
7 the takedown, we find 15 photographs and we have no
8 idea which photographs you allege is yours, and
9 maybe one is used in a fashion that is a fair use
10 and the others are not. These are -- this is what
11 this field is intended to encourage. To give us a
12 more sensible way.

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

24 So this is the formatting for the text file,
25 again for those who are kind of interested in the

1 technical standard that we've set for this. Very
2 simply replaces the last three fields of the web
3 form. You can upload that content, and obviously
4 this is designed to be something that machines can
5 create in an automated fashion and submit in an
6 automated fashion in a more efficient and
7 inexpensive way.

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

24 So this is a example of a screen shot of how
25 CVP looks. Basically it is just like a YouTube,

1 regular YouTube search except when you get the
2 results, if you are a CVP member, you get a tick
3 box, and if you tick the box and hit submit, that
4 comes into our system as a DMCA takedown and makes
5 things easier and quicker.

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

13 What we heard on the search side is we need
14 a way to automate and send a large number of URL's in
15 bulk. So the systems are designed differently in order
16 to accommodate those different needs. This is what the
17 CMS version looks like. If, for example, you had a
18 content ID match on a video and you said you wanted
19 to block that video and the user, the YouTube
20 uploader, elected to dispute that content ID match,
21 then as a right holder in CMS, you would have a
22 option to do that dispute and you can do that quite
23 easily in the set management tool by completing this
24 box, ticking the box, clicking submit, and we treat
25 that as a DMCA takedown notice.

1 So a third version, just again, to emphasize,
2 this is not a one size fits all process even at
3 Google, a third version, the trusted submitter
4 program that we have on Blogger is a bulk submission
5 tool that is put together as an XML based API. Let
6 me emphasize some differences about Blogger.

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

18 To take into example, lots of MP3 bloggers
19 out there, many don't understand that the link is not
20 authorized and in that case, they may have written
21 many pages about the song that they included a link
22 for. It would in our view be a shame if those pages of
23 original content were to disappear when the user can
24 resolve this problem when they get the notice. They'll
25 see, "I need to delete that link. That link was

1 infringing, but I've still got the two pages I wrote
2 about why I love the song."

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

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

23 One hour, two hours, however long the
24 event had been. So what we said to the copyright
25 owners is let's figure out a method where you can

1 essentially upload to us a screen shot showing the
2 infringing content on the blog at the appropriate
3 time, and with that screen shot, we will believe --
4 we will take your word that that's what was there.
5 Then we were able to say, okay. Now we have what we
6 need to believe that this was there, this was
7 infringing. We can take appropriate steps. So we
8 added that to the API to allow that to occur as
9 well.

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

25 MR. POGODA: If there are any questions or

1 specific comments.

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

12 They say here that, you know, while
13 they encourage copyright owners, they want to do
14 these false takedowns, which I believe is under
15 3 percent. But what they did is they put the name
16 of my band on there with a link. They publicly
17 shamed my band. You can't get this because they are
18 the owners. Some guy is making money off it, which
19 is, you know, just somebody making money off of my
20 work is kind of like, what, shear cropping. I do
21 the work and someone does the advertising, and
22 that's not innovative.

23 But anyway, I just find it Orwellian that
24 the chilling effect is supposed to be about free
25 speech, but what it's doing is chilling me because

1 I'm a real copyright owner and I make my living off
2 this and it's been decimated. The EFF is talking
3 about these -- I'm sorry. I'm nervous. I've never
4 done this before. Petitioning my government.

5 But you know, this is Orwellian in my
6 view because it's just like our income has been
7 sucked away by other people making money and there's
8 like no discussion of plagiarism. Somebody uploads
9 one of my CD's. The whole CD. They are monetizing
10 it making hundreds of thousands of dollars. It's
11 plagiarism and that's not right and that's not free
12 speech.

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

17 MR. SHEFFNER: Good afternoon. I'm Ben
18 Sheffner, Vice President of legal affairs of the
19 Motion Picture Association of America. I want to
20 thank PTO and NTIA for holding of this multiple
21 stakeholder forum. As many of you know, the MPAA
22 represents the six major motion picture studios here
23 in the US. For the record, that's 20th Century Fox,
24 Sony Pictures, Paramount Pictures, Disney, Warner
25 Brothers and NBC Universal.

1 And just as a -- I want to acknowledge my
2 colleagues who are here, Maryanne Graham from the
3 Motion Picture Association, who has been sort of
4 the prime implementer and person in charge of the
5 operations of the copyright alert system. We also
6 have representatives here from Warner Brothers,
7 Disney, Fox and Universal Studios, which I think
8 demonstrates the importance of this issue to our
9 members. And a lot of them work sort of in the
10 trenches day-to-day with the noticing process to
11 be able to fill in a lot of these sort of technical
12 gaps that you will see from my presentation.

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

18 So just to give you a little bit of a
19 flavor of the landscape which our members face. The
20 volume of the infringement they face on the Internet
21 is huge. As an example, in the one year period from
22 March 2013 to February, 2014, our members collectively
23 sent over 52 million DMCA notices. About 30 million
24 of those were to non-UCG sites like cyber lockers and
25 about 22 million to search engines. That actually

1 understates the total because it does not include
2 things like UGC sites, for example, YouTube.

