

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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DEPARTMENT OF COMMERCE MULTISTAKEHOLDER FORUM

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ON IMPROVING THE OPERATION OF THE DMCA NOTICE

AND TAKEDOWN SYSTEM

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THIRD PUBLIC MEETING

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Alexandria, Virginia

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Friday, June 20, 2014

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A G E N D A

PLENARY PUBLIC MEETING

OPENING REMARKS

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Chief Policy Officer and Director for
International Affairs, USPTO

JOHN VERDI

Director of Privacy Initiatives, NTIA

Administrator:

DARREN POGODA

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1 Panelists:

2 SHIRA PERLMUTTER

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4 International Affairs, USPTO

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6 JENNIFER BLANK

7 Attorney-Advisor, USPTO

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9 JOHN VERDI

10 Director of Privacy Initiatives, NTIA

11

12 REPORT OF WORKING GROUP

13

14 SANDRA AISTARS, Copyright Alliance

15

16 JIM HALPERT, Internet Commerce Coalition

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18 PLENARY DISCUSSION OF WORKING GROUP REPORT

19

AND

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DISCUSSION OF FUTURE WORK

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22

CLOSING REMARKS

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

2 (1:22 p.m.)

3 MS. PERLMUTTER: Okay. We're going to
4 get started. We're never quite sure, even
5 though we have a lot of people signing up in
6 advance, who's going to show up in person and
7 who's going to be watching or calling in, so we
8 don't want to waste everyone's time who's here
9 in the room.

10 So welcome to the Third Plenary Meeting
11 of the Multistakeholder Forum on Improving the
12 Operation of the DMCA Notice and Takedown
13 System, which is quite a mouthful, but I'm
14 getting used to saying it very quickly and
15 smoothly. We're very glad to see all of you who
16 are here with us at the Patent and Trademark
17 Office and also welcome anyone who's here by
18 webcast or phone. And, again, just for those of
19 you who may be new to the process, we are trying
20 to maximize participation by alternating
21 locations between the East and West Coasts as
22 much as possible pursuant to popular request.

1 So I'm Shira Perlmutter. I'm the
2 Chief Policy Officer here at the PTO, and we've
3 been running this process, which is part of our
4 Green Paper on Copyright Policy and Creativity
5 in the Internet Economy, along with NTIA. So
6 what I thought I would do is just start with a
7 very brief summary of how we've gotten here
8 today, what's brought us so far as we are so
9 far.

10 So the first plenary meeting, the first
11 big group meeting, which this is, of this
12 multistakeholder forum took place here in this
13 room -- although it might not have been
14 recognizable because it was double the size and
15 facing the other direction -- on March 20th, and
16 I have to say we were very pleased that that
17 meeting really established the cooperative and
18 constructive tone that has marked the entire
19 process so far. So those of you who were there,
20 and some who were there that might not be here
21 today, very quickly, surprisingly quickly,
22 reached consensus on how to start this process,

1 how to move forward by focusing initially on
2 standardization in the notice and takedown
3 process and also agreed that it would make sense
4 to create a smaller working group to look at the
5 issues from more of an operational and technical
6 perspective. So that was March 20th.

7 And then on May 8th, the plenary group
8 met again, this time in Berkeley, California,
9 and we had very helpful presentations by a
10 number of participants on issues surrounding
11 standardization from various particular
12 perspectives. We had a discussion and
13 opportunity to ask questions and make comments
14 on the presentations, and then started to
15 identify which standardization-related issues
16 the working group would start with. And at the
17 end of that meeting, and then subsequently as
18 well, participants from all across the continuum
19 of different stakeholder interests volunteered
20 to participate in the working group.

21 And, again, I have to say we've seen
22 really impressive enthusiasm and willingness to

1 make a commitment of time and energy from a very
2 large group of people, so we thank you all for
3 that. So that group, the smaller working group,
4 has now met twice. I understand the discussions
5 have been very productive, and we are looking
6 forward to hearing the results of what they've
7 discussed so far.

8 So after we've heard from the working
9 group, we'll then open the floor to feedback and
10 comments and then to discussion of next steps.
11 So, obviously, first, the question is next steps
12 on the standardization issues and then, as we
13 continue to make progress, we can then turn to
14 discussing further any other issues the plenary
15 group or the working group are ready to take up
16 and what the timing might be for that, including
17 the various issues that were identified during
18 the Green Paper process.

19 So just a couple of technical notes.
20 As before, there'll be an opportunity for remote
21 participation through the phone bridge and
22 information on accessing the bridge is on the

1 printed agenda which, I guess, is also available
2 online for those who aren't here. And for
3 anyone who's here who wants to make a comment,
4 please, again, come up to the front of the room
5 to one of the two microphones here and identify
6 who you are and, if you're here representing
7 some other interest, identify who that is.

