



Intellectual Property Rights and Copyright Piracy

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1. Testimony of John G. Malcolm Deputy Assistant Attorney General for the Criminal Division United States Department of Justice before the House Committee on the Judiciary, Subcommittee on Courts, the Internet, and Intellectual Property Thursday, March 13, 2003

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Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify before you today. This is an extremely important topic, and I commend you, Mr. Chairman, for holding this hearing. This hearing and the others recently held by the Subcommittee are providing the American public with an important look at the growing threat of intellectual property (IP) crime, which chiefly includes copyright piracy, trademark counterfeiting, and theft of trade secrets. Today I am pleased to offer the views of the Department of Justice on the links among organized crime, terrorism and intellectual property piracy.

The Department of Justice's Anti-Piracy Program

The enforcement of this nation's criminal laws protecting intellectual property is a priority at the Department of Justice. Since the beginning of his tenure, Attorney General Ashcroft has worked diligently to ensure that the prosecutorial resources needed to address intellectual property crime are in place. Shortly after becoming the Attorney General, he used additional resources provided by Congress to establish or expand Computer Hacking and Intellectual Property (or CHIP) Units in ten U.S. Attorney's Offices across the nation. These specialized units consist of dedicated federal prosecutors whose primary focus is on prosecuting high tech crimes, including IP crimes. Subsequently, the Attorney General established three additional CHIP units, and used additional funding to bolster the cyber and IP prosecutive resources in a number of other jurisdictions. The CHIP units ensure that the Department of Justice has a ready supply of prosecutors to pursue IP cases. The expertise of the various CHIP Units helps the Justice Department to keep pace with the changing face of high-tech crime. Rapid advances in technology bring new challenges to the investigators and prosecutors who handle these cases, and the establishment of these specialized units ensures that the individuals who misuse technology to further their criminal activity will not find a safe haven in the United States.

The CHIP Units complement the already existing network of Computer and Telecommunications Coordinators (CTCs) that serve in every United States Attorney's Office. The CTCs regularly receive specialized training in the investigation and prosecution of high-tech crimes, including intellectual property crimes. Many of the 94 U.S. Attorneys Offices have two or more CTCs to help meet the growing demand for trained high-tech prosecutors.

Working hand-in-glove with the CHIP Units and the CTC network is the Criminal Divisions Computer Crime and Intellectual Property Section, also known as CCIPS, which I supervise. Created as a Unit in 1991 by then-Assistant Attorney General Robert Mueller and elevated to a Section in the Criminal Division in 1996, CCIPS is a highly specialized team of over thirty-five lawyers who focus exclusively on computer and intellectual property crime. CCIPS attorneys prosecute cybercrime and intellectual property cases; advise and train local, state, and federal prosecutors and investigators in network attacks, computer search and seizure, and IP law; coordinate international enforcement and outreach efforts to combat intellectual property and computer crime worldwide; and comment upon and propose legislation. For example, CCIPS attorneys worked with Congress, including Members of this Committee, in 1997 to improve IP enforcement through the legislative amendments made by the "No Electronic Theft" (NET) Act. Those amendments extended federal criminal copyright law to unlawful large-scale reproduction and distribution of copyrighted works even when the thieves do not make a profit. In 1999, CCIPS prosecutors obtained the first convictions after trial under the Economic Espionage Act of 1996, a criminal statute that protects trade secrets. CCIPS also worked with the U.S. Sentencing Commission in 2001 to amend the sentencing guidelines to provide substantial sentences for copyright infringement.

With the deeply appreciated support of Congress, we have significantly increased the size of the Computer Crime and Intellectual Property Section in the past eighteen months, which is allowing us to devote additional resources to address piracy both here and abroad. Intellectual property protection is an important part of my portfolio, and a core responsibility of CCIPS. Moreover, for the first time, CCIPS has a Deputy Chief whose sole responsibility is to oversee and manage the attorneys in the Section dedicated to IP enforcement. At present, there are ten CCIPS attorneys working full-time on the IP program. The attorneys of CCIPS are developing a focused and aggressive long-term plan to combat the growing threat of piracy. They are developing and implementing the Departments overall anti-piracy strategy, assisting AUSAs in the prosecution of intellectual property crimes, and reaching out to international counterparts to ensure a more effective world-wide response to intellectual property theft. Working in concert, CCIPS, the CTC Network, and the CHIP Units create a formidable, multi-pronged approach to prosecuting intellectual property crimes. We are already beginning to see the positive results of their efforts.

Significant Prosecutorial Accomplishments:

In the past few years we have achieved many significant prosecutorial victories against IP pirates. I would like to take just a few minutes to highlight some of our most recent accomplishments.

Operation Buccaneer:

The Computer Crime and Intellectual Property Section, working with the CHIP Unit for the Eastern District of Virginia and the United States Customs Service, continues to investigate and prosecute a massive international copyright piracy conspiracy code-named "Operation Buccaneer." This undercover investigation culminated in the simultaneous execution of more than 70 searches worldwide in December 2001, including searches in Australia, Finland, Sweden, Norway, and the United Kingdom. It was the largest Internet software piracy investigation and prosecution ever undertaken, and the first to reach across international borders to achieve coordinated enforcement action against domestic and foreign targets. The investigation targeted multiple top-tier, highly organized and sophisticated international piracy or "warez" groups that specialized in "cracking" the copyright protection on software, movie, game and music titles and distributing tens of thousands of those titles over the Internet. I will discuss their organized criminal operations in more detail shortly.

As a result of Operation Buccaneer, as of today, twenty U.S. defendants have been convicted of felony copyright offenses, sixteen of those in the Eastern District of Virginia. Nine defendants have received prison sentences of between 33 to 46 months, the longest sentences ever imposed for Internet copyright piracy. Six defendants are awaiting trial in the United Kingdom, and I can assure you with virtual certainty that more prosecutions will be brought in the U.S. as this investigation progresses. In both its scope and outcome, Operation Buccaneer is the most significant Internet piracy case ever brought, and it has sent a strong deterrent message which continues to resonate throughout the copyright piracy community.

United States v. Mynaf:

On February 13, 2003, a California man, Mohsin Mynaf was sentenced in the Eastern District of California to 24 months in federal prison for multiple violations relating to copyright, including Digital Millennium Copyright Act violations, criminal copyright infringement, and trafficking in counterfeit labels. Mynaf operated a videocassette reproduction center which produced counterfeit movie videocassettes, which he would then sell at various locations throughout California. In addition to 24 months in federal prison, Mynaf must also pay in excess of \$200,000 in restitution. Three other individuals have also been convicted of aiding and abetting Mynaf in his illegal activity and are awaiting sentencing. This case was successfully prosecuted by a CTC in the U.S. Attorneys Office in Sacramento, California.

Operation Decrypt:

On February 11, 2003, in the Central District of California, as part of a year-long investigation known as Operation Decrypt, 17 individuals were indicted for their roles in developing sophisticated software and hardware used to steal satellite television signals. One of the individuals has already pled guilty and admitted to being responsible for nearly \$15 million in losses to the victim companies. An additional nine defendants have also agreed to plead guilty to

various crimes as a result of their involvement. The defendants in these cases used online chat rooms to exchange information and techniques on how to defeat the sophisticated security protections utilized by satellite entertainment companies. In October of 2002, search warrants were executed in seven states as part of this operation. Operation Decrypt is being prosecuted by an attorney with the CHIP Unit for the Central District of California, located in Los Angeles.

United States v. Ke Pei Ma, et. al:

On February 26, 2003, in a joint operation between federal and local law enforcement in New York City, four arrests were made and six people were charged (two remain fugitives) in conjunction with an investigation of the illegal distribution of Symantec and Microsoft software. At the time of the arrests, over \$9 million worth of counterfeit software was seized from distribution centers in the New York area. The defendants are believed to have distributed thousands of copies of counterfeit software and received an estimated \$15 million over two years in return for the pirated products. In a single two-month period, the defendants received nearly \$2 million dollars as a result of their illegal activity. This case was prosecuted by attorneys in the CHIP Unit in the Eastern District of New York.

United States v. Rocci:

Beginning on February 25, 2003, the Computer Crime and Intellectual Property Section, working with the CHIP Unit for the Eastern District of Virginia, engaged in a ground-breaking and highly-successful public education effort as part of a conviction originally obtained in December of 2002. In December, David Rocci of Virginia, pled guilty to conspiring with others to traffic in illegal circumvention devices in violation of the Digital Millennium Copyright Act. Rocci was the owner and operator of the most prominent publicly-accessible web site on the Internet dedicated to providing information about the "warez" scene and copyright infringement, www.iSONEWS.com. Rocci used his web site as the exclusive medium to conduct the illegal sale of circumvention devices known as "mod chips," which defeat security protections in the Microsoft Xbox and allow unlimited play of pirated games on the gaming console. As a condition of his guilty plea, Rocci transferred his domain name and website to the United States. Upon taking control of the domain name late last month, the United States replaced iSONEWS.com with a new web page providing information about U.S. v. Rocci, as well as a general anti-piracy message outlining the potential criminal consequences for engaging in illegal piracy. (A copy of the website is attached to this testimony.) This case marks the first time that the United States has assumed control of an active domain name in an intellectual property case. In the first three days, the new law enforcement site received over 238,000 hits from Internet users worldwide. As of March 11, the two week mark, the site received over 550,000 hits. The Department feels a strong sense of responsibility to educate the public about the need to respect intellectual

property rights and will look for additional opportunities like this to build upon successful prosecutions of those who willfully violate those rights.