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

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

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

23 One additional example. In the period from
24 May to October 2013, that's only about five months,
25 Disney sent over 24,000 DMCA notices about the movie Iron

1 Man 3 to a cyber locker called Uploaded.net, more
2 than 134 notices per day, and yet they were still
3 posted daily.

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

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

25 So we do think that standardizing notice forms

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

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

19 And I know that some other people have
20 mentioned this in previous presentations. We think
21 it will help improve, standardization will help
22 improve measurement of the problem, facilitates
23 analysis of the notice data and recognition of
24 patterns, problems and progress and also importantly
25 it helps identify repeat infringers.

1 The data that I quoted you on a couple
2 slides ago about the tens of millions of notices
3 that our members sent was actually quite difficult to
4 compile because it's across so many different
5 platforms and different of our members have different
6 practices in their notice sending. But standardization
7 across platforms across copyright owners will, in fact,
8 help facilitate the collection of data like I cited a
9 little while ago.

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

23 This is now administered by movie
24 labs which is a joint venture that does research on
25 behalf of the motion picture studios. But

1 importantly, it's open source. It's available to
2 anybody royalty free. It's available under a
3 creative commons license. Anyone can look at it at
4 www.ACNS.net, and in fact, we don't actually
5 know how widely it's been deployed because anybody
6 can go to the site, download the protocol and use it
7 without telling us, without paying us, and we think
8 that this is a good model as we are moving forward
9 to show again that these things actually do work in
10 practice.

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

17 One of the main contexts in which it has been
18 implemented is the copyright alert system, and for
19 those of you who are not familiar, that is a standardized
20 notice sending program where the major movie studios,
21 record companies and ISPs have gotten together and
22 through vendors, the copyright owners send notices to
23 ISPs. The ISPs then inform the subscribers that a
24 notice has been sent, and basically through various
25 steps they are given educational notices about the

1 fact that they are using peer to peer to infringe in
2 the hope that they would get the message and stop
3 their infringing activities.

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

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

22 And this kind of program is very helpful.
23 It allows copyright owners to submit multiple URL's
24 at once, and also importantly enables virtually instant
25 removal of the infringing content. Again, the ACNS

1 and YouTube system, these are just two examples of
2 standardization.

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

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

23 MR. MCNELIS: Brian McNelis. I am an
24 independent label operator in Los Angeles. I want
25 to thank the USPTO and I want to add a comment and I

1 had a question for you on your presentation. As an
2 independent label, we are really small. We went on
3 an exercise of sending out about 25,000 DMCA notices
4 a year, about 75,000 notices over three years that
5 were rather, you know, expensive for us to do. It's
6 a costly process for a small independent stake
7 holder, small record label, and you know, that only
8 covered our top ten titles at any given time.

9 We have a catalog of 300 titles and we just
10 don't have the resources to pay to have somebody
11 generating all these notices over time, and you know,
12 if a small company like us generates 25,000 a year,
13 you know, standardization is definitely going to be
14 great for us to be able to send more, but those
15 numbers were absolutely staggering and really kind of
16 illustrates kind of the hopelessness that we feel in
17 trying to protect our content in the light of such
18 enormous, enormous numbers. We just can't keep up
19 with the rapid reissuing of the content in this
20 whack-a-mole game.

21 We'd love to see something along the
22 lines of stay down and takedown. But my question
23 to you was, the systems that you have built, you
24 know, big organizations like the MPAA, RIAA and all
25 that, are these systems available to people like me,

1 small stakeholders? Is there an opportunity for
2 smaller stakeholders like myself to get access to
3 the systems you are building so that it's more
4 effective for us as well in this conversation?

5 Thank you.

6 MR. SHEFFNER: Sure. Well, in the specific
7 context of ACNS, the answer is absolutely yes. As I
8 mentioned, it's available. Anyone can literally go
9 to the website ACNS.net and download the
10 protocol. It's open source. It's royalty free.
11 You don't have to pay anything. And it's available
12 under our creative commons license. So the answer
13 is absolutely yes, and I think it's absolutely fair
14 as we are going forward, and hopefully the end
15 result of this will be some sort of agreement or
16 some best practices on standardized notices.
17 Obviously it has to take care of the little guy in
18 addition to the big guy.

19 But I would say even the big guy, you know,
20 yes. We represent big corporations and we can
21 afford to have enforcement programs. It would be one
22 thing if we sent those millions and millions of
23 notices and it actually did something. The problem
24 with sending the notices is it doesn't actually
25 solve the problem because the stuff gets reposted

1 right away. Again, efficiency is a good thing, but
2 it's not sufficient.