8 So we're very gratified to see that
9 steady progress is being made through this
10 forum, and we do continue to think that it
11 provides a really unique and excellent
12 opportunity to show that it is possible to find
13 some consensus approaches for operational
14 problems involved in online copyright without
15 necessarily requiring legislation. So we hope
16 we'll continue down this path.

17 Let me now give the floor to John
18 Verdi, who's the Director of Privacy Initiatives
19 at NTIA.

20 MR. VERDI: Thanks, Shira, very much.
21 I appreciate it. You know, my title aside, I'm
22 essentially here today standing in the shoes of

1 John Morris, who runs the policy shop at NTIA,
2 and we couldn't be more pleased to be working
3 with PTO on this process. My main goal in
4 saying just a few words today is to thank the
5 working group for the progress and the hard work
6 they have undertaken since the first meeting,
7 since the second meeting. I know that it takes
8 a tremendous amount of organization and
9 coordination and goodwill in order to make that
10 progress, and it seems pretty clear that folks
11 are well on their way towards working together
12 with a diverse group of stakeholders to try to
13 find some areas of agreement on how to improve
14 the DMCA notice and takedown process.

15 What I would encourage folks of the
16 plenary today to do is to try to build on the
17 work of the working group and support the work
18 of the working group in trying to find areas of
19 potential consensus, potential agreement, and
20 focus on those areas first. I know that there
21 are any number of issues concerning the
22 standardization of notices that might be thorny

1 issues, either because they require more
2 research or they could be sources of some
3 conflict between different stakeholders and
4 things like that, and there may be really
5 fruitful work to get to on that front. But
6 particularly because this process is relatively
7 young and it's relatively early in the schedule,
8 I'd encourage folks to focus on where you can
9 find areas of agreement. Figure out some
10 concrete steps for how you can memorialize those
11 agreements and those proposals as you move
12 forward in this process. Pick off the low-
13 hanging fruit first, and then turn to the areas
14 that might require more research, more
15 collaboration, more hard work in working through
16 more contentious issues. I'd encourage you to
17 do that.

18 And this is also the time for folks in
19 the plenary to feed into the work of the working
20 group to raise issues that the working group may
21 not have considered, to propose solutions to
22 issues that the working group may not have

1 addressed yet, and I'd encourage you guys to do
2 that as you move forward with the rest of your
3 meetings on this topic.

4 And, again, I just want to thank the
5 folks who have organized the working group, the
6 folks who have put the time in, and I look
7 forward to a constructive and productive meeting
8 today. Thank you very much.

9 MR. POGODA: And just one
10 administrative point before we turn it over to
11 Jim Halpert and Sandra Aistars, co-leads of the
12 working group, to provide a report of the
13 working group. I just want to say for those who
14 are watching via the webcast who want to
15 participate, you can do that via the phone
16 bridge, like Shira mentioned. If you are having
17 trouble finding that on the webcast page -- you
18 shouldn't, it's there with the agenda -- but
19 that number is 1-800-369-3319. The passcode is
20 1981439. And if you do want to participate,
21 please press *1. The operator will place you in
22 a queue. We will be alerted here in the room

1 that we have someone on the line, and we'll
2 patch you through when there's a natural break
3 in the action so you can address the room
4 seamlessly.

5 So with that, I will turn it over to
6 Jim and/or Sandra to provide a report from the
7 working group. Thank you, everyone.

8 MS. AISTARS: Thanks everybody. We
9 were kind of wondering if we'd be giving a
10 report to the working group itself primarily.
11 So to the extent we are and we say something
12 that you want to correct or expand on, please
13 feel free to do so.

14 I want to start by thanking, on behalf
15 of both of us, in particular Victoria Sheckler
16 and her colleagues at the RIAA who have helped
17 us behind the scenes to make progress between
18 working group meetings. As Shira noted, we've
19 had two separate working group meetings now
20 since the last meeting we had in Berkeley, and
21 in between those meetings we had identified as
22 our first working group item to collect web

1 forms and notice forms that participants in the
2 group found particularly useful as models to
3 consider for our standardized notice-sending
4 development exercise, and Victoria and her
5 colleagues were good enough to help summarize
6 and analyze all of those.

7 So we took those materials and, working
8 from those materials today, drilled down further
9 in a discussion with the working group members
10 to further understand all the operational
11 practices that underlie the need for particular
12 data elements that are asked for in those forms.
13 So we explored how and why data is requested
14 and, in particular, where data beyond what the
15 DMCA asks for is requested, why that's being
16 sought. That conversation also sort of
17 naturally brought up comments from senders of
18 notices of challenges that they experience when
19 they are attempting to send forms to report
20 infringements online, and so we discussed those
21 kind of in the flow of this morning's
22 discussion, and I think we had a very productive

1 and useful exchange of information amongst the
2 participants.

