

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

NATIONAL BROADBAND PLAN WORKSHOP
THE ROLE OF CONTENT IN THE BROADBAND ECOSYSTEM

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

2 MR. HERRIGAN: I hope my microphone is
3 on.

4 Well, thanks, everybody for being here
5 this morning. We are doing probably the 24th
6 workshop in the series of workshops that the FCC
7 is doing for the National Broadband Plan. My name
8 is John Herrigan. I'm the director of Consumer
9 Research for the National Broadband Task Force.

10 What I'd like to do is just say a few
11 brief remarks to set us up today. Then we'll get
12 to the meat of the program, which is our wonderful
13 group of panelists whom we thank for coming, some
14 at some distance, to be with us today.

15 What I want to do is just for a moment
16 put this workshop and topic into context of the
17 National Broadband Plan. With the National
18 Broadband Plan, we want to understand what is
19 driving adoption, what is driving deployment of
20 broadband networks, in order to develop a plan,
21 which is due in February 2010, that analyzes the
22 mechanisms that will ensure widespread access to

1 broadband for all Americans at affordable prices.

2 More specifically, the development of
3 broadband, both the evolution of networks and
4 growth of adoption, is really shaped powerfully by
5 users: Their ability to access a range of content
6 for communications, for creativity, and accessing
7 digital content for all kinds of purposes.

8 Content from the entertainment industries
9 certainly plays a big part in this process, but it
10 is part of a user environment where people get
11 health care information, get health care services
12 delivered to them increasingly, engage with civic
13 information. So people, when they're online, are
14 people who are recreating, being citizens, and
15 being health care consumers.

16 Today, though, we are looking at the
17 challenges to the creative industries brought
18 about by widespread digital connectivity. We want
19 to discuss solutions. Undoubtedly, we're going to
20 debate what the right solutions are, and I hope
21 touch on a few opportunities that are embedded in
22 broadband networks for the creative industries.

1 As we proceed today, the FCC will be listening
2 with an ear tuned to the National Broadband Plan
3 and its objective to bring widespread available
4 services to all Americans.

5 This particular workshop has attracted a
6 lot of interest. We probably would have had to
7 have two or three workshops to fit all the people
8 who wanted to be participating, but it's great
9 that we have an audience both here and in
10 cyberspace to pose questions to the panelists.

11 Before we get underway, I want to give a
12 moment to Michael Shapiro from the Patent and
13 Trademark Office, who would like to say a few
14 remarks on behalf of PTO who has a stake in this
15 issue.

16 So, Michael, we'll give you a chance to
17 grab this microphone.

18 MR. SHAPIRO: Thank you so much, John.
19 And thank you for this opportunity at this last
20 minute.

21 I just come with a very brief message
22 from our new director of the Patent and Trademark

1 Office, who is the Undersecretary of Commerce for
2 Intellectual Property Policy, David Kappos. And
3 David asked me simply to kind of underscore his
4 keen interest and our department's keen interest
5 in the development of the National Broadband
6 Policy.

7 As we all know, the roll out of
8 broadband networks arrives with a great promise of
9 benefiting consumers and creators and producers of
10 high-quality digital content. It also arrives
11 with a great peril, as we are all too familiar, of
12 accelerating unfortunate trends in digital piracy.

13 So, from our part, we want to be active
14 participants in this interagency process,
15 clarifying intellectual property rules as we
16 understand them, and making a significant and
17 positive contribution.

18 So, thanks so much for this opportunity
19 to say these few words.

20 MR. HARRIGAN: Thank you very much,
21 Michael. Let's get underway. Before we do so,
22 let me just lay out the ground rules. We are

1 going to start with the panelists going around
2 with five minute statements laying out their
3 points of view on the issues. That will be
4 followed by our distinguished group of agency
5 questioners to my immediate left: Kris Monteith
6 with the FCC, Phil Weiser from the Department of
7 Justice, and Susan DeSanti from the FTC.