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

9 MR. MCNELIS: Thank you.

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

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

20 What we are finding right now is that
21 there's a lack of standardization in the notice and
22 takedown process. I think others have described,
23 other providers, various providers, insist on very
24 specific methods for the notice and takedown than the
25 notices that we send. Different companies have

1 different processes. Even the same companies have
2 different processes. We have also seen from day-to-
3 day basis that forms get changed quite a bit, and I
4 think we'll show that in screen capture later where
5 one particular company changed the form a variety of
6 times, which made it hard for us to use our automated
7 systems to submit notices in an efficient process.

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

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

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

25 MS. SCHECHLER: So to give you a flavor of the

1 nature of the problem, there is a locker called For
2 Share. For that site last year we sent over three
3 quarters of a million notices to that site. And
4 over 600 were for these two particular tracks. That goes
5 to Ben's point before, and into the independent
6 label's point before about the nature of the
7 problem.

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

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

23 In terms of the HTML behind the forms
24 changed ways in terms of certain headings were changed,
25 apparently for no apparent reason, but which caused our

1 automated systems to stop working for a time so that
2 we had to readjust them to respond to the changes of
3 the web form. The look and the functionality of the form
4 did not change, but certain tags within the HTML
5 form changed and we are not entirely sure why that
6 happened. But it made it very difficult for us to
7 submit these forms in an effective and efficient
8 way.

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

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

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

25 And I think we should talk about what is the

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

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

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

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

22 Formerly, Media Fire was one of the most
23 common cyber lockers that we saw on a day-to-day basis
24 offering infringing copies of our
25 members' recordings. About a year and a half, two

1 years ago, they publicly announced they'd
2 implemented fingerprinting through the use of audio
3 magic, and almost immediately, we saw the number of
4 infringements on this service drop.

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

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

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

25 MR. MCDEVITT: This is an example of actually

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

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

24 This is an example of what we have to submit
25 with Bing. Perhaps not surprisingly, it's an Excel

1 document. It's an Excel document and it requires again
2 a different form. Basically some of the same
3 information. The artist name, song title
4 and the URL of the infringement. But it is completely
5 different from what we submit to Google and it's
6 obviously different from what we submit to other
7 providers.

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

15 But again there's some differences. Can we
16 have some more harmonization with that? And thinking
17 about the language and what language is neutral to make
18 sure that the users of the system understands their
19 rights and responsibilities that they have within
20 the systems. Compare that with Apple, completely
21 different approach. They throw it to the user and
22 the app developer to work it out themselves. Or
23 with Microsoft, which goes farther than just warning
24 you about your rights, responsibilities and risks in
25 submitting an app, but also ask you to, I think

1 it's, that you understand that this could be a material and
2 false misrepresentation.

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

11 MR. MCDEVITT: 2005.

12 MS. SCHECHLER: So we've been using this since
13 2005. To our knowledge, at least 600 universities
14 accept this type of notice with respect to their
15 networks and most of the commercial ISP's of mixed use. As Ben
16 mentioned, it's available on this website and it's
17 free to use. Is that a possible solution for some
18 harmonization? We understand and appreciate that
19 there are lots of smaller copyright owners that
20 aren't going to go in bulk in sending notices and
21 that they should have a simplified system to use.

22 So our suggestion is there should be a two-
23 prong approach. One, to look at the small to medium
24 enterprise if you will, and individual user, and
25 then one for the bulk users. And we have got to

1 think about two approaches and think about
2 standardization in both those approaches. We agree
3 with Corynne and the Media Rights lady this morning,
4 that we need to think about the counter notice side
5 as well, and making sure that it's simplified,
6 streamline and that everyone can get the information
7 that they need to know, when to submit a notice and
8 also when to submit a counter notice. Are there
9 other bulk solutions that are available? We'd be
10 very interested in exploring that as well.

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

21 MR. POGODA: Vicki, I was just about to say. I
22 have it in my notes. First, thank you everyone for
23 your presentations. Very insightful for all the
24 effort you put into them. Thank you everyone for
25 their questions. I agree. I think there's

1 consensus that we need a break after two plus hours
2 of listening to everyone, most especially our court
3 reporter up front, who might need a rest.

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

12 (A recess was taken.)

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

21 So I think we should open up the floor now
22 for a discussion of some of the technical presentations
23 that we heard earlier today, that we heard a lot of
24 interesting ideas and proposals in them, but I would,
25 again, just remind everyone that the focus of any

1 comments, any input you give at this point should be
2 constructive and aimed at identifying specific
3 issues for the working group and maybe not just
4 debate over potentially competing views on issues

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

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

23 So one issue is finding alternative ways to
24 enforce through dialogue, good idea, the copyright
25 small claims court, which is an idea that's floating

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

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

18 Let's see. ISPs, I think, should also,
19 every time they get a claim, search that database, I
20 think repeat offenders should have more serious
21 penalties. Even to the point of stripping them of
22 their domain, let alone taking down the web page or
23 the offending material since it becomes clear that
24 they are in the business of offending and
25 infringing.

1 Let's see. The final note. I'm very concerned
2 about chilling, the chilling effect that the
3 warning's given to claims holders about fair use and
4 other legal issues that have a chilling effect on
5 defending the copyright, and I would hope people
6 will think about that when they think about
7 standardizing of the forms. Thank you.