3 What we have identified as our work
4 items is, first and foremost, to come up with
5 standardized forms that would allow both for
6 batch sending of notices and also individual
7 sending of notices and coupling that also with
8 coming up with a spec for API that could
9 facilitate notice sending as well. We are
10 recognizing that a lot of the types of
11 challenges that people are encountering can be
12 alleviated, especially either through the use of
13 APIs or through the use of trusted sender
14 programs, and so we're working towards
15 identifying ways to facilitate the use of such
16 programs as well.

17 As we've been speaking, naturally and
18 organically in the conversation various issues
19 come up that don't clearly fit into something
20 you would put in a form necessarily, that fall
21 more into the realm of behaviors or best
22 practices, or how one might design the placement

1 of information on a website or interaction on a
2 website, or how one might better educate users
3 of forms to help provide information to the
4 recipient of the form that the site needs to be
5 able to more effectively process the
6 information. And so we're keeping a list of all
7 of that information with the goal of creating a
8 kind of separate document that will help educate
9 and suggest better ways or appropriate ways,
10 suggested ways perhaps, of implementing
11 education or other kind of non-data-collecting
12 aspects of the online DMCA-based interactions
13 that people have in this context.

14 Do you want to add to that, Jim?

15 MR. HALPERT: The goal that we have
16 identified of reducing negative externalities,
17 really from an array of notice and takedown
18 practices that are somewhat counterproductive or
19 impose costs on others that are not commensurate
20 with the benefit to the entity that's doing
21 them, I think is one that's achievable and will
22 require input and information. For example,

1 there was a discussion about CAPTCHA codes or a
2 document about limits on the amount of works
3 that can be submitted as part of a submission
4 that comes in on a form or through an API. And
5 each side, I think, can benefit from talking
6 about the practical reasons for some of these
7 things and then for some of the practical
8 effects. The effects not just on, for example,
9 rights owners and service providers, but on
10 actual Internet users who are also represented
11 in this process. And we heard less from that
12 community at this phase because we're just
13 spelling out what the items are that are in the
14 notice and what the experience is of the
15 different senders of these.

16 When we get to a deeper dive on
17 counter-notification, I think that there will be
18 a lot of input from Internet users'
19 representatives in this process and we will
20 learn a lot from that. But this is a process,
21 again, that we're working through to understand
22 where these negative externalities are, and then

1 the next phase will be coming up with some model
2 or standard recommended notice elements, at
3 least, or full notice forms, how to address
4 those problems that we've been talking about.

5 I'd also add that there's a recognition
6 of the working group that this is by no means a
7 process that can produce a single form that
8 would be used in a bulk context or an individual
9 notice context because there are different types
10 of platforms that require somewhat different
11 information. I think when we have something to
12 send back to the full working group, there will
13 be quite a variety of flavors of different
14 elements that fit what's required. For example,
15 in the search context, where if you send the URL
16 for a search, it really raises more questions
17 than it answers, as Jordan explained from Yahoo.
18 And we'll be working through some of these
19 variations, and very much need input from the
20 plenary group about different contexts that
21 would require slightly different types of
22 information in order to optimize the efficiency

1 of the search process.

2 So we hope to move forward benefiting
3 from more of that information before the next
4 working group meets, and our next date is the
5 16th of July -- we missed Bastille Day by two
6 days -- from 2:00 to 4:00 Eastern. And the
7 working group is an open working group, so like
8 Matt Schruers showed up this morning and
9 contributed, and anybody who wants to do so
10 certainly can. But we're going to be meeting by
11 conference call because it's totally unfair to
12 ask people to fly across the country for these
13 interim meetings of the working group. But
14 we'll be having a conference call on the 16th at
15 2:00 p.m. in Washington, D.C. If you're in
16 Washington and want to come to the DLA Piper law
17 office at 8th between E and F or to Sandra's
18 office -- we haven't figured out where we're
19 going to do it, but we'll do it one of those
20 two places -- and if you want to be in the room,
21 you're welcome to do that. Otherwise, just dial
22 in on the phone.

1 This is an interim process. Right now
2 we're learning about what works well for
3 everybody and what causes these externalities,
4 and we'll try to move forward to beginning to
5 draft up ways to address not a negative
6 statement, but an affirmative statement of the
7 sorts of things that are good to include in a
8 notification process in these different contexts
9 as our first step through this working group,
10 and we're optimistic about finding pretty broad
11 agreement on this listening to all of you guys
12 about how to proceed.

13 MS. AISTARS: And I guess the one thing
14 that I would also add to that, my impression
15 this morning, in particular, was that as we
16 talked about the reasons for requesting certain
17 information, I found that there are practices
18 that from a notice sender perspective -- and I
19 would imagine this is true whether you're
20 sending a takedown notice or whether you're
21 sending a counter-notice -- there are things
22 that you might find frustrating and not

1 understand the reasons for, and when you hear
2 the reason for it, it puts it in better context.