8 We will be taking questions following
9 all of the presentations. Questions can be
10 submitted in two ways: We have probably over 100
11 people in cyberspace watching a webcast of this
12 and they'll be able to e-mail in questions; and
13 those of you in the audience can find somebody who
14 will be distributing cards and you can write down
15 your questions.

16 They will be submitted to me to pose to
17 the panelists. Each panelist is going to have
18 five minutes, and we will -- rather than having me
19 read lengthy introductions, I will let you use the
20 packet that's been distributed to understand the
21 background of our distinguished panelists.

22 So, with no further ado, let me begin

1 with Dan Glickman for five minutes.

2 MR. GLICKMAN: Thank you, John. And I'd
3 also like to introduce Mr. Steve Weinstein, who is
4 here with me, who is a technologist, and he's the
5 head of a consortium of movie studios that have
6 been working in technical solutions in the area of
7 digital distribution. If you'll just raise your
8 hand. If we get any real technical questions,
9 he's here to bail us out. So I just thought I
10 would refer to him.

11 I might start by saying that the
12 expansion of broadband can have an enormously
13 positive impact on the ability of consumers to
14 access all sorts of content, particularly in the
15 entertainment worlds of film and television, and
16 will increase the audience dramatically for our
17 product. So we view this as a great positive.

18 But the Internet economy will not
19 flourish if it is or becomes a lawless environment
20 where no distinction is made between lawful and
21 unlawful content and where the rights and
22 protections of others are not respected and where

1 there are no rules of the road. The Internet must
2 be a safe and secure environment where the
3 protections and security provided in the offline
4 world, whether it's retail or commerce or
5 transportation, also exist in the online world as
6 well.

7 Now, not only is this a consumer issue,
8 but, quite frankly, it is critical for the future
9 of our industry, which employs about 2.5 million
10 people in all 50 states. And I have this economic
11 report which I would give you, which we did in
12 April, which talks about the economic significance
13 of the industry to this country. We're the only
14 industry that has a positive balance of payment
15 surplus with every single country in the world we
16 do business. No other industry has that, film and
17 television and entertainment generally. And so it
18 is critically important.

19 And it's also critically important,
20 these issues, economically as most movies do not
21 make their money back in the initial distribution,
22 but require DVD, home video, and legitimate

1 Internet market and related aftermarkets to recoup
2 their investment. And that's where we are most
3 vulnerable to piracy in this process.

4 Our main point here, not only to talk
5 about the value to consumers and the significance
6 economically to our industry, is that the FCC
7 should advise Congress through the Broadband Plan
8 to support a policy that actively and strongly
9 encourages the best practices for online content
10 security and to ensure that technological
11 innovation is encouraged and can be used as a part
12 of any effort to protect copyrighted material
13 online.

14 The net result of failure in this area

15 is that a tidal wave of piracy on the Internet
16 will slow and impede the consumer experience and
17 thwart broadband development, which is directly
18 inconsistent, I believe, with the Commission's
19 objectives. Broadband adoption and acceptability
20 is directly linked to the availability of
21 compelling content -- content like good movies and
22 television shows and other forms of entertainment.

1 And these good entertainment products will drive a
2 great deal of the reason why people will want this
3 enhanced online experience.

4 I'm older probably than most of the
5 people in this room, but there was an old movie --
6 old song called "Love and Marriage, go together
7 like a horse and carriage." At the end of that
8 song the line goes, "You can't have one without
9 the other."

10 That's true here. You can't have good
11 connections, good pipes, good delivery systems
12 that mean anything unless you have good content
13 that people like. And the reverse is true. All
14 the good content in the world don't mean much if
15 you can't find a delivery system to pipe it
16 through. And you have to provide the incentives
17 for both to be able to continue their work.

18 Our industry is committed to provide
19 consumers many more choices online which others on
20 this panel will talk about.

21 I would like to mention a bit about the
22 issue internationally, however. As you look for

1 other models for broadband deployment, the U.S.
2 should lead by example and ensure property rights
3 are an essential element to any plan.