Mr. Chairman, as you can see, the Department of Justice is actively pursuing intellectual property criminals engaged in a wide array of illegal activity, and we are doing so using all of the various statutes at our disposal. Our efforts are beginning to pay off, and we are having success in our battle with global piracy. But we are not resting on our laurels and are aware that there is much work to be done. We remain committed to this effort and will build on our success by continuing to prosecute piracy aggressively.

Organized Criminal Activity and Piracy:

As a result of cases such as those I have just mentioned, law enforcement today has a deeper and more sophisticated understanding of piracy than it has ever had before. Piracy is a continually evolving crime. Traditionally, piracy operations were small, often run by individuals or a loose collection of people trying to make a quick buck in what has been perceived to be a fairly "risk-free" criminal enterprise. However, in recent years, that has changed. Piracy is now big business: a world-wide, multi-billion dollar illicit economy which robs legitimate industries and creators of income, while driving up costs for consumers.

It is against this backdrop that criminal organizations are playing a more prominent - and dangerous - role in piracy around the globe. Organized criminal activity, in many forms, is clearly a factor in global piracy today. Today, I will talk about two different, yet equally troubling, types of organized criminal activity that are emerging globally: organized on-line piracy groups and traditional organized crime syndicates operating from Asia or Eastern Europe.

Organized On-line Piracy Groups:

One aspect of piracy - practically non-existent as recently as twenty years ago - is online or Internet piracy. The Internet has changed the landscape of intellectual property crimes in many ways. Piracy over the Internet poses significant challenges for law enforcement. It is harder to detect than traditional means of piracy, and it costs the pirates virtually nothing to operate, while generating countless perfect digital copies of music, movies, software and games in just a fraction of the time it would take to generate the copies manually. Even when we successfully remove the source of digital piracy, any copies previously distributed remain on the Internet and can spawn a whole new generation of pirated products with little more than a few strokes on a keyboard.

As mentioned, until recently, on-line piracy was believed to be high-return, low-risk endeavor by many in the piracy community. Now, however, through a number of high-profile enforcement actions, the Department is making it clear to members of the online piracy community that their activities may have

dire consequences for them. In addition to Operation Buccaneer, attorneys from the Department, along with the Federal Bureau of Investigation, have effectively prosecuted online pirates in other cases, such as the "Pirates with Attitude" and "Fastlane" prosecutions in Illinois, and two ongoing prosecutions, "Operation Bandwidth" in Nevada and "Operation Digital Piratez" in New Hampshire. We are committed to continuing to disrupt the online piracy community. The word is out: the Department of Justice will pursue online pirates and will put them in jail.

The Department has learned a great deal about the online piracy community. First and foremost, it is dominated by a handful of highly structured, security conscious groups which exist solely to engage in piracy online. These organized criminal groups are frequently referred to as "warez" groups. While warez groups are a relatively new phenomenon, they are responsible for placing a massive number of pirated movies, music, games and software into circulation each year, and represent a significant and growing threat to intellectual property rights around the globe.

The leading international warez groups compete against each other to attain a reputation as the fastest, highest quality, free providers of pirated computer software, including utility and application software, PC and console games, and movies. These groups specialize in being the first to release new pirated software to the warez community for unauthorized reproduction and distribution. The groups prosecuted as part of Operation Buccaneer were among the most notorious organized online piracy groups in the warez scene.

These criminal organizations are extremely security conscious, utilizing state-of-the-art technology to attempt to shield their illegal activity from victim companies and from law enforcement. They are also highly organized, structured to maximize their manpower and technological know-how to fully and efficiently support their illegal activity.

Like legitimate companies, "top-tier" warez groups have clear hierarchies and divisions of labor. Rank and position within warez groups are based on a variety of factors, including special skills, length and quality of service to the group, and reputation within the warez scene. A typical group - which can consist of people all over the world who may know each other only through their screen names - will consist of one or possibly two leaders, two or three high level individuals known as "Council," twelve to fifteen Staff members, and a general Membership comprising anywhere from twenty to eighty individuals. The Leader has ultimate authority over all aspects of the group and its activities. Council members are primarily responsible for the group's day-to-day operations, including preparation of new releases, recruitment, and security issues. Staff members are typically the most active individuals in preparing a group's new releases for distribution, or in maintaining the group's "File Transfer Protocol" (FTP) sites from which the pirated software is distributed. Finally, the general Members contribute to the group in a variety of ways, including acting as occasional suppliers of new software, hosting the groups FTP servers, or providing hardware (e.g., laptops, hard drives, routers,

other computer equipment) to other group members for use in their warez activities. The more work someone does for the group, the higher up the organization that person will move, and the greater the access that person will have to pirated products.

While there are countless similarities, two factors distinguish warez groups from traditional organized crime syndicates. First, warez groups conduct their illegal operations in the cyber world as opposed to the physical world. Second, and perhaps most startling, warez groups typically do not engage in piracy for monetary gain. In fact, in some quarters of the warez scene, pirates who engage in "for profit" operations are held in contempt and criticized.

Despite the fact that warez groups typically do not profit directly, it would be a grave mistake to dismiss their conduct as harmless or unimportant. On the contrary, warez groups pose a growing and significant threat to intellectual property rights holders around the world. It is generally agreed that most of the pirated movies, music, games and software available on the Internet come from these high-level warez groups. Further, they are the source for much of the pirated products which filter their way down to less sophisticated, but more widely used, distribution mechanisms such as peer-to-peer networks. For example, a warez group dedicated to music piracy will obtain unauthorized advance copies of songs and albums and distribute those advance copies to the warez scene. Within days, or frequently within just a few hours, the warez music release filters down to public "Internet Relay Chat" (IRC) channels and peer-to-peer networks - often weeks before its commercial release date. The availability of MP3 files on the Internet in advance of legitimate CDs being made publicly available results in a direct injury to the artists and to the recording industry.

While the pirates who steal and distribute copyrighted works do not profit monetarily, the consequences to the victim company are just as dire as if they did. For many victim companies, particularly smaller companies whose livelihood depends upon the success of only one or two products, irreversible damage occurs the moment the pirated digital copy hits the Internet.

Any consideration of organized crime and IP must include top-level warez release groups. While we recognize that our efforts must address all aspects of online and hard-goods piracy, including the pursuit of those involved in the lower tiers of the Internet distribution chain, the Department will continue to devote significant resources to pursuing warez groups.

Traditional Organized Crime and Intellectual Property

Another emerging concern is the fact that traditional organized crime syndicates appear to be playing a dominant role in the production and distribution of certain types of hard goods piracy, such as optical disks. This problem seems particularly prevalent in Asia and parts of the former Soviet Union. Unlike warez groups, the goal of these organized crime groups is to make as much money as they can.

The continued emergence of organized crime poses substantial challenges for law enforcement. Highly organized criminal syndicates frequently have significant resources to devote to their illegal operations, thus increasing the scope and sophistication of their criminal activity. Further, by nature, these syndicates control international distribution channels which allow them to move massive quantities of pirated goods, as well as other illicit goods, throughout the world.

As one might expect, these groups do not hesitate to threaten or injure those who attempt to interfere with their illegal operations. Industry representatives in Asia report that they have been threatened and their property has been vandalized by members of these syndicates when their anti-piracy efforts strike too near the illegal operation. Government officials have also been threatened. These criminal syndicates are a formidable foe, but one that must be dealt with to truly attack the problem of intellectual property theft.

Throughout Asia, organized crime groups operate assembly lines and factories that generate literally millions of pirated optical discs. These groups pirate a full range of products ranging from music to software to movies to video games. Anything that can be reproduced onto an optical disk and sold around the globe is available. There is also anecdotal evidence that syndicates are moving their production operations onto boats sitting in international waters to avoid law enforcement.

Recently, an attorney from the Computer Crime and Intellectual Property Section visited Kuala Lumpur, Malaysia to conduct law enforcement training for Malaysian prosecutors and agents. According to Malaysian officials with whom he spoke, many, if not most, of the optical disk production facilities in Malaysia are owned and operated by organized crime syndicates, specifically very wealthy and powerful criminal gangs or "triads" from Taiwan which control a significant number of facilities not just in Malaysia but across Asia generally.

The reach of organized crime appears to extend beyond the production of optical disks into the distribution chain. While in Malaysia, that same CCIPS attorney visited an open air market, similar to ones found in large cities around the world, which offered a myriad of pirated products. While touring the market, our attorney learned that many vendors offer their goods on tables covered in brightly colored cloths which indicate that vendors affiliation with a specific criminal syndicate. One vendor may use a red cloth to show his affiliation with one criminal gang, while his neighbor offers his wares on a blue cloth signifying his affiliation with another criminal gang.

Of course, this problem is not limited to Malaysia, but occurs in other parts of the world such as in parts of the former Soviet Union. Additionally, many organized piracy groups from Asia use South America, most notably Paraguay, as a transshipment point for pirated products. Industry groups have reported that organized crime from Taiwan and other parts of the world control much of the distribution of optical disks into Latin America through

Ciudad del Este. It is also true that the pirated goods produced by organized crime syndicates enter into and are distributed throughout the United States. There is ample evidence, for example, that Taiwanese triad members import into the United States massive amounts of counterfeit software and other counterfeit products, such as "remarked" computer chips. The reach of these organized crime operations is undeniably global in scope.

Of course, developing more and better intelligence about these organized crime groups and their operations is just the first step in what will be a long and potentially difficult process of targeting this type of activity. Because most of these syndicates operate outside the United States, we must rely on foreign governments for much of the enforcement efforts in this area. The importance of international cooperation cannot be overstated. If a government lacks the will or the expertise to enforce IP laws, organized crime will continue to proliferate with impunity. Even in countries that have the will and expertise to fight back, a lack of investigative resources, inadequate laws, a judicial system that will not impose serious sentences, or corruption can grind IP enforcement to a halt.