3 We were having a short conversation
4 before the meeting began, and to me it seems
5 like there probably are categories of sites and
6 services who aren't participating in this
7 collaborative effort with us who probably aren't
8 likely to adopt best practices or guidelines or
9 whatever we set forth here. But the group that
10 is here and is working together, to the extent
11 that some of these practices are being used in
12 an effort to channel behavior away from
13 something that is either difficult for the
14 service to manage or that the service finds
15 counter-productive in some fashion, it seems to
16 me that this effort and this understanding that
17 we can develop for the reasons kind of
18 underlying the use of various techniques might
19 allow us to develop better and less burdensome
20 ways of channeling that behavior to the same
21 goals and accomplishing the same thing at the
22 end in a way that's easier for everybody to

1 manage.

2 MR. HALPERT: And we will later give
3 thought to how the working group's draft can
4 incentivize people to follow what's really a
5 voluntary process. But if entities are
6 following good practices, there may be reasons
7 to figure out ways that, for example, if one's a
8 trusted sender and fits a trusted sender
9 profile, there are certain things that should be
10 beneficial from that. Conversely, if one's a
11 service provider and following this code, there
12 ought to be some ways to think about benefits
13 for the service provider. So that's a later
14 phase of this.

15 But I think creative thinking may be
16 able to help drive not only usability of this,
17 but also a real feeling on the part of entities
18 out in the wild west of the Internet world that
19 we're all trying to help here, to incentivize
20 them to apply these principles in their own
21 practices without any sort of law, but with
22 understandings among the participants in this

1 process that these are practices that are
2 appropriate to be encouraged and both senders
3 and recipients of these notices who follow them
4 should be given a little extra break by the
5 participants in the process. So we'll explore
6 that at a later date.

7 But our immediate task is to come up
8 with these forms or models so that we have
9 something concrete that's under the belt of the
10 working group. We're hoping to be able to drive
11 this process with a draft going out to the full
12 plenary group and then incorporating those
13 comments, after doing several rounds within the
14 working group, so that by the end of September
15 we'll have these draft model notice elements and
16 comments on those collected for further review.
17 But we recognize that there's going to be a
18 little bit of August vacation for a whole bunch
19 of folks, and it's hard, as John Verdi informed
20 us from experience in the other multistakeholder
21 processes, to get people to meet in person in
22 August, but we can continue to work in the

1 working group and then have, we hope, a bunch of
2 materials for consideration in September.

3 MS. PERLMUTTER: One question. Is
4 there any particular way that would be helpful
5 for those who are not in the working group to
6 contribute at this point, or should they be
7 waiting to see the outcome of the next meeting,
8 and will there be any product that anyone would
9 look at between now and the end of September in
10 the plenary? I'm just trying to think how the
11 communication can best take place for those who
12 are not spending the time in the working group.

13 MR. HALPERT: Sure. It's a great
14 question. I would say right now we're flagging
15 these issues. I think you guys all have access
16 to the spreadsheet that Marina put together,
17 working with Vicki at RIAA, and if there are
18 other issues beyond the ones that you've just
19 heard described by Sandra that you think are
20 important in either way, either necessity of
21 certain information from the perspective of
22 service providers or Internet users or from the

1 perspective of a content notifier, requirements
2 that create operational difficulties, it would
3 be very helpful for us to receive those in
4 writing before the Fourth of July so that we can
5 then incorporate that into the drafting process
6 and discussion that will happen in the middle of
7 July.

8 MS. AISTARS: Yes. And the other
9 element is what types of service providers
10 require different information and notices. So
11 those three issues, if anyone in the larger
12 plenary session has further input on, that would
13 be great.

14 But in terms of how else you can
15 participate, I think, actually, Shira, most of
16 the people who are here or, I'm guessing, dialed
17 in also, are actually following our work either
18 on the email list that we've set up or actually
19 even calling in to the working group calls. So
20 in some ways, we're --

21 MS. PERLMUTTER: And a fair number who
22 aren't, actually, that we've seen --

1 MS. AISTARS: Okay.

2 MR. HALPERT: Well, we certainly can
3 release -- Once we have a rough draft, we can
4 certainly release that more broadly. We just
5 don't want to impose on people's time saying we
6 need your comment on X, Y, or Z item when these
7 are sort of preliminary drafts. And we could
8 make it clear that things are preliminary drafts
9 within the working group, for example, but
10 circulate them more broadly, and then anyone who
11 wants to weigh in can do so. But it's mostly a
12 matter of being respectful of people's time and
13 not making you feel like you have to comment at
14 this phase, otherwise that will be lost in the
15 discussion. Because this will be a very
16 incremental process, I think, in the drafting
17 leading to September.