4 Other countries are looking to us as to
5 what we're doing in this area and many are moving
6 ahead: The U.K., France, New Zealand, Taiwan.
7 And, of course, Korea moved ahead with a very
8 rapid broadband plan. But I would point out that
9 because of a lack of protections on content, that
10 led to ubiquitous piracy on that universal
11 broadband plan, which has basically led to the
12 industry leaving the DVD and home video market
13 entirely and has also hurt Korean films and the
14 Korean film industry as well.

15 Now, since then, they have begun to
16 adopt some graduated response and other programs
17 to deal with it, but Korea is a good example of
18 what happens to unrestricted broadband without
19 reasonable protection of content in the process.
20 Existing technologies in this area are helpful,
21 but are rudimentary compared to the possible
22 future developments to protect content and to

1 protect broadband.

2 Thus, it is critical that the Commission
3 not stunt the development of dynamic Next
4 Generation technology models.

5 A positive response will mean that the
6 Internet as a whole will operate more efficiently
7 for consumers, giving consumers more choices for
8 all sorts of content, increasing further
9 investment in this area, and inspiring innovation
10 and increasing broadband adoption by the people of
11 this great country.

12 So, I thank you very much for allowing
13 me to make a few comments here.

14 MR. HERRIGAN: Thank you very much.
15 Patrick?

16 MR. ROSS: Thank you, John. I'm glad to
17 be here today. I would echo, Dan, that we love
18 the idea of getting robust and affordable
19 broadband to all Americans.

20 I think the bottom line for the
21 Copyright Alliance is that we do feel there is a
22 meaningful distinction between lawful and unlawful

1 Internet content. And I would quote the FCC
2 chairman, Julius Genachowski. He said, "I do not
3 interpret the goals of Net neutrality as
4 preventing network operators from taking
5 reasonable steps to block unlawful content."

6 Now, you're hearing today from some of
7 my friends and colleagues: The MPAA, the
8 Directors Guild of America, Paramount, the Writers
9 Guild of America. They're all Copyright Alliance
10 members, but our membership encompasses all
11 creative efforts, the companies, unions, and
12 individuals in those. So we have business and
13 entertainment software. We have record labels and
14 performing rights organizations and music
15 publishers. We have book, magazine, and newspaper
16 publishers; amateur and professional sports
17 leagues. We have member organizations and unions
18 in studio photography, in media photography,
19 school photography.

20 Actually, my daughter is getting her
21 high school freshman picture taken today, so I'm a
22 little nervous for her.

1 But we have photo archivists and graphic
2 artists. So all of them rely on intellectual
3 property rights for their livelihoods and the
4 inability to enforce those rights essentially
5 makes those rights meaningless.

6 Now, the International Intellectual
7 Property Alliance estimates that more than 43
8 percent of U.S. economic growth comes from these
9 industries. We're talking about \$1.5 trillion
10 annually, about 11 percent of U.S. GDP; nearly 12
11 million U.S. jobs. Those are important numbers.
12 But I'd like to speak a little bit about some of
13 the individual artists and creators that I work
14 with through our One Voice grassroots network.

15 Individual artists and creators share
16 with their industry partners an appreciation for
17 the gifts of the digital revolution. But,
18 unfortunately, some of them also suffer from a
19 profound disrespect for their rights online by
20 some Internet users, particularly their rights to
21 reproduction, distribution, and importantly the
22 right to create derivative works from their own

1 creativity.

2 When I speak to them, some of them also
3 have some confusion about the way Washington works
4 and whether anybody in this town actually
5 appreciates how important their rights are to
6 them. Now, no offense when I read the description
7 of this workshop. I did not see a lot of
8 attention to individual artists and creators, but
9 I'm very pleased that we have a composer on the
10 panel with us today. And I'm very eager to hear
11 her story and hear how she's embracing new
12 technologies and using her rights as a copyright
13 owner to encourage all sorts of new forms of
14 creativity.

15 Let me speak briefly about some of the
16 artists and creators that I've gotten to know.
17 There's Juliette Tworsey.

18 She's a singer-songwriter with an indie
19 band called FireBug. She embraces social
20 networking; she blogs. She streams her songs
21 online for free, but she is appalled that so many
22 so-called music fans happily steal the works of

1 recording artists.