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

19 And although those numbers seem large, we
20 are actually among the smallest entities in the room,
21 maybe the smallest entity in the room that hosts works.
22 And I'm observing in this conversation a distance
23 between the very real need to and interest in
24 combatting piracy and the value of noncommercial
25 transformative works. And they are very different

1 concerns that are in some ways disconnected from
2 each other in remedy, but can affect each other.
3 When one tries to serve one, one can have unintended
4 consequences when it comes to the other.

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

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

16 And it is -- we've submitted green paper
17 responses, but not to the standardization situation,
18 which is why I wanted to talk now. It's hard to
19 overstate the disconnect between individual users and
20 the DMCA process in this context. We hear frequently
21 from fans who are terrified to post their noncommercial
22 transformative remix fan works because they are
23 afraid that they'll, as one wrote to us, get kicked
24 off the Internet if I post my My Little Pony story.
25 That's the situation we pride ourselves in as a

1 resource for fans.

2 And they are even more frightened when they
3 receive a takedown notice, which because of the nature
4 of the work they are making is almost certain to be a
5 false positive caught by an automated system. And we
6 are keenly aware that the operators of these automated
7 systems don't want to be catching these here, but they
8 are deeply frightening for the recipients and it is
9 often difficult to tell from them what work is
10 alleged to be infringed, and as some have noted in a
11 remix context, often small pieces of several works
12 are incorporated, quoted from, discussed, and in
13 that context, it's very difficult to know who even
14 to engage with if you want to have a conversation
15 about whether something is fair use.

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

23 So with that in mind, a few principles I think
24 may be helpful to think about as we go forward. And
25 these -- I think as we've seen, some of these are in

1 dispute. We see different stakeholders already
2 having different opinions about these. We haven't
3 necessarily heard about them from this standpoint.
4 Posting regulations should, when you are making
5 someone promise that they have the right to post
6 what they are posting, that right should include
7 that they might be posting something that's fair
8 use, not just something that they own, but something
9 that they are authorized by law to post for other
10 reasons than ownership.

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

20 Human beings looking at these works would
21 know instantly that they are not infringing. This is
22 somebody who's used a title of one book as the title
23 for their fan work about another book. These are not
24 infringing uses. And a person with judgment would
25 observe that immediately. I'm not talking about

1 close cases here. Notices to users that they are
2 having a work taken down should identify procedures
3 for counter notice in as unintimidating a way as
4 possible.

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

11 Putting on my ISP host hat for a moment, as
12 among the smallest of the SMEs in the room, small
13 entities have unique concerns when it comes to
14 making standardized processes, and our archive, for
15 example, is entirely volunteer run and extremely
16 small. And so when we get a notice that something
17 on our site is infringing, what we get, we don't
18 have a big forum with a lot of rigmarole. We have
19 an e-mail and someone has to look at the e-mail and
20 look at the work and see if it is, in fact, a work
21 that is implicated. And through that process, we, I
22 think have only found maybe one, maybe two actual
23 infringing works. And so the burden on the ISP is
24 something that should be considered for the non-
25 Googles of the world. Maybe even for the Googles

1 of the world. I don't want to exclude them, but
2 they have a very different resource set than the
3 nonprofit.

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

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

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

1 players in the system.

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

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

21 We'd like to further explore this as to
22 realities to form notices. It might be, we don't
23 yet know if form notices specifically are realistic
24 for a wide variety of service providers to implement,
25 and we know that there's a diversity and availability

1 to meet the costs and also a diversity of the
2 considerations that each platform takes with respect
3 to its individual offerings and users.

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

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

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

25 MR. MORRIS: Thanks.

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

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

20 That's just not what this particular
21 exercise is aimed at. Also to say that as described
22 in the green paper on the various public notices
23 we've issued since then after we've read the public
24 comments we've received, we are aware that there are
25 many other issues besides standardization and many

1 of them may overlap a bit with standardization.
2 We've heard allusions to them during the course of
3 the afternoon, and I guess the best way to think of
4 it is we are trying to address things one at a time
5 and not bite off more than we can chew and get
6 bogged down by the complexity of all of the topics.

7 So what we would really like to do this
8 afternoon is to make sure we come up with a list of
9 issues that the working group can start to address
10 that are first of all within the mandate for this
11 multistakeholder forum, which is improving the
12 operation of the notice and takedown system without
13 the need for legislation, and second, within the
14 scope of our agreed initial topic of
15 standardization, while recognizing there aren't
16 completely bright lines and there might be some
17 overlap, and also to point out as long as we are
18 talking about the resources available to the working
19 group and the forum as a whole, just to again remind
20 people or tell people that weren't here for the
21 first meeting that the PTO's office of our chief
22 economist is going to be attending these meetings
23 and is available to help with looking at data in any
24 way to that might be useful and we have Amanda Fila
25 with that office here to assist us.

1 I don't want to in any way interrupt or
2 cut off the discussion, but there's a plethora of
3 material and ideas and themes that have been put out
4 in the various presentations so far, and I'll just
5 list a few different things that I've heard that
6 maybe you might want to draw on in making
7 suggestions for topics or thinking about how to
8 organize where the working group starts.