18 MS. PERLMUTTER: Absolutely. And part
19 of the purpose of the working group is for those
20 people who wanted to invest the time that it
21 takes to come up with the documents for the
22 bigger group to see. So I'm not suggesting

1 anyone has any obligation to do anything, but
2 just to the extent that there are people who
3 aren't in the working group who want to say
4 anything about this as the process is going on,
5 they should feel free as Jim and Sandra said.
6 Thank you.

7 MS. AISTARS: Great. Thank you.

8 MR. HALPERT: Thanks. Yeah, and please
9 do let us know what you think if you were not in
10 the working group meeting about this list,
11 particularly that chart and elements that you
12 think are helpful or are not helpful and what
13 alternative you might suggest. Thank you.

14 MR. POGODA: Thanks, Jim and Sandra. I
15 appreciate that and I appreciate all the work
16 you've done, all the work the working group has
17 done. Not everyone in the room was in the
18 working group meeting. Not everyone
19 participating on the webcast was in the working
20 group meeting.

21 So maybe we can open this up by opening
22 up to the floor to kind of get a feel from the

1 larger group what their feelings are on the
2 report, what questions they have about
3 specifics, maybe specific items, specific
4 substantive areas that the working group has
5 been working on, suggestions for them about what
6 they think of their course, how they might
7 change course, how they might stay on course,
8 things along those lines. And so this is a
9 stakeholder-driven process, and if any
10 stakeholders have anything they want to ask or
11 say, the floor is yours.

12 Well, congratulations, Jim and Sandra.
13 I think that was a rather excellent report.

14 MR. HALPERT: If you're boring enough,
15 nobody complains.

16 MR. POGODA: Right.

17 MS. PERLMUTTER: Or preliminary enough.

18 All right. Well, maybe this will be a much
19 shorter meeting than we had thought.

20 Obviously, as Darren said, the idea is
21 that this is your process, and we very much
22 appreciate that there are a lot of people who

1 are talking to each other, both in the formal
2 sessions and just informally back and forth, and
3 we do have the sense that there is a lot of
4 progress being made and better mutual
5 understanding of what each stakeholder's
6 positions and concerns are, which allows the
7 potential to find some ways around the problems
8 that everyone can live with. So we're very
9 pleased and very appreciative about that. So we
10 want to make sure that this is an inclusive
11 process and everyone, even those who aren't in
12 the working group, have an opportunity to speak
13 up, and we also want to make sure that the
14 process continues and we're able to continue
15 making progress leading to some result by the
16 end of the year. I say "some result." I don't
17 mean resolving everything, but some outcome.

18 I know that this has also been made
19 more complicated by the fact that there are so
20 many other governmental processes on copyright
21 going on simultaneously right now. I will say
22 ours was the first, I think, in terms of timing

1 of meetings. So we don't want to force people
2 to stay in a room and talk if it's premature to
3 have further discussions in this particular
4 forum.

5 So maybe what we should do at this
6 point is just talk a little bit about sort of
7 timing and future work and if people think there
8 are other topics, either under standardization
9 or beyond standardization, that we should start
10 talking about how to address, or whether we just
11 continue this process as is and have it develop
12 organically over the next few months. And then
13 we should certainly talk about, actually,
14 calendars. Because, unfortunately, while the
15 working group has a fair amount of flexibility
16 in terms of when and how it meets, for these in-
17 person plenary meetings we need to actually book
18 rooms and so it requires us to plan a fair
19 amount ahead of time. We have some dates picked
20 out, but we have to figure out how that works
21 with what the working group is already doing.

22 So why don't we open the floor for any

1 comments on how to take the working group effort
2 further if there are any comments on that. If
3 people feel that's also premature and they'd
4 rather wait until the next meeting, that's fine,
5 too. But the floor is yours.

6 MS. SHECKLER: It's Vicki with the
7 Recording Industry Association of America. We'd
8 like to thank the PTO and the NTIA for the work
9 that you've done to date as well as Sandra and
10 Jim for their efforts with the working group.
11 We're committed to this process and working with
12 all of you to see what we can do on
13 standardization.

14 In terms of next steps, we'd like to
15 see a process that is effective as well as
16 efficient. So down the line, if we get to it,
17 one of the issues that we would like to address
18 is the problem of the same content repopulating
19 on certain sites. Thank you.

20 MR. McCOYD: I am Ed McCoyd from the
21 Association of American Publishers, and I am
22 participating in the technical working group.

1 There are just a few items that we hope can be
2 addressed at some point in the process. One is
3 greater transparency of repeat infringer
4 policies and perhaps baseline best practices for
5 those. Also, discussion of what constitutes an
6 expeditious takedown. And we see those being
7 somewhat further down the line, certainly not
8 right away, as we focus right now on the lower-
9 hanging fruit of forms and best practices
10 related to them.