The Department of Justice is committed to being a constructive part of the United States government's international IP outreach efforts. In particular, we are focusing our resources on those foreign nations which face surmountable difficulties in the investigation and prosecution of IP crimes. We are pleased to be working with other United States agencies, such as the Patent and Trademark Office, the State Department and the U.S. Trade Representative, to ensure that foreign nations are committed to building sound and lasting IP enforcement regimes.

The Justice Department will continue to work closely with investigative agencies, especially the Federal Bureau of Investigations and the United States Customs Service, to develop additional intelligence sources and information in order to enhance our ability to respond to the growing threat of organized crime from Asia and other parts of the world. This is a serious and emerging threat that victimizes American rights holders, costs companies hundreds of millions of dollars, and damages our nation's economy. There is no easy solution. The task at hand requires a concerted effort on the part of industry, government and law enforcement. The Department stands ready to do its part.

Terrorism and Piracy

Finally, Mr. Chairman, I want to close by briefly discussing terrorism. Earlier I noted that organized crime syndicates are frequently engaged in many types of illicit enterprises, including supporting terrorist activities. On this point, I want to be crystal clear. Stopping terrorism is the single highest priority of the Department of Justice. We are constantly examining possible links between traditional crimes and terrorism, and we will continue to do so. All components of the Justice Department, including CCIPS, the Counterterrorism Section, and the Organized Crime and Racketeering Section, will do

everything within their power to make sure that intellectual property piracy does not become a vehicle for financing or supporting acts of terror.

Conclusion

On behalf of the Department of Justice, I want to thank you again for inviting me to testify today. We thank you for your support over the years and reaffirm our commitment to continuing to work with Congress to address the significant problem of piracy. I will be happy to answer any questions that you might have.

2. Statement of Marybeth Peters, Register of Copyrights before the Subcommittee on Courts, the Internet, and Intellectual Property Committee on the Judiciary, United States House of Representatives 108th Congress, 1st Session, March 6, 2003

Source: Copyright Office
<http://www.copyright.gov>

Statement of Marybeth Peters, Register of Copyrights before the Subcommittee on Courts, the Internet, and Intellectual Property Committee on the Judiciary, United States House of Representatives 108th Congress, 1st Session
March 6, 2003

Piracy Prevention and the Broadcast Flag

Mr. Chairman, Congressman Berman, Members of the Subcommittee, thank you for inviting me to appear before the Subcommittee today to discuss the copyright issues raised by measures for the protection of digital broadcast television signals, commonly referred to as the “broadcast flag” proposal. Let me offer my congratulations to you, Mr. Chairman. I look forward to working with you on this and many other copyright-related issues. You are off to a strong start and it is very encouraging to those of us in the copyright field.

As you know, in August 2002 the Federal Communications Commission issued a Notice of Proposed Rulemaking soliciting comments from interested parties on whether it was desirable to adopt a regulatory protection regime as part of the transition to digital broadcast television, and if so, how such a regime should be put into place. (1) While the subject matter of the broadcast flag proposal is technological, many of the comments submitted to the FCC arguing both for and against its adoption are rooted in copyright law. (2) As Congress has recognized, the Copyright Office has a long history of providing expert advice and assistance on these types of issues.(3)

The purpose of my testimony is twofold. First, I want to explain the relationship between the broadcast flag proposal and important principles of copyright law, such as the reproduction right, the distribution right and the doctrines of “fair use” and “first sale.” I believe that as consideration of the broadcast flag proposal moves forward, a clear understanding of copyright law is necessary so that important copyright principles and policy are not undermined by the establishment of any regulatory scheme. Second, to this end, I hope to provide some clarity on the “fair use” and “first sale” doctrines and their role in the broadcast flag discussions.

While I have no position on the broadcast flag proposal at this time, I believe that producers of television programming have ample ground to fear that in the transition to digital broadcasting and with the advent of new consumer electronic devices that permit recipients of broadcasts to reproduce television programs and retransmit them on the Internet, they may encounter massive piracy in much the same way that record companies, recording artists, composers and musicians have suffered from

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phenomena such as Napster and its progeny. They have good reason to insist that something must be done to prevent such infringement. It may well be that the broadcast flag proposal is the best available solution. I do not have sufficient mastery of the technical details to venture an opinion at this time.

I also do not take a position with regard to what uses ought to be allowed by a broadcast flag, should that proposal be adopted. It is my understanding that many of the commenters in the FCC proceeding have insisted that implementation of the broadcast flag be done in a way that permits consumers to engage in acts of fair use. It is also my understanding that some proponents of the broadcast flag have taken the position that any technological measures that are adopted as part of the broadcast flag proposal should or at least could permit a number of practices that consumers desire to engage in even though they are beyond the scope of fair use. Copyright owners of broadcast programming may simply be willing to forego having technological measures prohibit those uses, while retaining their right to assert that some or all of those uses are infringing.

If there is consensus among copyright owners of broadcast programming that implementation of the broadcast flag should permit conduct by consumers that goes beyond fair use, I see no reason why such conduct should not be permitted. In other words, the conduct permitted by the broadcast flag need not necessarily be coextensive with fair use. If, on the other hand, the ultimate determination is to permit acts beyond those permitted by fair use and beyond those for which there is a consensus among the pertinent copyright owners, then there will be serious copyright implications which this Subcommittee will want to examine.

In any event, the fact remains that the FCC has been presented with a number of arguments asserting that the broadcast flag proposal must accommodate fair use and the first sale doctrine, and that the people making those arguments have asserted that certain kinds of conduct must be accommodated because it falls within those doctrines. If these arguments are to be made and considered, it is important that they be done so with an accurate understanding of the fair use and first sale doctrines.

The Broadcast Flag Debate Raises Important Issues Related to Copyright

As the first paragraph of the FCC's notice indicates, digital broadcast copy protection has been offered as a way to address the concern that “[i]n the absence of a copy protection scheme for digital broadcast television, content providers have asserted that they will not permit high quality programming to be broadcast digitally.” (4) The reason for this reticence is concern about infringing downstream uses of digital broadcasts. This Subcommittee has become quite familiar with the characteristics of digital technology and the Internet. While those technologies provide enhanced quality of content and expanded opportunities for marketing, they also dramatically increase the ease and reach of copyright piracy.(5)

As we understand it, the "broadcast flag" is one solution for placing certain limits on how digital broadcasts can be redistributed after receipt by a consumer, so as to prevent harm to the economic value of that programming. In many ways, this dilemma is simply a specific example of the problem addressed by copyright law generally—how much protection is necessary to provide an incentive for authors to

create and disseminate works to public for their use and enjoyment. Not surprisingly, therefore, many of the comments submitted to the FCC focus on questions of copyright law, such as to what extent personal copying and distribution of broadcast programming are governed by the fair use or first sale doctrines in copyright law, and how the Supreme Court's 1984 decision in *Sony Corp. v. Universal City Studios, Inc.* should be applied in creating a regulatory regime like the broadcast flag.

In addition, implementation of the broadcast flag may provide some precedent for how other activity involving digital technology and copyrighted works will be addressed under fair use and other provisions of the Copyright Act. As a result, the broadcast flag proposal cannot be considered in a vacuum, without regard to important aspects of copyright law and the use of copyrighted works. Moreover, the issues involved in the broadcast flag debate may have ramifications in the international copyright system.

Fair Use and the Sony Betamax Decision

In the next part of my testimony I hope to provide background on the fair use doctrine, the Sony decision and the first sale doctrine, and how they might relate to the broadcast flag. As I noted, many of the comments submitted on the broadcast flag proposal raised important questions of copyright law, such as the doctrine of “fair use.” (6) A correct and complete understanding of fair use will assist in an evaluation of those comments . My testimony today is intended in part to provide a concise explanation of the fair use doctrine, and its application by the Supreme Court in the Sony case (often referred to as the Betamax decision) (7) the central case around which much of this debate revolves.