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

19 Issues about certainty on the one hand from
20 getting a lot of detailed information versus the burden
21 of having to provide that information, and then issues
22 that have been raised I think on both sides about
23 potential chilling impact, both on individual creators
24 when they are looking to make a claim and also the
25 chilling impact on users and what are some ways to

1 address that on both sides so that we don't have
2 inappropriate chills, shall we put it that way.

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

16 So I throw these things out for you and
17 hope that we can start having also a bit of a
18 discussion of how do we formulate some issues for
19 the working group to start with, again emphasizing
20 that all we want at this point is to have a working
21 group, start having discussions about what can and
22 can't be done, how it would work and what the impact
23 would be without reaching conclusions, but having
24 that discussion at a very practical level, and then
25 letting this larger group listen to the fruit of

1 that discussion and see where we want to go from
2 there.

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

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

25 And the first one is a notice that goes to

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

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

21 A second thing which I think is important to
22 mention is that the notices that go in the ACNS
23 system contain a summary of the evidence that
24 actually proves that this is an infringement, which
25 in the case of peer to peer would be a cash value or

1 something like that. So it gives an opportunity to
2 actually tell the recipient, "This is I think why I
3 think this is infringing and for them to take the work out,"
4 and figure it out for themselves because it's a standard
5 way of reporting that information. So I think
6 that's another important piece.

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

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

20 First of all, the claimant has to make the
21 case, and secondly, the person who receives it has to
22 know the case has been made. And so those are some key
23 points that I wanted to mention about ACNS, and we can
24 go into more detail and see how something like that
25 might work in this particular situation and provide

1 a sort of mechanism that would help both sides of the
2 equation and drive us to the efficiency side so that
3 we can then focus more quickly on the effectiveness
4 side of it, too.

5 MR. HALPERT: Jim Halpert. One thing you may
6 not know is that the ACNS is not actually a 512 notice and takedown
7 system. It's an accommodation that a variety of service
8 providers and universities have made out of the good
9 faith to accommodate concerns about peer to peer
10 infringement, which are not properly the subject of
11 512(c) notices, but may nonetheless offer a useful
12 model to apply in the 512(c) context.

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

21 I think there's a good deal that we can
22 work on in a consensus way here. There's an important
23 additional consideration for the Internet service
24 providers and data center operators who are big. They
25 are not like Deviant Art or others, but in the world

1 of the Internet, there's a lot of hosting that happens
2 in various different levels, and you have entities
3 that control data centers, for example, that can't do
4 individualized takedowns.

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

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

25 I know, Ben, when you gave your first

1 presentation at the first meeting, you said
2 this is a side issue. This is a total side issue
3 from the perspective of what the MPAA is doing in
4 enforcement, but actually operationally is
5 burdensome and diverts resources from responding to
6 real legitimate takedown requests and other sorts of
7 complaints about user behavior that big ISPs
8 receive.

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

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

1 notice and takedown. So I want to make sure.

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

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

18 MR. HALPERT: These entities are sending
19 purported 512(c) notices that are really designed to
20 obtain to provide a predicate to obtain the identity
21 of a peer to peer or allegedly a peer to peer
22 infringing user and they submit the 512(c) notice as
23 the gateway then to be able to go to court because
24 you need to supply that as to part of your 512(h)
25 subpoena.

1 There are also others who want takedowns
2 and aim enormous volumes of these notices at data
3 center operators who respond that they can't do
4 anything about the notice, and they nonetheless
5 continue to receive hundreds and thousands or
6 millions of notices from these entities. And at
7 some point, that's a waste of resources because each
8 of these has to be reviewed and it slows down the
9 response.

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

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

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

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

25 MS. PERLMUTTER: I think we need everyone to be

1 on the mic so that it's on the record, and also, one
2 other, again, caution is given the time we have and
3 what we are trying to accomplish here, rather than
4 discussing what solutions should be, if we can focus
5 a little more on identifying what the issue would be
6 on the table to move forward, thank you. There's so
7 much to talk about.

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

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

13 MR. VON LOHMAN: For those of you who are
14 listening in, I would add, I would propose two
15 concrete measures for the working group to
16 potentially take up. Based on what I have heard
17 everyone discuss today and what I think, I think I
18 hear as some common ground. And so it seems to me
19 that we've heard a number of people talk about the
20 value of standard notices, particularly the things
21 that can be submitted through web form or other
22 somewhat standardized technical channels. So I
23 think it makes sense to have the working group
24 explore what I would consider to be basically a menu
25 of options.

1 I think Brianna has mentioned that many,
2 probably a majority, probably a vast majority of
3 60,000 service providers out there currently don't
4 have web forms or other standard technical approaches,
5 and I fully expect as time goes on more and more of
6 them will. Right? Because as volumes go up, as
7 sites grow larger, it's only a matter of time before
8 the DMCA traffic gets to a point where you really
9 don't want to be getting notices by fax and e-mail
10 because that will destroy your resources very quickly
11 without actually getting the issues solved.