11 MS. PERLMUTTER: And, also, please, if
12 there are any issues relating to standardization
13 itself that you think should be further explored
14 that haven't been mentioned yet in the working
15 group, please feel free to express that as well.

16 MR. SHEFFNER: Ben Sheffner from the
17 Motion Picture Association of America. To echo
18 Vicki, thanks very much to PTO and NTIA and to
19 Jim and Sandra for their work that they've done
20 in getting the process going in the working
21 group on the issue of standardization.

22 To reiterate what I've said at earlier

1 meetings, efficiency is a good thing and I'm
2 glad that we're focusing on that first. It's
3 necessary, but it's not sufficient to address
4 the underlying problem. The point of the DMCA
5 is not to send millions and millions of takedown
6 notices. The point of the DMCA, or at least one
7 of the points of the DMCA, is to reduce the
8 level of infringement. But if sending millions
9 and millions of notices doesn't result in an
10 actual reduction in the volume of infringement,
11 it's just a bunch of make-work. So I do think
12 that after we address the issue of
13 standardization, which again is a necessary and
14 good thing, it is necessary to focus on steps
15 that will actually reduce the level of
16 infringement, which again are things, as Vicki
17 mentioned, like preventing the re-posting of
18 material once it has been identified and taken
19 down in the first instance. Thank you.

20 MS. PERLMUTTER: All right. Well,
21 we'll continue to try to tailor the mix of
22 plenary meetings that are webcast and open to

1 the public with the smaller working group, which
2 is not that much smaller at this particular
3 point in time, and how to sync up the need to
4 plan these plenary sessions ahead of time and
5 also have flexibility for the working group.
6 And it may be that some plenary sessions will be
7 shorter and some of them will be longer,
8 depending on where the working group is in its
9 work, and we'll try to get it as right as we can
10 going forward with everyone's input and
11 suggestions.

12 So why don't I suggest that we talk a
13 bit about then how to handle the next meeting.
14 Do you want to take that?

15 MR. POGODA: Sure. So right now, and
16 I'll just throw this open for discussion, we
17 have space reserved out in Berkeley, California,
18 very close to where we had the last meeting, and
19 that space is reserved for July 31st. That
20 would be the day after, actually, we hold one of
21 the Green Paper round table events on the policy
22 issues of first sale, remixes, and statutory

1 damages. It would be the day after that
2 meeting, which is July 30th, which is also in
3 Berkeley. We set it up that way on purpose.

4 The next venue we had secured for after
5 that one was here, same place, September 10th.
6 As Shira said, we face certain logistical
7 realities in terms of making sure that we can
8 have space available if we need it, and so
9 that's why we went ahead and set up those dates.
10 They haven't been publicly announced yet. We
11 shared them with some of the working group
12 members. But we can throw that open for
13 discussion now.

14 I know Jim and Sandra reported that the
15 next working group meeting is on July 16th. We
16 had set up, when we began this process, a vision
17 of holding the larger plenary sessions about
18 every six weeks, hence the reason why we had
19 July 31st and September 10th. But we'll throw
20 that open for discussion now about what the
21 working group thinks about that, what members in
22 the plenary think about that in terms of a date

1 for the next plenary session with perhaps
2 another setup like we had today, an opportunity
3 for an in-person meeting for the working group
4 members with participation by phone possible as
5 it was this morning.

6 And we can throw that open now so that
7 we leave here with knowledge of what's going to
8 be required from the government in terms of any
9 space we may or may not need to continue to
10 reserve or not or things along those lines.

11 MS. PERLMUTTER: Technological support.

12 MR. POGODA: And technological support
13 and all kinds of other support. There's a lot
14 of stuff that goes on behind the scenes that
15 make this possible. So let's throw that open
16 for discussion and try to leave here with an
17 answer on that.

18 MR. VERDI: And for the folks on the
19 phone, press *1 and you can join the discussion.

20 MR. HALPERT: To the extent that this
21 date works, Sandra prompted me, DLA Piper has an
22 office in San Francisco near the Mission. So

1 one can take BART from near there and get to
2 Berkeley. And it might be possible to do a pre-
3 meeting, if we needed to do a meeting in person,
4 on the 30th in the afternoon, for example, which
5 would allow people to fly out, if they weren't
6 already attending some of these other events,
7 and meet in the afternoon and then go to
8 Berkeley bright and early on the next morning if
9 that's a convenience.

10 And if July doesn't work and we're
11 doing this in the beginning of September, the
12 same offer stands to be able to use office space
13 that's probably about -- if you take BART and
14 walk a little bit, it's probably about 35
15 minutes or 30 minutes from where we'd be meeting
16 in Berkeley.