Fair use is often described as an “equitable rule of reason,” for which “no generally applicable definition is possible, and each case raising the question must be decided on its own facts.” (8) It was a common law doctrine until 1976, when Congress first codified it in Section 107 of the Copyright Act as part of the general revision to copyright law it enacted that year. (9) The statutory text does not define fair use—rather, it provides guidelines for such a determination in the form of a list of four nonexclusive factors that must be applied to the entire circumstances of a particular case. In addition, the preamble to the section sets forth examples of uses that traditionally have been found to be fair uses, such as criticism, comment, news reporting and teaching. While this list is not determinative of the fair use issue, it was intended to provide additional guidance to courts as to the types of uses that had been ruled fair prior to the 1976 Act. (10)

There is no question that fair use is a fundamental component of U.S. copyright law, as it provides an essential safeguard to ensure that copyright does not stifle uses of works that enrich the public, such as “criticism, comment, news reporting, teaching ..., scholarship, or research.” (11) Along with other doctrines like the first sale doctrine (which I discuss below) and the idea/expression dichotomy, fair use provides necessary “breathing room” in copyright and helps achieve the proper balance between protection of copyrighted works and their use and enjoyment. As the Supreme Court recently explained in the *Eldred* case, fair use is also one of copyright law's important First Amendment accommodations. (12)

Many of the comments in the FCC proceeding, however, misstate the nature of fair use and its role in our copyright system. Much of this confusion stems from a misreading of the Supreme Court's opinion in *Sony Corp. v. Universal City Studios*,⁽¹³⁾ the first opinion in which the Supreme Court addressed fair use. ⁽¹⁴⁾

In *Sony*, motion picture copyright owners brought a copyright infringement action against the manufacturer of the Betamax VCR. The claim was asserted under a theory of secondary liability, based on the consumers' use of the VCR to record television programs broadcast free over the air. The Court's 5-4 opinion addressed two issues: first, borrowing from the “staple article of commerce” doctrine in patent law, it ruled that secondary copyright liability could not be imposed based solely on the manufacture of copying equipment like the VCR where the device at issue “is capable of substantial noninfringing uses.” ⁽¹⁵⁾ Second, it found that the VCR had “substantial non-infringing uses,” including making reproductions of broadcast television programs for purposes of “time-shifting,” that is, watching a show at a time later than when it is broadcast. ⁽¹⁶⁾

The Court's finding that “time-shifting” of broadcast television programs was fair use was based predominantly on its analysis of the first and fourth factors in Section 107—namely, whether time-shifting adversely affects the market for or value of the copyrighted works at issue. The court concluded that “time-shifting merely enables a viewer to see such a work which he had been invited to see free of charge” and that therefore it was a “non-commercial” use. ⁽¹⁷⁾ It also found that the copyright owners had not provided sufficient evidence “that time-shifting would cause any likelihood of nonminimal harm to the potential market for, or the value of, their copyrighted works.” ⁽¹⁸⁾

Having found that “time-shifting” was a “substantial non-infringing use” of the VCR, the Court did not consider whether other activity related to home taping of broadcasts—such as creating a library of recorded shows, making further copies from the initial recording or distributing recorded shows to friends or others—would qualify as fair use. Nor did the Court rule, as one commenter suggests, that recognizing “time-shifting” as fair use was based on First Amendment concerns. ⁽¹⁹⁾ Thus, the suggestion that the *Sony* decision established a fair use “right” for individuals to engage in a wide variety of reproduction and distribution activities is simply incorrect.⁽²⁰⁾

Moreover, because fair use is a case-by-case, fact-specific determination, one must consider the circumstances of the *Sony* case when attempting to apply it to today's environment. In the early 1980s, there was very little the typical consumer could do with the analog tape recording of a television show made with a VCR—further reproduction and distribution were subject to substantial physical constraints. The 1980s consumer did not have access to personal computers with hard drives, recordable DVD players, wireless home networks, websites, peer-to-peer software applications and high-speed Internet connections, all of which make acquisition, reproduction and distribution of recorded broadcasts (in high-quality digital form) easy and inexpensive.

In today's digital world, the “private” and “non-commercial” use of works can quickly and easily become public distribution of copies that has a substantial harmful effect on the commercial value of copyrighted works. As my predecessor as Register of Copyrights observed nearly 40 years ago, “a particular use which may seem to have little or no economic impact on the author's rights today can assume tremendous importance in times to come.” (21) We have all watched over the past few years as Napster and other peer-to-peer software applications transformed private hard drives and individual, person-to-person exchanges of digital files into a major distribution network of unauthorized copies of works. Indeed, this Subcommittee held a hearing on precisely that topic last week. That activity has undercut the ability of legitimate, revenue-generating distribution services on the Internet to develop and flourish. Indeed, the Ninth Circuit Court of Appeals recognized this situation in the Napster case when it distinguished Sony in analyzing the potential market harm caused by individuals' distribution of copyrighted music files over the Napster service. (22)

Other commenters suggest that the Sony decision requires that fair use must vindicate “consumer expectations” as to the functionality of their home electronics devices. This claim, too, misstates the nature of fair use. Consumer expectations are typically asserted and vindicated in the marketplace, not through fair use. Recent history shows that to the extent copyright owners offer a product in a format that consumers find unattractive and limiting, it will be rejected. (23) The Sony decision is not based on whether time-shifting met “consumer expectations” about what they could do with their VCRs, but rather whether it met the criteria for fair use in Section 107, including principally whether the activity harmed the market for copyrighted works. (24)

The proper fair use inquiry would include an assessment of whether the consumer's activity, if permitted on a widespread basis, will provide benefits to the public without undermining the incentive for the creation and distribution of works—that is, the ability of authors to receive compensation for the dissemination of their works. Consumer expectations in and of themselves are not particularly relevant to this question. Indeed, users of peer-to-peer services like Napster are becoming accustomed to the notion that creative works should be provided free without any restrictions on further copying and distribution. Such “consumer expectations” are not only inconsistent with traditional fair use jurisprudence, they are destructive to copyright's principles and purpose.

To be clear, we do not disagree that legitimate consumer expectations should play an important role in consideration of the broadcast flag proposal. It appears that consumer expectations have been a driving force behind the proposal, as the proposed regime would permit unlimited copies for personal use, largely unrestricted use in the home network environment, and the potential for use outside a home network environment. Many broadcasters and copyright owners apparently recognize that even a mandated solution like the broadcast flag must meet the needs and desires of consumers or they will not embrace digital television. (25) Our concern is that the important policy goals of copyright should not be undermined in the course of adopting any regulatory framework that purports to be protecting fair use, when in reality it permits far more than fair use.

The First Sale Doctrine and Digital Content

Some have also suggested that the “first sale” doctrine of copyright law requires that the broadcast flag proposal permit certain activity with respect to copies of digital broadcasts. (26) As this Subcommittee knows, the Copyright Office, pursuant to Section 104 of the Digital Millennium Copyright Act (“DMCA”) of 1998, recently engaged in a comprehensive study of the relationship between the first sale doctrine and existing and emergent technology. (27) The Copyright Office issued its report in August 2001 and I testified before this Subcommittee at the end of that year about our findings and recommendations in that report.

The “first sale” issues raised with respect to the broadcast flag appear very similar to those raised in the DMCA Section 104 Report: whether the first sale doctrine as it currently exists would permit certain activities related to digital transmission of copyrighted works. Some have suggested that the first sale doctrine requires that individuals be permitted to transmit digital copies of broadcasts to a circle of family or friends and inside and outside the home. As with the fair use issue, the Copyright Office believes that consideration of the broadcast flag should not be made based upon an incorrect or incomplete understanding of the first sale doctrine. I would like to provide a brief description of that doctrine and our conclusions from the DMCA study, which remain unchanged today.

The common-law roots of the first sale doctrine allowed the legitimate owner of a particular copy of a work to dispose of that copy. This judicial doctrine was grounded in the common-law principle that restraints on the alienation of tangible property are to be avoided in the absence of clear congressional intent to abrogate this principle. This doctrine was first codified as section 27 of the Copyright Act of 1909 and now appears in section 109 of the Copyright Act of 1976. Section 109(a) specifies that notwithstanding a copyright owner's exclusive distribution right under section 106, the owner of a particular copy or phonorecord that was lawfully made under Title 17 is entitled to sell or further dispose of the possession of that copy or phonorecord.

The first sale doctrine is a limitation on the copyright owner's exclusive right of distribution. It does not limit the exclusive right of reproduction. While the sale or other disposition of a purchased VHS tape or book would only implicate the distribution right, the transmission of an electronic copy of the same work from one device to another would typically result in the making of a reproduction. This activity therefore entails an exercise of an exclusive right that is not covered by section 109. In other words, there is nothing in the first sale doctrine as it currently exists which would authorize the type of activity that some have proposed that the broadcast flag should permit.

In the deliberations leading up to the DMCA Section 104 Report, several participants argued that first sale principles should apply to digital transmissions, notwithstanding that such transmissions typically involve the reproduction right. (28) It appears that a similar suggestion is being made in the broadcast flag proceeding. We concluded then, and continue to believe, that there are fundamental differences between digital copies transmitted in a networked environment and the physical copies covered by the

existing first sale doctrine, and that those differences argue against recognizing a new form of first sale for digital copies.

Conclusion

In closing, Mr. Chairman, the Copyright Office has only begun its analysis of the broadcast flag proposal, and therefore at this time is taking no position on whether the broadcast flag proposal should be adopted or whether it should be changed in any way to reflect any aspect of existing copyright law, such as the fair use or the first sale doctrines. Let me be clear though, the appropriate balance between copyright owners, broadcasters, equipment manufacturers and consumers is fundamental to our support of any effort to devise a regulatory scheme governing digital broadcasts. Such a compromise, and the debate leading to it, should not be based on an incorrect understanding of copyright law and policy.

I want to thank the Subcommittee again for giving me the opportunity to testify today. The Copyright Office would be pleased to assist the Subcommittee in its consideration of these important issues and I am happy to answer any questions you may have.

1 67 Fed. Reg. 53,903 (Aug. 20, 2002).

2 See generally Initial Joint Comments of Motion Picture Association of America (MPAA), et al.; Initial Comments of Consumer Electronics Association (CEA); Initial Comments of Computer & Communications Industry Association (CCIA); Initial Comments of Home Recording Rights Coalition (HRRC).

3 See 17 U.S.C. § 701(b).

4 67 Fed. Reg. 53,904.

5 For a more in-depth discussion of some of the differences between analog and digital technology, see Copyright Office, Copyright Office DMCA Section 104 Report (2001), at 82-85. The results of this study were reported to Congress on August 29, 2001 and are available at:
www.copyright.gov/reports/studies/dmca/dmca_study.html.

6 See note 2.

7 Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

8 H.R. Rep. 94-1476, 94th Cong., 2d Sess., at 65 (1976).

9 17 U.S.C. § 107. The text of the section provides:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include-

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

10 See H.R. Rep. 94-1476, at 66. The Judiciary Committee made clear that pre-1976 fair use precedent remained in effect, as Section 107 was to “restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.”