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

20 I think there's some efficiency to be
21 gained with an approach, like that if we could
22 develop a menu of option based on some of the best
23 practices that different service providers have
24 already engineered, that would include smaller
25 service providers as well as larger ones. So that

1 as the 60,000 plus service providers reach the point
2 in their maturity that we really should do something
3 to automate or make more sufficient our process,
4 what should we do? They won't invent a new form
5 that's completely different than the forms that the
6 rights holders have already optimized into their
7 system.

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

15 The second thing I would suggest as a concrete
16 goal for the working group in this area is figuring
17 out how we can get benefits of automated scalable
18 enforcement tools into the hands of individual and
19 smaller rights holders. And I think we need to
20 think about, we need to get more information about
21 what obstacles are standing between us and that
22 goal. I don't know what it is. Maybe the
23 enforcement vendors are worried that the volume is
24 not big enough, and so maybe they don't want to be.
25 It's inefficient for them to find clients who don't

1 have enough volume. If that's the case, maybe we
2 can talk about some way to aggregating volume so
3 that it is worth it for the vendors to be in these
4 businesses.

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

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

24 Jim also made me think about should we
25 have conversations or discussions about the

1 different types of service providers that claim
2 512 status? And perhaps not for the initial
3 conversation on standardization, but when you look
4 at what Sandra showed us for that service provider
5 and all those gazillion pop ups and how hard it was
6 to get there, I don't know the site, but my guess
7 is that they are not the sites that 512(c) was
8 intended to protect. So perhaps we can have some of
9 those conversations if they led to those,
10 great. But at least it will bring us to a common
11 understanding of who's protected.

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

1 this system.

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

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

1 making the whole process standard and predictable
2 and as neutral as possible.

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

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

23 And, finally, I agree and appreciate
24 Fred's comments and suggestion that we find some way
25 to help smaller entities on the user side also take

1 advantage of the trusted sender process. And that's
2 something we'd be interested in working towards with
3 all of you.

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

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

23 It also has participation by independent
24 artists on both the movie and the music side through
25 their respective trade associations. So on the

1 movie and television side, the Independent Film and
2 Television Alliance, IFTA participates. On the music
3 side, A2IM, which represents independent artists and
4 records participates through the auspices of the RIAA.
5 So while individuals themselves might have some trouble
6 using some of these automated systems, they often band
7 together through their own respective organizations
8 and can better participate in some of these automated
9 systems.

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

19 But there's lots of people that aren't in
20 the room. The trolls, the copyright trolls that Jim
21 Halpert was just talking about, they didn't bother to
22 show up. The representatives of the cyber lockers
23 whose business model is totally dependent on piracy,
24 they have no interest in showing up because they have
25 no interest in improving the DMCA process.

1 If the DMCA process was improved to the
2 extent that it was actually effective, not merely
3 efficient, they wouldn't have a business model so
4 again, we support these efforts, but I do think it's
5 necessary to recognize that again this is not by
6 itself going to solve the piracy problem. It's going
7 to take steps beyond simply making the DMCA process
8 more efficient. Thank you.

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

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

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

1 keep that cautious approach as we go forward.

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

15 And finally, I think that, while I appreciate
16 that we are talking here about a particular problem
17 and a particular issue, and so this isn't going to
18 be the forum to solve piracy. It's also not going
19 to be the forum to solve takedown abuse. But with
20 respect to the latter, I think that it would be
21 helpful if the discussions that are going to proceed
22 on that particular issue of takedown abuse could
23 happen relatively closely in time. I'm not sure
24 what the plan is. Because I think what that says to
25 the world is we are trying to make this process

1 better for everybody, the takedown process, but that
2 includes taking seriously the problem of abuse.

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

9 MR. MURPHY: Hello. My name is Tom Murphy. I
10 am an entrepreneur who has worked at many music
11 technology companies in the Bay Area over the last
12 20 years. I'm an aspiring musician and I'm
13 currently on the board of the local chapter of the recording
14 academy. So I speak with lots of artists about the
15 issues that are facing them on a daily basis and
16 technology is clearly at the forefront.

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

22 And over the course of the day, I've seen
23 a few trends that I'd like to mention for the working
24 group to consider, and the first one is that we are
25 all creators, and whether you are a musician who

1 creates their piece of work to try to earn a living,
2 or you are a remixer posting onto a public site for
3 social media sharing and communication, for us to
4 consider the other sides of the fence as we try to
5 look at these solutions, that we are focused on the
6 concept of takedown and very closely related is the
7 concept of put up.

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

18 The second issue that I think has come up and
19 come up over and over again that I feel is important
20 to continue to discuss is just the mention of
21 repeatedly is mentioned a common language that
22 ignorance of the law is not an excuse to break it.
23 And it seems that there are lots of different
24 questions both on the creators and in the takedown
25 process of what's fair use and what's derivative

1 work. And part of our challenge is we need to
2 educate the people using these tools as well. At
3 least some small subset of these abuses and these
4 uses of resources and time. The more that people
5 understand their place in this process, the more
6 they will be attempting to provide reputable uses
7 for it. And some people might not post if they
8 actually realize that there are consequences.