17 MS. PERLMUTTER: I should just add that
18 for those who want to go to the round table on
19 the 30th at Berkeley, we've generally been
20 scheduling those to end by three in the
21 afternoon. So it might be possible to do both,
22 if you wanted to do that, and maybe we can play

1 with the timing and make it end a little bit
2 earlier.

3 So it sounds like one possible scenario
4 then would be to have -- obviously, we'll have
5 the round table in Los Angeles on the policy
6 issues on the 29th, a round table at Berkeley on
7 the 30th. We could try to make it a bit earlier
8 and maybe end it at 2:00 or 2:30. There would
9 still be an opportunity for those in the working
10 group who then want to go to Jim's office that
11 he's just offered, or wherever the meeting might
12 be of the working group, and then the plenary
13 could then be the next morning and people could
14 get back to the East Coast, if they wanted to,
15 that afternoon. So that sounds like a possible
16 working hypothesis.

17 MS. AISTARS: Do you have space for the
18 round table that we could use once you're done?

19 MS. PERLMUTTER: I think we probably
20 have the space at Berkeley booked for the whole
21 day, so we'll double-check on that.

22 MS. AISTARS: That might be more

1 convenient.

2 MS. PERLMUTTER: We can check with the
3 person who knows. Hollis will tell us.

4 MS. ROBINSON: I'll check to see if its
5 available.

6 MR. POGODA: And that's what you had in
7 mind, so a working group meeting on the 30th and
8 then still hold a West Coast plenary session on
9 the 31st in the morning?

10 MS. PERLMUTTER: On the 31st; yes.

11 MS. AISTARS: Yes.

12 MR. POGODA: Okay. I just wanted to be
13 clear just for purposes if anyone objected to
14 that or didn't think it was necessary or
15 anything along those lines. Okay.

16 MS. PERLMUTTER: It sounds like a
17 reasonable plan. And then I guess the other
18 question is you were talking about the end of
19 September to have something to report or
20 something to share, and the next time we had
21 blocked out was September 10th.

22 MR. HALPERT: I think that's a good

1 time --

2 MS. PERLMUTTER: Okay.

3 MR. HALPERT: -- actually, to meet. I
4 do raise a question. Given that there has not
5 been any statement by anybody who is not a
6 working group member, the working group has
7 grown so much, I think we might give some
8 thought, based on how the discussion is going,
9 whether the event on the 31st in the end, if we
10 make progress in the next several weeks and the
11 people who say they'll attend the plenary
12 doesn't include a lot of additional people who
13 are not on the working group, it may not really
14 be necessary, actually, to meet in the end of
15 July in the plenary. And it's something to
16 think about depending on whether there's more
17 interest in the plenary or not. But it would
18 probably save a lot of resources for folks in
19 the room and for PTO if it proves not to be
20 necessary. I understand the importance of
21 having the plenary available to people, but if
22 they're not taking advantage of it because they

1 can participate in the working group, I think we
2 should give some thought to it, because it is
3 expensive when people are jetting across the
4 country, as some people would be, for this.

5 MS. PERLMUTTER: We'll look at what the
6 overlap was between the two of them, but I
7 suppose, to some extent, the question is whether
8 you think that the working group would still be
9 sort of in process so there wouldn't be that
10 much to discuss in the plenary at that point in
11 time.

12 MR. HALPERT: Yes.

13 MS. PERLMUTTER: All right. Well,
14 let's take a vote essentially. For those in the
15 room or those who are online and would like to
16 weigh in, the proposal would be to have the
17 working group meet the afternoon of the 30th
18 after our round table ends -- and we'll figure
19 out the exact timing, but like mid-afternoon --
20 and then not to have the plenary meet in July
21 and have the next meeting of the plenary be
22 September 10th, both in terms of convenience and

1 also because we don't want to have people come
2 for a whole meeting of a couple of hours if it's
3 going to be as short as this and it's
4 essentially just saying here's where the working
5 group is but we don't have more to report yet.
6 Maybe September would be a more productive time
7 for that. I think Matt was first, and then Jim.

8 MR. SCHRUERS: So as Jim helpfully
9 pointed out, I crashed this morning's working
10 group meeting -- and nobody objected --

11 MR. HALPERT: Which we appreciated.

12 MR. SCHRUERS: -- well, thank you -- but
13 that was somewhat out of form, and I guess the
14 point to that is, is that to the extent that
15 we're going to de-emphasize what the plenary is
16 doing, then I think we need to space out the
17 number of plenary meetings. You know, for folks
18 who really aren't there either need to be
19 permitted to sort of participate transparently
20 in the working group or not do that. Because
21 the alternative is just sort of less
22 transparency in the process, and I --

1 MR. HALPERT: Yeah. There's no
2 question about that.

3 MS. PERLMUTTER: Anyone is permitted to
4 participate in the working group. It's not like
5 a closed group. So that's not a problem.