11 17 U.S.C. § 107.

12 *Eldred v. Ashcroft*, 123 S. Ct. 769 (2003).

13 464 U.S. 417 (1984).

14 *Sony* was the first case in which the Supreme Court interpreted the 1976 Copyright Act and its codification of fair use in Section 107. Before the 1976 Act, the Supreme Court heard two cases that raised fair use issues, but did not issue an opinion in either of them. See *Sony*, 464 U.S. at 476 (dissenting opinion) (citing *Williams & Wilkins Co. v. United States*, 487 F.2d 1345 (1978), *aff'd* by an equally divided court, 420 U.S. 376 (1975) & *Benny v. Loew's Inc.*, 239 F.2d 532 (9th Cir. 1956), *aff'd* by an equally divided court sub nom. *Columbia Broadcasting System, Inc. v. Loew's Inc.*, 356 U.S. 43 (1958)).

15 464 U.S. 442.

16 *Id.* at 442-456.

17 *Id.* at 449.

18 *Id.* at 451.

19 See Initial Comments of CCIA, at 17.

20 The phrase “fair use rights” is a misnomer. It is not true, as some commenters have argued, that consumers have a vested, enforceable right to make uses of a copyrighted work that may be deemed “fair” under the fair use doctrine. Rather, if such a use is made, fair use protects the otherwise infringer from liability. The structure and language of Section 107 make clear that fair use is not a right, but merely an affirmative defense to potential copyright infringement. Compare 17 U.S.C. § 106 (enumerating specific rights granted by copyright) with 17 U.S.C. § 107 (beginning “Notwithstanding the provisions of Sections 106 and 106A, the fair use of a copyrighted work . . . is not an infringement of copyright.”) Courts have recognized this technical but important distinction in limiting the ability of commercial services to rely on the purported “fair use rights” of their customers to excuse reproduction and distribution of copyrighted works. See William F. Patry, *The Fair Use Privilege in Copyright Law* (2d ed.1995) at 432-33; see, e.g., *Pacific & Southern Co. v. Duncan*, 744 F.2d 1490 (11 th Cir. 1984). cert. denied, 741 U.S. 1004 (1985), on remand, 618 F. Supp. 469 (N.D. Ga. 1985), aff’d 792 F.2d 1013 (11th Cir. 1986); *Basic Books, Inc. v. Kinko's Graphic Corp.*, 785 F.Supp. 1522 (S.D.N.Y. 1991) (copy shop found not to be acting as agent of colleges where professors provided materials for copying); *RCA/Ariola Int'l, Inc. v. Thomas Grayston Co.*, 845 F.2d 773, 782 (8th Cir. 1988) (fair use claim by manufacturer of machines permitting customers of retail stores to duplicate tapes rejected); cf. *Princeton University Press v. Michigan Document Services*, 74 F.3d 1512 (6th Cir. 1996).

21 Copyright law revision, 89th Cong., 1st Sess., supplementary report of the register of copyrights on the general revision of the u.s. copyright law, part 6, at 14 (Comm. Print 1965). See also S. Rep. 94-473, 94th Cong., 1st Sess., at 65 (1975) (“Isolated instances of minor infringements become in the aggregate a major inroad on copyright that must be prevented.”).

22 *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1016-17 & 1019 (9th Cir. 2001).

23 See e.g., Michael Liedtke, *H&R Block Jabs at TurboTax Software*, Assoc. Press, March 4, 2003; Stephanie Stoughton, *Circuit City's Slipped Disc; Firm Concedes Defeat; Abandons Divx Technology*, Wash. Post, June 17, 1999; Associated Press, *Circuit City, Partner Let Divx Expire Lack of Industry Support Cited*, Daily Press, June 17, 1999.

24 That is not to say that in determining whether to implement a broadcast flag proposal, legitimate consumer expectations should not be taken into account. But if they are, it should not be because they purportedly are equivalent to fair use.

25 See Initial Comments of National Broadcasting Company, Inc. (NBC), at 4.

26 See Initial Comments of CEA, at 6.

27 Copyright Office DMCA Section 104 Report (2001).

28 See Copyright Office DMCA Section 104 Report (2001), at 44-48, 80-105 for a summary and analysis of the proposals for a digital first sale doctrine based on a “forward and delete” model.

3. Executive Summary of the Digital Millennium Copyright Act of 1998 and URL for the Complete Version of the U.S. Copyright Law

Source: Copyright Office
<http://www.copyright.gov/>

Complete version of the U.S. Copyright Law
<http://www.copyright.gov/title17/circ92.pdf>

Executive Summary of the Digital Millennium Copyright Act of 1998

INTRODUCTION

The Digital Millennium Copyright Act of 1998 (DMCA) was the foundation of an effort by Congress to implement United States treaty obligations and to move the nation's copyright law into the digital age. But as Congress recognized, the only thing that remains constant is change. The enactment of the DMCA was only the beginning of an ongoing evaluation by Congress on the relationship between technological change and U.S. copyright law. This Report of the Register of Copyrights was mandated in the DMCA to assist Congress in that continuing process.

Our mandate was to evaluate "the effects of the amendments made by [title I of the DMCA] and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and the relationship between existing and emergent technology and the operation of sections 109 and 117. . . ." Specifically, this Report focuses on three proposals that were put forward during our consultations with the public: creation of a "digital first sale doctrine;" creation of an exemption for the making of certain temporary incidental copies; and the expansion of the archival copying exemption for computer programs in section 117 of the Act.

Part I of this Report describes the circumstances leading up to the enactment of the DMCA and the genesis of this study. Part I also examines the historical basis of sections 109 and 117 of the Act. Part II discusses the wide range of views expressed in the public comments and testimony. This input from the public, academia, libraries, copyright organizations and copyright owners formed the core information considered by the Office in its evaluation and recommendations. Part III evaluates the effect of title I of the DMCA and the development of electronic commerce and associated technology on the operations of sections 109 and 117 in light of the information received and states our conclusions and recommendations regarding the advisability of statutory change.

I. BACKGROUND

A. THE DIGITAL MILLENNIUM COPYRIGHT ACT

The World Intellectual Property Organization (WIPO) treaties were the impetus for the U.S. legislation. In order to facilitate the development of electronic commerce in the digital age, Congress implemented the WIPO treaties by enacting legislation to address those treaty obligations that were not adequately addressed under existing U.S. law. Legal prohibitions against circumvention of technological protection measures employed by copyright owners to protect their works, and against the removal or alteration of copyright management information, were required in order to implement U.S. treaty obligations.

The congressional determination to promote electronic commerce and the distribution of digital works by providing copyright owners with legal tools to prevent widespread piracy was tempered with concern for maintaining the integrity of the statutory limitations on the exclusive rights of copyright owners. In addition to the provisions adopted by Congress in 1998, there were other proposals - including amendments to sections 109 and 117, that were not adopted, but were the subjects of a number of studies mandated by the DMCA. Section 104 of the DMCA requires the Register of Copyrights and the Assistant Secretary for Communications and Information to report on the effects of the DMCA on the operation of sections 109 and 117 and the relationship between existing and emergent technology on the operation of sections 109 and 117 of title 17 of the United States Code.

The inclusion of section 109 in the study has a clear relationship to the digital first sale proposal contained in a bill introduced in 1997 by Congressmen Rick Boucher and Tom Campbell. The reasons for including section 117 in the study are less obvious. While there is no legislative history explaining why section 117 is included in the study, it appears that the reference was intended to include within the scope of the study a proposed exemption for incidental copies found in the Boucher-Campbell bill, which would have been codified in section 117 of the Copyright Act.

B. SECTION 109(a) AND THE FIRST SALE DOCTRINE

The common-law roots of the first sale doctrine allowed the owner of a particular copy of a work to dispose of that copy. This judicial doctrine was grounded in the common-law principle that restraints on the alienation of tangible property are to be avoided in the absence of clear congressional intent to abrogate this principle. This doctrine appears in section 109 of the Copyright Act of 1976. Section 109(a) specified that this notwithstanding a copyright owner's exclusive distribution right under section 106 the owner of a particular copy or phonorecord that was lawfully made under title 17 is entitled to sell or further dispose of the possession of that copy or phonorecord.

C. SECTION 117 COMPUTER PROGRAM EXEMPTIONS

Section 117 of the Copyright Act of 1976 was enacted in the Computer Software Copyright Amendments of 1980 in response to the recommendations of the National Commission on New Technological Uses of Copyrighted Works' (CONTU). Section 117 permits the owner of a copy of a computer program to make an additional copy of the program for purely archival purposes if all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful, or where the making of such a copy is an essential step in the utilization of the

computer program in conjunction with a machine and that it is used in no other manner.

II. VIEWS OF THE PUBLIC

Section II of the report summarizes the views received from the public through comments, reply comments and hearing testimony. The summaries are grouped into three categories: views concerning section 109, views concerning section 117, and views on other miscellaneous issues.

A. VIEWS CONCERNING SECTION 109

Most of the comments dealt with section 109 whether or not they addressed section 117. While there was a broad range of views on the effect of the DMCA on the first sale doctrine, most of the commenters believed that the anticircumvention provisions of 17 U.S.C. section 1201 allowed copyright owners to restrict the operation of section 109. Of particular concern to many commenters was the Content Scrambling System (CSS) and the "region coding" used to protect motion pictures on Digital Versatile Disks (DVDs). They argued that use of CSS forces a consumer to make two purchases in order to view a motion picture on DVD: the DVD and the authorized decryption device. In the view of these commenters, this system reduces or eliminates the value of and market for DVDs by interfering with their free alienability on the market. A similar argument was advanced for the region coding on DVDs in that the geographic market for resale is restricted by this technological protection measure.