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

18 And I think that a number of people voiced
19 various good examples many times, this process is
20 the only one that people feel available to them,
21 because they didn't know who to contact. They didn't
22 know how to contact them. They didn't know how to
23 negotiate. In that, the next question simply becomes,
24 so if we begin collecting information and storing it,
25 who has it? Where does it go? What do we do with

1 it? We have a system like the ACNS that seems like
2 a very good start. If we talk about the concepts of
3 globalized centralized system, what are the repercussions
4 of that and how do we protect that?

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

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

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

1 to be doing and trying to do it right.

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

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

24 There's a backlog of 15 years at the
25 copyright office of copyright agents that have built

1 up and that is a process that needs to be automated.
2 It needs, or not automated, it needs a standardized
3 form. It needs an easily searchable form that you
4 can search not just by name, not just by company, not
5 just by e-mail address. You need to be able to search
6 it on different fields. The company that has that page
7 registered needs to be able to change it. It needs to
8 have the authority to change it.

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

15 MS. KAROBONIK: Hi. Teri KaroboniK.
16 New Media Rights. I think a lot of interesting
17 concepts and directions have been brought forward
18 today, but in order to organize them in an efficient
19 way, I think it might be helpful for the vast
20 majority of people in this room to take off our
21 lawyer hat and look at it for what it is.
22 Ultimately it's a system. So it might be helpful to take these
23 concepts and inputs, outputs, and internal system. So maybe
24 let's start with what outputs do we ultimately need
25 to get those outputs? What inputs to do we need put

1 in? And then bridge the gap, what type of
2 technology and what type of standardized forms?
3 It's just an interesting way of organizing it that
4 will hopefully make it a little bit more efficient.

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

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

21 And then also the availability of this
22 special trusted sender type of status, how do you
23 get that status and who can it be made available to?
24 And then the second big picture being the
25 availability to smaller submitters of automated

1 tools of various kinds, as Fred had suggested, and
2 what I think would be important, and this is just --
3 I'm throwing this out again as a straw man for
4 comments, but I think when you look at either of
5 those big picture or basket type of issues, we would
6 need to take into account a number of points, and I
7 think both Sandra and Corynne have made these points
8 in different ways.

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

22 So I think there's some interesting ideas
23 about allowing the person who posted the content and
24 the person who is claiming rights to be able to have
25 a conversation without at the same time necessarily

1 making identities public and there's obviously
2 sensitivities about that on both sides.

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

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

23 Best practices seems like a potential way
24 to go because obviously not everyone is in the room,
25 whether trolls or anyone else, and if we could have

1 some agreement on best practices could capture
2 something about what is working currently as well
3 as what isn't working, that could be very helpful.
4 But obviously we would all need to agree on that, and
5 also think about what we mean by best practices and
6 how they will be used. I say that's an issue to
7 keep in mind for discussion as we move forward. So
8 with those comments and suggestions, again, the
9 floor is yours.

10 MR. WATTLES: Josh Wattles with Deviant Art.
11 Having been responsible for putting together an
12 automated form and how difficult that was and
13 providing what many people refer to as plain English
14 explanations of something that isn't in plain
15 English, so how can you explain it in plain English,
16 we would welcome having combined intelligence. You
17 know, having available a standard mechanism is more
18 than just a physical thing.

19 It's also linguistic. It's also having in
20 the room people who participate who have the smarts,
21 bottom line, to produce that kind of document because
22 it's not easy. So I think one of the things a working
23 group can do is draw on intelligence and bring that in.
24 And you know, as you were talking, you know, it would
25 seem to me this sort of, you know, like the Verisign

1 system, you know, instead of thinking about best
2 practices, you might think about some sort of seal
3 system. You know, so that you take it away from the
4 notion of practices and just bring it into a voluntary
5 compliance. Like we have chosen to be this way
6 because that's what we've chosen to do, you know,
7 rather than this notion of imposing a standard that
8 you would expect everybody to gather around. So you
9 know, that sometimes works, that system.

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

18 MR. HALPERT: I love the idea of Deviant Art
19 being compliant in all aspects. It's been very
20 helpful, and I stood up to make a comment that's
21 aimed in the exact same direction. I do suggest,
22 Shira, your list, which is great, for the smaller
23 providers, that are not, smaller service providers
24 and smaller artists who may not be up to using an
25 automated data dump type of system to communicate in

1 bulk, it may be also worthwhile working on a
2 standard very simple understandable notice process
3 that would be easy to use.

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

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

21 So I think we may want to, as part of the
22 smaller entities using the standardized forms, also think
23 about automated notice, also think about a standard
24 notice and takedown process for those smaller entities
25 to follow that smaller companies that wouldn't even

1 be able to implement that sort of, or accept notices
2 in that form could follow or for that matter couldn't
3 provide data in that form. And so if we add that
4 to our list, I think it will serve the transparency
5 purpose, Josh, that you were describing, and also
6 catch in a good way a whole lot of smaller players
7 who might not have the voice to. Thanks.