6 And I guess the only question is, at
7 that stage, will the working group still be in
8 sort of an interim phase where there isn't
9 really anything to report, in which case we
10 could have them report on September 10th?

11 MR. HALPERT: And there also could be
12 reporting through an email that goes out to
13 anybody who's interested or even through a push
14 notice from the PTO, and the working group could
15 meet twice in July in order to make progress
16 before August vacation. So there are a variety
17 of different ways to do this. I think whatever
18 promotes transparency is positive.

19 The only question is just a resource
20 and time question. If some of the people here
21 in this large meeting would not be going out to
22 Berkeley anyway, should they all get on a plane

1 in order to be part of a larger presentation
2 that really duplicates what the working group
3 has been doing?

4 MS. PERLMUTTER: And we could certainly
5 see whether there might be some, as I think Jim
6 was suggesting, some sort of short interim
7 report of what the working group was doing
8 preparatory to the September plenary session. I
9 think that might work. I don't know. Matt,
10 does that sound like a reasonable alternative?

11 Once again, it's just sort of saying it
12 sounds like there's a fair amount of work to be
13 done to get to the point where there's a useful
14 report that is worth all the time of gathering
15 it.

16 MR. SCHRUERS: I agree entirely with
17 that point, that indeed there might be -- the
18 next plenary would basically just be awaiting a
19 work product that may not be ready for prime
20 time yet and then would convene with really
21 nothing to discuss. If that's the case, then,
22 yeah, it doesn't make any sense to have it. I

1 think there's consensus on that. But to the
2 extent that activity would be going on in the
3 working group, then we just need to ensure that
4 folks, whether it's me or others, can sort of
5 engage in that.

6 MS. PERLMUTTER: So we will stress
7 again, anyone is welcome to join the working
8 group, and we will make sure that there is
9 appropriate reporting of any progress, even
10 before the September 10th plenary session.

11 All right. Thank you very much. Go
12 ahead, Sandra.

13 MS. AISTARS: I was just going to
14 volunteer, to the extent that it's helpful, in
15 terms of keeping up to speed on the working
16 group's progress, I'm happy to post any of our
17 notes or any documents that we circulate on the
18 Copyright Alliance blog or on our website
19 someplace, or even establish a little place to
20 collect that information, if the rest of the
21 working group doesn't mind going to the
22 Copyright Alliance site to find it there.

1 MS. PERLMUTTER: And one thing we can
2 do is sort of task the working group with
3 figuring out what's the best and most
4 appropriate way to give some sort of interim
5 updates on their work until there's a full
6 report at the plenary meeting.

7 MS. AISTARS: I just mean so the
8 general public can see it if they want.

9 MS. PERLMUTTER: When I say "the
10 plenary," I mean the public because that's
11 what's open to everyone. Absolutely. Thank
12 you.

13 All right. It sounds like we have a
14 working plan. That's great. We really
15 appreciate it. We're just checking right now to
16 see if the tentative dates where we've reserved
17 time slots and places are available so we can
18 just tell you what the thinking is in terms of
19 scheduling aims. Again, not that things can't
20 be adjusted a bit, but, again, within the
21 parameters of space and other commitments.

22 I'll go out on a limb and say that on

1 my calendar we have Tuesday, October 21st -- no,
2 sorry, Wednesday, October 22nd for the next
3 plenary after September 10th.

4 MR. VERDI: Is that East Coast or West
5 Coast?

6 MS. PERLMUTTER: West Coast. Silicon
7 Valley, Wednesday, October 22nd was tentatively
8 calendared.

9 MS. AISTARS: What date?

10 MS. PERLMUTTER: October 22nd.

11 MR. HALPERT: And which one is going to
12 be in the Valley and which one is going to be --

13 MS. PERLMUTTER: Silicon Valley,
14 October 22nd. Sept 10th will be here. And then
15 by July, we can tell you. I think we have dates
16 also reserved for November and December.

17 MS. AISTARS: Shira, I'm running a
18 conference from the 22nd through the 24th that
19 will take a lot of at least --

20 MS. PERLMUTTER: Well, we'll go back to
21 the drawing board. I mean, we're also working
22 within the constraints of WIPO meetings and

1 other things happening at the PTO, but we'll
2 figure out what we can do.

3 Okay. So tentatively that's scheduled.

4 It may be a problem and we might need to change
5 it, but right now we've got that time reserved.

6 And then we'll see what the other options are
7 around that time so we can discuss it by the
8 next meeting.

9 I would really like to thank everyone
10 for coming. I'm sorry it was a relatively short
11 meeting, but since most of you were also here
12 for the working group meeting, that was well
13 worthwhile. And we, again, very, very much
14 appreciate all the time and effort and thinking
15 everyone is putting into this and think it's
16 going to lead to some improvements. So thank
17 you very much, and have a good rest of the day.

18 (2:17 p.m.)

19

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