Another concern expressed by a number of commenters was the growing use of nonnegotiable licenses accompanying copyrighted works that are written to restrict or eliminate statutorily permitted uses, including uses permitted under section 109. In some cases, these license restrictions are enforced through technological measures. It was argued that these licensing practices and the prohibition on circumvention frustrate the goals of the first sale doctrine by allowing copyright owners to maintain control on works beyond the first sale of a particular copy. These commenters stated that this interference with the operation of the first sale doctrine has the capacity to inhibit the function of traditional library operations, such as interlibrary loan, preservation, and use of donated copies of works.

Other commenters rebutted these claims, arguing that over-restrictive technological protection measures or licenses would not survive in the marketplace, since competition would be a limiting principle. It was also argued that the effect of licensing terms on the first sale doctrine is beyond the scope of this study.

Commenters generally viewed section 1202 of the DMCA, which prohibits the alteration or removal of copyright management information, as having no impact of the operation of the first sale doctrine.

The greatest area of contention in the comments was the question of whether to expand the first sale doctrine to permit digital transmission of lawfully made copies of works. Although some proponents argued that such transmissions are already permitted by the current language of section 109, most thought that clarification of

this conclusion by Congress would be advisable since the absence of express statutory language could lead to uncertainty.

The proponents of revising section 109 argued that the transmission of a work that was subsequently deleted from the sender's computer is the digital equivalent of giving, lending, or selling a book. Allowing consumers to transfer the copy of the work efficiently by means of online transmission would foster the principles of the first sale doctrine. These principles have promoted economic growth and creativity in the analog world and should be extended to the digital environment. Proponents of this argument sought amendment to section 109 to allow a person to forward a work over the Internet and then delete that work from his computer.

Others opposed such an amendment for a number of reasons. Opponents pointed out that the first sale doctrine is a limitation on the distribution right of copyright owners and has never implicated the reproduction right which is, in their view, a "cornerstone" of copyright protection. In addition, the impact of the doctrine on copyright owners was also limited in the off-line world by a number of factors, including geography and the gradual degradation of books and analog works. The absence of such limitations would have an adverse effect on the market for digital works. Opponents also believed that proposals that depend on the user deleting his copy would be unverifiable, leading to virtually undetectable cheating. Given the expanding market for digital works without a digital first sale doctrine, opponents questioned the consumer demand for such a change in the law.

B. VIEWS CONCERNING SECTION 117

The comments related to section 117 fell into two main categories: those addressing the status of temporary copies in RAM and those concerning the scope of the archival exemption.

Many commenters advocated a blanket exemption for temporary copies that are incidental to the operation of a device in the course of use of a work when that use is lawful under title 17. Such an exemption was originally proposed in the Boucher-Campbell bill as an amendment to section 117.

Other commenters vigorously opposed any exemption for incidental copies at this time. They argued that such an exemption would dramatically expand the scope of section 117 in contrast to the carefully calibrated adjustment made to section 117 in the DMCA to address the problems experienced by independent computer service organizations at issue in *MAI Systems Corp. v. Peak Computer, Inc.* These commenters stated that Congress' narrow adjustment to section 117 in the DMCA reaffirmed the conclusion that temporary copies in random access memory (RAM) are copies that are subject to the copyright owner's exclusive reproduction right. Further change would undercut the reproduction right in all works and endanger international treaty obligations.

There was disagreement on the economic value of temporary copies. Proponents of an amendment argued that temporary buffer copies are necessary to carry out streaming of performances of works on the Internet and have no value apart from that

performance. They argued that the limitations under other sections of the Copyright Act, including sections 107 and 512, were insufficient to sustain the operation of businesses that stream audio performances to the public.

Opponents, on the other hand, argued that these copies are within the scope of the copyright owner's exclusive rights and do possess value. Particular emphasis was placed on the value of temporary copies of computer programs. It was also argued that as streaming performances become more common, these temporary copies will increase in value because of the adverse effect of the performances on the market for purchases of copies of these works. Opponents believed it would be premature to change the law because of the absence of specific evidence of harm and the high potential for adverse unintended consequences. It was noted that when Congress was presented with concrete evidence of harm to independent service organizations after the *MAI v. Peak* decision, Congress took steps to remedy the situation. Similarly, section 512 of the DMCA created limitations on the remedies available against Internet service providers for incidental copying that is essential to the operation of the Internet.

The other major concern involving section 117 concerned the scope of the archival exemption. Proponents of amending section 117 raised two primary points. First, they argued that the policy behind the archival exemption needs to be updated to encompass all digital works rather than just computer programs. Since computers are vulnerable to crashes, viruses, and other failures, downloaded music, electronic books and other works face the same risks that precipitated the exemption for computer programs. Some argued that all digital media is susceptible to accidental deletion or corruption. Consumers should be permitted to protect their investments in works.

Proponents of expansion of the archival exemption offered another argument - section 117 does not comport with reality. Systematic backup practices do not fit the structure of section 117, which is limited to making a copy of an individual program at the time the consumer obtains it. It was argued that such a discrepancy between the law and commonly accepted practices undermines the integrity of the law. Such a fundamental mismatch creates the perception that the law need not be literally followed, thereby creating a slippery slope.

Opponents of an expansion of the archival exemption countered that the justification behind section 117 no longer exists. Most software is distributed on CD-ROM, which is far more robust than floppy disks. Consumers need merely retain the original CD as a backup, since it is a simple operation to reinstall software that is compromised. In addition, these opponents argued that there is currently an inaccurate public perception of the scope of the backup copy exception. These commenters argue that many invoke the archival exception as a shield to commercial piracy.

Opponents of an amendment to section 117 asserted that even if there is a mismatch between actual backup practices and the current exception, no one has been harmed by it. Commenters noted that no one has been sued as a result of backing up material outside the scope of section 117, and no one has stopped performing backups. It was also argued that if a particular activity does not fall within the terms of section 117, it may nevertheless be privileged under the fair use doctrine.

C. VIEWS CONCERNING OTHER MISCELLANEOUS ISSUES

There were assorted other comments and testimony on a range of issues. There were concerns raised about the potential adverse effects of sections 1201 and 1202 on the traditional concepts of first sale, fair use, and the archival and preservation exemptions. It was argued that these prohibitions are likely to diminish, if not eliminate, otherwise lawful uses. It was asserted that copyright management information may also have the capacity to reveal user information in a manner that would chill legitimate uses of copyrighted works.

Another prevalent concern was that licenses are being used increasingly by copyright owners to undermine the first sale doctrine and restrict other user privileges under the copyright law. These commenters argue that this trend is displacing the uniformity of federal copyright law with a wide variation of contract terms that must be evaluated and interpreted. This poses a particular challenge to large institutions, such as universities and libraries, in determining legal and acceptable use in any given work. A number of commenters argued that federal copyright law should preempt such license terms.

Other commenters argued that Congress did not intend copyright law broadly to preempt contract provisions. They argue that the freedom to contract serves the interests on both copyright owners and the public by allowing greater flexibility in determining pricing, terms and conditions of use, and other options.

III. EVALUATION AND RECOMMENDATIONS

We are not persuaded that title I of the DMCA has had a significant effect on the operation of sections 109 and 117 of title 17. The adverse effects that section 1201, for example, is alleged to have had on these sections cannot accurately be ascribed to section 1201. The causal relationship between the problems identified and section 1201 are currently either minimal or easily attributable to other factors such as the increasing use of license terms. Accordingly, none of our legislative recommendations are based on the effects of section 1201 on the operation of sections 109 and 117.

A. THE EFFECT OF TITLE I OF THE DMCA ON THE OPERATION OF SECTIONS 109 AND 117

The arguments raised concerning the adverse effects of the CSS technological protection measure on the operation of section 109 are flawed. The first sale doctrine is primarily a limitation on copyright owner's distribution right. Section 109 does not guarantee the existence of secondary markets for works. There are many factors which could affect the resale market for works, none of which could be said to interfere with the operation of section 109. The need for a particular device on which to view the work is not a novel concept and does not constitute an effect on section 109. VHS videocassettes for example, must be played on VHS VCRs.

A plausible argument can be made that section 1201 may have a negative effect on the operation of the first sale doctrine in the context of works tethered to a particular

device. In the case of tethered works, even if the work is on removable media, the content cannot be accessed on any device other than the one on which it was originally made. This process effectively prevents disposition of the work. However, the practice of tethering a copy of a work to a particular hardware device does not appear to be widespread at this time, at least outside the context of electronic books. Given the relative infancy of digital rights management, it is premature to consider any legislative change at this time. Should this practice become widespread, it could have serious consequences for the operation of the first sale doctrine, although the ultimate effect on consumers is unclear.

We also find that the use of technological measures that prevent the copying of a work potentially could have a negative effect on the operation of section 117. To the extent that a technological measure prohibits access to a copyrighted work, the prohibition on the circumvention of measures that protect access in section 1201(a)(1) may have an adverse impact on the operation of the archival exception in section 117. Again, however, the current impact of such a concern appears to be minimal, since licenses generally define the scope of permissible archiving of software, and the use of CD-ROM reduces the need to make backup copies.

Given the minimal adverse impact at the present time, we conclude that no legislative change is warranted to mitigate any effect of section 1201 on section 117.