2 There's a Michigan author, Rowena
3 Cherry. She also social networks; she blogs. She
4 even hosts an Internet radio show. Yet she has to
5 spend a significant amount of her time that she
6 could be using writing, tracking down infringers,
7 playing Whac-a-Mole with people that are "sharing"
8 her copyrighted novels online.

9 There's Leif Skoogfors. He's a
10 Pennsylvania media photographer. Like all
11 professional photographers, he is enjoying the
12 benefits of easy, online, legal licensing of his
13 photographs. But he has also seen some of his
14 photographs infringed hundreds of times online and
15 fails to understand why so little respect is
16 afforded to visual artists on the Internet.

17 Now, it's clear that there needs to be
18 from the perspective of policymakers a clear
19 distinction between legal and illegal conduct
20 online because failure to do so allows the illegal
21 to supplant new and innovative legal approaches.

22 Now, at the Copyright Alliance we've

1 been very pleased to see that policymakers seem to
2 get this critical point.

3 And I'd like to cycle back to the FCC
4 chairman if I could. You'll forgive me. I'm a
5 former reporter so I actually do believe in
6 accuracy and I want to read the quote to you.

7 "Illegal copyright infringement is a
8 threat to our economy." This is a statement that
9 the FCC chairman gave to the Senate Commerce
10 Committee. "Illegal copyright infringement is a
11 threat to our economy with harm measured in the
12 billions of dollars representing lost wages and
13 lost jobs for American workers. It is a threat to
14 the creativity that our copyright laws are
15 designed to protect and encourage and a threat to
16 a significant contributor to our economy and U.S.
17 Global competitiveness. It is vital that illegal
18 conduct be curtailed on the Internet. I do not
19 interpret the goals of Net neutrality as
20 preventing network operators from taking
21 reasonable steps to block unlawful content."

22 We at the Copyright Alliance could not

1 have worded that any better. I'd like to thank
2 you for your time.

3 MR. HERRIGAN: Thank you very much.
4 Michael Bracy with the Future of Music Coalition.

5 Thank you, Mike.

6 MR. BRACY: Thank you, John. And thanks
7 to you and your colleagues at the FCC for putting
8 this on.

9 You know, I think the first point we
10 want to make is it's so important that we've had
11 this -- a very lengthy, very extensive public
12 process to make sure that a lot of stakeholders
13 are involved in these debates, and we really
14 appreciate being invited today, and the process as
15 a whole.

16 In many ways we think that the way you
17 frame this workshop and the questions you're
18 asking today mirror the questions we've been
19 asking at the Future Music Coalition for 10 years.
20 And there are a lot of real challenges here, a lot
21 of real tricky questions.

22 We formed our organization in the year

1 2000 because we felt it was obvious that the
2 digital transformation of the music community was
3 going to create incredible opportunities and
4 significant challenges for musicians, particularly
5 the over 80 percent of works that come from the
6 Independent Music Community, where there have been
7 a lot of challenges for how they access -- these
8 artists would access the market and find their
9 audiences. And I think what we've seen over the
10 last decade is that these are very, very difficult
11 and very challenging debates. There are no easy
12 answers. The goal, though, that I think we all
13 share is the evolution and the vision of what we
14 call a legitimate digital music marketplace. And
15 the question is how do we get there?

16 When the first file trading sites came
17 online, when Nabster first came online, we were
18 just a few months old, and our mantra then and
19 sort of one of our organizing thoughts now is that
20 the only antidote to an illegal Nabster is a legal
21 Nabster. And what we mean by that is that the way
22 you're going to create this legitimate digital

1 music marketplace is through innovation, is
2 through basically giving consumers and giving
3 customers something to put their money into,
4 putting their energy and consumer money and
5 dollars into, and structures that will then flow
6 back through the music community.