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

21 Maybe that's a question for the working
22 group to look into and for engineers who have to
23 actually act on the notices they received to look
24 into, but I guess from our, or creative thinking
25 about how one would achieve compliance, that would

1 be one method is just to shoot for something that
2 is easy and compelling rather than something that
3 you are kind of regulating and forcing people to do.

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

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

21 And I hope that as we evaluate that language,
22 we look at the outcome that we are looking to get is
23 to be fair to everyone like we are in this room and
24 in our conduct here, which is today it's consent and
25 it's respect and it's permission and I hope that

1 those values come through as the working group moves
2 forward. Thank you.

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

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

17 And so we had asked everyone to think
18 about who should be in the working group. We would
19 like it to be representative, I mean, it needs to be
20 representative to have legitimacy and to be able to
21 achieve something here. And at the same time, we
22 also do understand that not everyone will have the
23 time to do it and there will also be, as I said,
24 opportunities to be alternates who could cover
25 other meetings. What we'd like to do is to get some

1 statement of some volunteers to be on the working
2 group. There's obviously a lot of brain power and
3 experience in this room that we'd really like to
4 draw on. And if we could get some initial
5 indications of who would be willing to serve on that
6 group and help out with this project that would be
7 fantastic.

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

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

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

24 What we thought we would do is have that
25 this session will always be essentially half a day

1 and the other half a day for the working group so
2 that that could all be done in one day, but we will
3 need the working group to meet in between to meet in
4 some way in between so that they can report on
5 progress and their discussions in thinking to the
6 plenary session so we can move things forward. So
7 we don't have a definite number in mind, but there
8 would have to be sufficient interaction in order to
9 make some sort of report on where things stand on
10 status and progress to this larger group.

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

15 MS. PERLMUTTER: One things we suggested before
16 we do think the working group be an off the record
17 Chatham House group conversation where people's comments aren't
18 Attributed and made public. By then the report will be made
19 public, so everyone will know what they are saying to all of
20 us and then we will be able to decide what to do
21 with that. And again, they are not empowered to
22 make conclusions. They are empowered to look at the
23 issues and try to move things along from a technical
24 perspective and tell us where the discussions have
25 gotten for us to make decisions in this forum.

1 MS. AISTARS: Do you intend to -- the question
2 was whether the USPTO intends to have like a
3 rapporteur or somebody to help facilitate those
4 working group meetings.

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

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

23 I'm trying to think of the best way to do
24 this. Maybe what we should do is we will pass
25 around and get names. And let me reassure those who

1 are participating by webcast or those who are not
2 here but will hear reports is that please, if in the
3 next week you decide you would like to participate
4 in a working group, please let us know. We will
5 also look at the list to try to make sure it is
6 representative, and if it seems to be missing
7 important groups, we will also try to reach out and
8 drum up more interest and ask you to find others who
9 can participate.

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

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

16 MS. PERLMUTTER: If people, it's not that we
17 are looking to give a hard deadline, but because we
18 want to get the working group started in the next
19 couple of weeks, in the next couple of weeks, we
20 will publicize this, I think we've already
21 publicized that we are looking for volunteers for the
22 working group, if in the next week people could get
23 back to us with names of others that they want to
24 add, it's not that it's not possible ever to add

1 anyone else, but we'd like to have a starting group to begin
2 the process.

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

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

26 So I think a smaller group that can talk

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

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

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

1 the goal for the next session.

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

4 MR. POGODA: Yes.

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

19 So I mean, to some extent, I think one thing,
20 I mean, after a working group can get organized, one
21 thing to do is to, you know, dig in and kind of start
22 identifying, you know, the various topics that you guys
23 want to grapple with. And that may end up leading to
24 suggested agenda items that then the meeting in June
25 you might suggest to us a couple weeks in advance

1 that, you know, addressing this topic would be a
2 really useful thing to have as a conversation.

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

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

19 MS. PERLMUTTER: I think we will do that for
20 the working group itself. I think we need to
21 circulate contact information for everyone on the
22 working group to figure out the best means for you
23 to meet or communicate with each other, and then we
24 will continue to have our regular e-mail alerts to
25 the bigger group about meetings and presentations

1 and whatever report the working group is going to be
2 making.

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

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

20 MR. MORRIS: You know, let me kind of jump in
21 again to say, I mean, based on the number of NTIA
22 processes, we really have found that, and my
23 perception is that in this room, there are people
24 from all sides of the issues who actually are
25 interested in making progress and that's really kind

1 of the most important result from these meetings is
2 that there's an interest in making progress.

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

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

21 MS. PERLMUTTER: Any other questions?
22 Comments? Thoughts? Thank you. It's been a really
23 interesting afternoon from our perspective and we
24 will be sending out alerts. We will be putting
25 together the working group and communicating with

1 them to set up the initial meet and then leave it to
2 them to organize it to be able to report back on the
3 20th as to what they've done and what
4 they've discussed.

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

16 (Meeting was concluded at 5:38 p.m.)

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2
3 I, Krishanna Derita, do hereby certify that the
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