B. THE EFFECT OF ELECTRONIC COMMERCE AND TECHNOLOGICAL CHANGE ON SECTIONS 109 AND 117

There is no dispute that section 109 applies to works in digital form. Physical copies of works in a digital format, such as CDs or DVDs, are subject to section 109 in the same way as physical copies in analog form. Similarly, a lawfully made tangible copy of a digitally downloaded work, such as a work downloaded to a floppy disk, Zip™ disk, or CD-RW, is clearly subject to section 109. The question we address here is whether the transmission of a work to another person falls within - or should fall within - the scope of section 109.

1. The First Sale Doctrine in the Digital World a. Evaluation of Arguments Concerning First Sale

The first sale doctrine is primarily a limitation on the copyright owner's exclusive right of distribution. It does not limit the exclusive right of reproduction. While disposition of a work downloaded to a floppy disk would only implicate the distribution right, the transmission of a work from one person to another over the Internet results in a reproduction on the recipient's computer, even if the sender subsequently deletes the original copy of the work. This activity therefore entails an exercise of an exclusive right that is not covered by section 109.

Proponents of expansion of the scope of section 109 to include the transmission and deletion of a digital file argue that this activity is essentially identical to the transfer of a physical copy and that the similarities outweigh the differences. While it is true that there are similarities, we find the analogy to the physical world to be flawed and unconvincing.

Physical copies degrade with time and use; digital information does not. Works in digital format can be reproduced flawlessly, and disseminated to nearly any point on the globe instantly and at negligible cost. Digital transmissions can adversely effect the market for the original to a much greater degree than transfers of physical copies. Additionally, unless a "forward-and delete" technology is employed to automatically delete the sender's copy, the deletion of a work requires an additional affirmative act on the part of the sender subsequent to the transmission. This act is difficult to prove or disprove, as is a person's claim to have transmitted only a single copy, thereby raising complex evidentiary concerns. There were conflicting views on whether effective forward and delete technologies exist today. Even if they do, it is not clear that the market will bear the cost of an expensive technological measure.

The underlying policy of the first sale doctrine as adopted by the courts was to give effect to the common law rule against restraints on the alienation of tangible property. The tangible nature of a copy is a defining element of the first sale doctrine and critical to its rationale. The digital transmission of a work does not implicate the alienability of a physical artifact. When a work is transmitted, the sender is exercising control over the intangible work through its reproduction rather than common law dominion over an item of tangible personal property. Unlike the physical distribution of digital works on a tangible medium, such as a floppy disk, the transmission of works interferes with the copyright owner's control over the intangible work and the exclusive right of reproduction. The benefits to further expansion simply do not outweigh the likelihood of increased harm.

Digital communications technology enables authors and publishers to develop new business models, with a more flexible array of products that can be tailored and priced to meet the needs of different consumers. We are concerned that these proposals for a digital first sale doctrine endeavor to fit the exploitation of works online into a distribution model - the sale of copies - that was developed within the confines of pre-digital technology. If the sale model is to continue as the dominant method of distribution, it should be the choice of the market, not due to legislative fiat.

We also examined how other countries are addressing the applicability of the first sale - or exhaustion - doctrine to digital transmissions. We found that other countries are addressing digital transmissions under the communication to the public right and are not applying the principle of exhaustion, or any other analog thereof, to digital transmissions.

b. Recommendation Concerning the Digital First Sale Doctrine

We recommend no change to section 109 at this time. Although speculative concerns have been raised, there was no convincing evidence of present-day problems. In order to recommend a change in the law, there should be a demonstrated need for the change that outweighs the negative aspects of the proposal. The Copyright Office does not believe that this is the case with the proposal to expand the scope of section 109 to include digital transmissions. The time may come when Congress may wish to address these concerns should they materialize.

The fact that we do not recommend adopting a "digital first sale" provision at this time does not mean that the issues raised by libraries are not potentially valid concerns. Similarly, our conclusion that certain issues are beyond the scope of the present study does not reflect our judgment on the merits of those issues.

The library community has raised concerns about how the current marketing of works in digital form affects libraries with regard to five specifically enumerated categories: interlibrary loans, off-site accessibility, archiving/preservation, availability of works, and use of donated copies. Most of these issues arise from terms and conditions of use, and costs of license agreements. One arises because, when the library has only online access to the work, it lacks a physical copy of the copyrighted work that can be transferred. These issues arise from existing business models and are therefore subject to market forces. We are in the early stages of electronic commerce. We hope and expect that the marketplace will respond to the various concerns of customers in the library community. However, these issues may require further consideration at some point in the future. Libraries serve a vital function in society, and we will continue to work with the library and publishing communities on ways to ensure the continuation of library functions that are critical to our national interest.

2. The Legal Status of Temporary Copies

a. RAM Reproductions as "Copies" under the Copyright Act

All of the familiar activities that one performs on a computer, from the execution of a computer program to browsing the World Wide Web, necessarily involve copies stored in integrated circuits known as RAM. This information can remain in memory until the power is switched off or the information is overwritten. These reproductions generally persist only for as long as the particular activity takes place.

The legal status of RAM reproductions has arisen in this study almost exclusively in the context of streaming audio delivery, including webcasting. In order to render the packets of audio information in an audio "stream" smoothly, in spite of inconsistencies in the rate of delivery, packets of audio information are saved in a portion of RAM called a buffer until they are ready to be rendered.

Based on an the text of the Copyright Act - including the definition of "copies" in section 101 - and its legislative history, we conclude that the making of temporary copies of a work in RAM implicates the reproduction right so long as the reproduction persists long enough to be perceived, copied, or communicated.

Every court that has addressed the issue of reproductions in RAM has expressly or impliedly found such reproductions to be copies within the scope of the reproduction right. The seminal case on this subject, *MAI, Sys. Corp. v. Peak Computer, Inc.*, found that the loading of copyrighted software into RAM creates a "copy" of that software. At least nine other courts have followed *MAI v. Peak* in holding RAM reproductions to be "copies" and several other cases have held that loading a computer program into a computer entails making a copy, without mentioning RAM specifically.

b. Evaluation of Arguments Concerning Temporary Incidental Copy Exceptions

In the course of this study, arguments were advanced in support of a blanket exemption for incidental copies similar to that proposed in the Boucher-Campbell bill. Most of the arguments advanced on such a proposal focused exclusively on the specific issue of buffer copies made in the course of audio streaming, rather than the broader issue of incidental copying generally. This focus suggests that legislation tailored to address the specific problems raised in the context of audio streaming should be examined. This focus is particularly appropriate since there was no compelling evidence presented in support of a blanket exemption for incidental copies and there was evidence that such an exemption could lead to unintended adverse consequences for copyright owners.

There was compelling evidence presented, however, on the uncertainty surrounding temporary buffer copies made in RAM in the course of rendering a digital musical stream. Specifically, webcasters asserted that the unknown legal status of buffer copies exposes webcasters to demands for additional royalty payments from the owner of the sound recording, as well as potential infringement liability.

The buffer copies identified by the webcasting industry exist for only a short period of time and consist of small portions of the work. Webcasters argue that these reproductions are incidental to the licensed performance of the work and should not be subject to an additional license for a reproduction that is only a means to an authorized end. Buffer copies implicate the reproduction right, thus potentially resulting in liability. There is, therefore, a legitimate concern on the part of webcasters and other streaming music services as to their potential liability.

We believe that there is a strong case that the making of a buffer copy in the course of streaming is a fair use. Fair use is a defense that may limit any of the copyright owner's exclusive rights, including the reproduction right implicated in temporary copies. In order to assess whether a particular use of the works at issue is a fair use, section 107 requires the consideration and balancing of four mandatory, but nonexclusive, factors on a case-by-case basis.

In examining the first factor - the purpose and character of the use - it appears that the making of buffer copies is commercial and not transformative. However, the use does not supersede or supplant the market for the original works. Buffer copies are a means to a noninfringing and socially beneficial end - the licensed performance of these works. There is no commercial exploitation intended or made of the buffer copy in itself. The first factor weighs in favor of fair use.

The second factor - the nature of the copyrighted work - weighs against a finding of fair use because musical works are generally creative. The third factor - the amount and substantiality of the portion used in relation to the copyrighted work as a whole - would also be likely to weigh against fair use since, in aggregate, an entire musical work is copied in the RAM buffer. Since this is necessary in order to carry out a licensed performance of the work, however, the factor should be of little weight.

In analyzing the fourth factor - the effect of the use on the actual or potential market for the work - the effect appears to be minimal or nonexistent. This factor strongly weighs in favor of fair use.

Two of the four statutory factors weigh in favor of fair use, but fair use is also an "equitable rule of reason." In the case of temporary buffer copies, we believe that the equities unquestionably favor the user. The sole purpose for making the buffer copies is to permit an activity that is licensed by the copyright owner and for which the copyright owner receives a performance royalty. In essence, copyright owners appear to be seeking to be paid twice for the same activity. Additionally, it is technologically necessary to make buffer copies in order to carry out a digital performance of music over the Internet. Finally, the buffer copies exist for too short a period of time to be exploited in any way other than as a narrowly tailored means to enable the authorized performance of the work. On balance, therefore, the equities weigh heavily in favor of fair use.

c. Recommendation Concerning Temporary Incidental Copies

Representatives of the webcasting industry expressed concern that the case-by-case fair use defense is too uncertain a basis for making rational business decisions. We agree. While we recommend against the adoption of a general exemption from the reproduction right to render noninfringing all temporary copies that are incidental to lawful uses, a more carefully tailored approach is desirable.