7 And we also feel very strongly that it's
8 very important to engage in some of the
9 opportunities for the federal government to weigh
10 in in either proactive ways or potentially
11 challenges or problems we've seen through federal
12 action over the years. And, of course, we talked
13 specifically about the impact of the 1996 Telecom
14 Act, and what that meant for the radio industry
15 just is one example.

16 So this is complicated. There are a lot
17 of things that go well beyond just music licensing
18 and pricing. We're looking at infrastructure
19 build-out. We're looking at a monopoly and
20 duopoly pricing in the broadband market. We're
21 looking at innovation in consumer electronics.
22 We're looking at the development of new

1 applications and services. We're looking at
2 spectrum allocation. We're looking at digital
3 inclusion. We're looking at the shifting nature
4 of the music, the very structure of the music
5 industry.

6 These are all factors that come into
7 play, including tangential issues or issues that
8 feel tangential, like what do we do with the
9 terrestrial radio industry? There are a lot of
10 things to factor as we think about how do we
11 create this legitimate digital marketplace.
12 Again, there are no easy answers.

13 With that in mind, we have a couple of
14 ideas that we'd like to present to sort of frame
15 our thinking in this workshop. The first is that
16 there clearly is a very significant public
17 interest in ensuring that there are economic
18 structures that allow creators to be compensated.
19 A healthy, vibrant music community is vital to our
20 economy. It's vital to our culture. And as the
21 music economy continues to evolve and some
22 traditional jobs are threatened, new vocational

1 possibilities are emerging and will continue to
2 emerge.

3 Second, we believe that ongoing
4 collaboration and innovation is the key to
5 development of this legitimate digital music
6 marketplace. Our friend Jim Griffin likes to say
7 purchasing music in this economy is now optional.
8 We think that's true. We're not aware of a
9 workable scheme that prioritizes
10 government-mandated technology workarounds, like
11 content filtering (inaudible) operators, industry
12 overseers as a way of getting us to that goal. We
13 firmly believe the focus needs to be on
14 development of innovative solutions that encourage
15 consumers to participate in legal licensed music
16 delivery platforms.

17 Third, it's real important to recognize
18 that we're just seeing how this new economy is
19 taking shape. Over the past few years we've seen
20 a vast array of legitimate licensed products and
21 services, things like Rhapsody, eMusic, iTunes,
22 Amazon Music Store, radio stations delivered via

1 satellite and the web, streaming services like
2 Spotify. We've heard of new brands: iPod,
3 iPhone, Zune, Ebizis, Sonus, MySpace, Twitter,
4 Guitar Hero Rock Band. We're just starting to see
5 what this legitimate licensed marketplace is going
6 to look like and how these new economic structures
7 are going to flow money back to creators.

8 Now, we feel that a big part of the next
9 stage of this development is universal access to
10 competitive broadband marketplace. Combined with
11 strong enforcement of Net neutrality principles,
12 we think that in many ways is going to bring more
13 consumers in the market. We think when there's
14 less -- when consumers have to pay less money for
15 monthly access to broadband they'll have more
16 disposable income to put into the legitimate
17 marketplace. And we think that Net neutrality is
18 critical because, again, it's going to increase
19 and continue the innovation for new services and
20 applications that are going to allow musicians the
21 ability to reach their fans. In whole, this will
22 generate more revenue for artists and the music

1 community.

2 In closing, I just also want to express
3 my appreciation to Alex Shapiro for traveling from
4 Washington state. We think Alex is sort of
5 typical of dozens and dozens of artists and
6 composers who are taking their own personal time
7 and their energy to engage in these complicated
8 policy debates. And we do think it's real
9 important that the Commission has invited her, and
10 we look forward to her testimony and being part of
11 the rest of this workshop.

12 Thanks so much.

13 MR. HERRIGAN: Thanks very much,
14 Michael. Kathy Garmezzy from the Directors Guild
15 of America.

16 Kathy.

17 MS. GARMEZY: Thank you. Thank you for
18 inviting us to be here today. I know you've had
19 many sessions like this and put a lot into it, but
20 we think today is particularly meaningful because
21 it is, after all, the content that flows through
22 the pipes that give it its value.