We recommend that Congress enact legislation amending the Copyright Act to preclude any liability arising from the assertion of a copyright owner's reproduction right with respect to temporary buffer copies that are incidental to a licensed digital transmission of a public performance of a sound recording and any underlying musical work.

The economic value of licensed streaming is in the public performances of the musical work and the sound recording, both of which are paid for. The buffer copies have no independent economic significance. They are made solely to enable the performance of these works. The uncertainty of the present law potentially allows those who administer the reproduction right in musical works to prevent webcasting from taking place - to the detriment of other copyright owners, webcasters and consumers alike - or to extract an additional payment that is not justified by the economic value of the copies at issue. Congressional action is desirable to remove the uncertainty and to allow the activity that Congress sought to encourage through the adoption of the section 114 webcasting compulsory license to take place.

Although we believe that the fair use defense probably does apply to temporary buffer copies, this approach is fraught with uncertain application in the courts. This uncertainty, coupled with the apparent willingness of some copyright owners to assert claims based on the making of buffer copies, argues for statutory change. We believe that the narrowly tailored scope of our recommendation will minimize, if not eliminate, concerns expressed by copyright owners about potential unanticipated consequences.

Given our recommendations concerning temporary copies that are incidental to digital performances of sound recordings and musical works, fairness requires that we acknowledge the symmetrical difficulty that is faced in the online music industry: digital performances that are incidental to digital music downloads. Just as webcasters appear to be facing demands for royalty payments for incidental exercise of the reproduction right in the course of licensed public performances, it appears that companies that sell licensed digital downloads of music are facing demands for public performance royalties for a technical "performance" of the underlying musical work that allegedly occurs in the course of transmitting it from the vendor's server to the consumer's computer.

Although we recognize that it is an unsettled point of law that is subject to debate, we do not endorse the proposition that a digital download constitutes a public performance even when no contemporaneous performance takes place. If a court were to find that such a download can be considered a public performance within the language of the Copyright Act, we believe that arguments concerning fair use and the making of buffer copies are applicable to this performance issue as well. It is our view that no liability should result from a technical "performance" that takes place in the course of a download.

3. Archival Exemption

a. Evaluation of Arguments Concerning the Scope of Section 117(a)(2)

Currently the archival exemption under section 117(a)(2) is limited to computer programs. This section allows the owner of a copy of a computer program to make or authorize the making of an additional copy of the program "for archival purposes," provided that "all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful." A number of arguments were advanced in the course of this study for an expansion of this archival exemption in order to cover the kind of routine backups that are performed on computers and to allow consumers to archive material in digital format other than computer programs.

Commenters asserted that consumers need to backup works in digital form because they are vulnerable. That was CONTU's rationale for recommending that Congress create an exemption to permit archival copies of computer programs. In both cases, the vulnerability stems from the digital nature of the works. It would be perfectly consistent with the rationale of CONTU's recommendations and Congress' enactment of section 117 to extend the archival exemption to protect against the vulnerabilities that may afflict all works in digital format.

Evidence was presented to us noting that the archival exemption under section 117 does not permit the prevailing practices and procedures most people and businesses follow for backing up data on a computer hard drive. There is a fundamental mismatch between accepted, prudent practices among most system administrators and other users, on the one hand, and section 117 on the other. As a consequence, few adhere to the law.

While there is no question that this mismatch exists, nobody was able to identify any actual harm to consumers as a result of the limited scope of the archival exemption. Additionally, it was argued that the need to make archival copies of computer programs has diminished, because almost all software sold in the United States is distributed on CD-ROM, which itself serves as an archival copy in the event of hard drive problems or upgrades.

b. Recommendations Concerning the Archival Exemption

Although there has been a complete absence of any demonstrated harm to the prospective beneficiaries of an expanded archival exemption, and although we believe that a strong case could be made that most common archival activities by computer users would qualify as fair use, we have identified a potential concern - the interplay between sections 107 and 109. It appears that the language of the Copyright Act could lead a court to conclude that copies lawfully made under the fair use doctrine may be freely distributed under section 109.

Section 109 permits "the owner of a particular copy or phonorecord lawfully made" under title 17 to distribute that copy without the copyright owner's permission. To the extent that section 107 permits a user to make a backup copy of a work stored on a hard drive, that copy is lawfully made and the user owns it. Section 109, on its face, appears to permit the user to sell or otherwise dispose of the possession of that backup copy. The legislative history can be read to support either view.

We conclude that a statutory change is desirable, and recommend that Congress amend the copyright law in one of two ways.

Given the uncertain state of authority on the issue, we cannot conclude with a satisfactory level of certainty that a court will not, in the future, find a backup copy made by virtue of section 107 to be eligible for distribution under section 109. We believe that such a result is contrary to the intent of Congress and would have the capacity to do serious damage to the copyright owner's market. We therefore recommend that Congress either (1) amend section 109 to ensure that fair use copies are not subject to the first sale doctrine or (2) create a new archival exemption that provides expressly that backup copies may not be distributed. We express no preference as between the two options, and note that they are not mutually exclusive.

The first option would entail amending section 109(a) to state that only copies lawfully made and lawfully distributed are subject to the first sale doctrine. This proposed change would not preclude the distribution of copies made pursuant to the fair use doctrine since the exclusive right of distribution is equally subject to the fair use doctrine. It would, however, require that a separate fair use analysis be applied to the distribution of that copy.

The second option entails creating a new exemption for making backups of lawful copies of material in digital form, and amending section 117 to delete references to archival copies. The new exemption should follow the general contours of section 117(a)(2) and (b), and include the following elements: it should permit the making of one or more backup copies of a work. The copy from which the backup copies are made must be in digital form on a medium that is subject to accidental erasure,

damage, or destruction in the ordinary course of its use. It should stipulate that the copies may be made and used solely for archival purposes or for use in lieu of the original copy. It should also specify that, notwithstanding the provisions of section 109, the archival copy may not be transferred except as part of a lawful transfer of all rights in the work. Finally, it should specify that the archival copies may not be used in any manner in the event that continued possession of the work ceases to be rightful.

4. Contract Preemption

The question of contract preemption was raised by a number commenters who argued that the Copyright Act should be amended to insure that contract provisions that override consumer privileges in the copyright law, or are otherwise unreasonable, are not enforceable. Although the general issue of contract preemption is outside the scope of this Report, we do note that this issue is complex and of increasing practical importance, and thus legislative action appears to be premature. On the one hand, copyright law has long coexisted with contract law. On the other hand, the movement at the state level toward resolving questions as to the enforceability of nonnegotiated contracts coupled with legally-protected technological measures that give right holders the technological capability of imposing contractual provisions unilaterally, increases the possibility that right holders, rather than Congress, will determine the landscape of consumer privileges in the future. Although market forces may well prevent right holders from unreasonably limiting consumer privileges, it is possible that at some point in the future a case could be made for statutory change.

4. Annotated Web Sites

Office of the U.S. Trade Representative

<http://www.ustr.gov/sectors/intellectual.shtml>



The Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters. The U.S. Trade Representative is a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade and related investment matters.

Within USTR's Web Site, you will find a wealth of public information available at your fingertips. This page is one point of access to documents and records that are already made publicly available through electronic means. In addition, this page will continue to provide information on what and where certain documents or records may be found, and what is available to you by mail or for inspection and copying at our Washington, D.C. office.

Department of Justice

Computer Crime and Intellectual Property Section (CCIPS)

Protecting Intellectual Property Rights: Copyrights, Trademarks and Trade Secrets

<http://www.usdoj.gov/criminal/cybercrime/ip.html>



The Department of Justice and other agencies are continually working to improve protections for intellectual property rights and the enforcement of intellectual property laws. You can find information on DOJ initiatives, summits, and speeches in this website. It also contains information on U.S. interagency efforts, such as NIPLECC, as well as international efforts to protect intellectual property rights.

U.S. Copyright Office

<http://www.copyright.gov/>



U.S. Copyright Office is an office of public record for copyright registration and deposit of copyright material. They are part of a long tradition of promoting progress of the arts and protection for the works of authors. Its homepage has been created with the desire to serve the American copyright community of creators and users, as well as the general public. Here you will find all our key publications, including informational circulars; application forms for copyright registration; links to the copyright law and to the homepages of other copyright-related organizations; news of what the Office is doing, including business-process reengineering plans, Congressional testimony and press releases; its latest regulations; a link to its online copyright records cataloged since 1978; and much more.

U.S. Patent and Trademark Office

<http://www.uspto.gov/>



This is the only official Web site of the United States Patent and Trademark Office, a Performance-Based Organization of the Government of the United States of America, and an Agency of the U. S. Department of Commerce. For over 200 years, the basic role of the Patent and Trademark Office (PTO) has remained the same: to promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries (Article 1, Section 8 of the United States Constitution). Under this system of protection, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans.

U.S. Customs Service

National Intellectual Property Rights Coordination Center

http://www.cbp.gov/xp/cgov/enforcement/investigative_priorities/nipr/ipr_center.xml



The National Intellectual Property Rights Coordination Center (IPR Center) is the U.S. Government's latest weapon in the fight against violations of Intellectual Property Rights (IPR) laws. Located at U.S. Customs Service Headquarters in Washington, DC, the IPR Center is a multi-agency Center responsible for coordinating a unified U.S. Government response regarding IPR enforcement issues. Core staffing is provided by investigative personnel from Customs and the Federal Bureau of Investigation (FBI). Particular emphasis is given to investigating major criminal organizations and those using the Internet to facilitate IPR crime.



The Information Resource Center

Embassy of the United States of America

Madrid, Spain

<http://www.embusa.es>

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