1 I'm here, as you said, speaking on
2 behalf of the Directors Guild of America. And our
3 members are filmmakers from around the world,
4 those whose names you know well who make big
5 blockbusters and those who do smaller independent
6 films, as well as directors in television, news,
7 documentaries, new media, and any other
8 audiovisual work with which you're familiar. But
9 the thing that unites them all, different though
10 they may be in the work they do, is both a great
11 excitement and concern about the digital future.

12 I would guess that if I asked everyone
13 in this room right now to close your eyes and
14 remember the first movie you ever saw, the first
15 movie that ever affected you, you would remember
16 it clearly and you could picture it in your memory
17 even now. And that's what's meant by the "magic
18 of new movies." That magical experience and the
19 hard work, the long periods of time, talent, and
20 investment that it takes to bring it together, is
21 why we are not like everything else on the
22 Internet. And let me be quick to say that is not

1 a value judgment about other things on the
2 Internet, but it is why our members' work is the
3 real and primary target of Internet theft. If it
4 weren't, there would not be an increasing number
5 of Internet sites which are growing in moneymaking
6 businesses whose sole purpose is dedicated to
7 selling films for free.

8 This debate is not about the sanctity of
9 Internet free expression. My members do not deny
10 the importance of the free and equal flow of ideas
11 on the Internet, but they don't create what the
12 word "information" conjures up. In fact, the very
13 words "information" and "content" blur and obscure
14 the reality of what is at stake. This is about
15 stealing films and other works recognized around
16 the world and loved by billions of people who want
17 to have them. It is about an American cultural
18 art form that our country seeded and grew starting
19 100 years ago and whether our country and our
20 government believe it should be protected.

21 This is not just about what you see on
22 the screen at the end. It is just as much about

1 what is required to bring it there. Creating a
2 film from original concept to script-to-screen
3 takes years, calls for a myriad of unique talents:
4 Being able to put wonderful words on paper; being
5 able to become what you are not so that your
6 acting connects with people sitting in a darkened
7 theatre; knowing how to shoot a scene to capture
8 the light; being able to create a time and place
9 and costume; and being able to take all of that
10 collaboration, the efforts of hundreds of people,
11 and direct it into a vision onto the screen. It
12 also takes financial investment with great risk
13 and no prediction of whether there will be
14 recoupment or success.

15 Our business is structured to make
16 filmmaking possible. This is not often known
17 outside our world: Artists are risk-takers just
18 like the financiers, and we share directly in the
19 revenue that is generated from our work after it
20 is in the theatre because that work could not be
21 made without our members and the other talent.
22 And that's true for everybody, and it is critical

1 to their survival and to the survival of their
2 health and pension plans. Seventy percent of the
3 pension plan in DGA's case comes from downstream
4 revenue, and that's what's most vulnerable to
5 piracy.

6 Finally, let me say something I don't
7 think needs to be said, but I'm going to say it
8 anyway, which is our members are not technophobes,
9 which often those who disagree with some of the
10 philosophy are called. The work they do is the
11 very intersection of art and technology, and that
12 was true long before the Internet came into being.
13 Again, we understand the importance of an open and
14 fair Internet, but to us that does not mean that
15 we believe everything on the Internet is equally
16 in need of protection or rather equally as
17 deserving of nonprotection. Just because someone
18 can easily download the sum of a life's work, we
19 don't believe that the right and the ability to do
20 that is somehow more valuable than the right that
21 belongs to the person who created it.

22 So what do we hope from your

1 deliberations? We hope you understand the huge
2 economic and culture value we're trying to protect
3 and that the decisions have worldwide
4 ramification. We hope you understand we are not a
5 narrow self-interest and there are millions of
6 people and billions of dollars at stake. We hope
7 you understand the uniqueness of what we create
8 and how our industry makes it possible. Finally,
9 just as our president believes that good public
10 policy means a balancing of interests involved,
11 so, too, do we believe that a digital future must
12 be found which works to the benefit of both film
13 artists and the consumer public who love their
14 work.

15 After all, we're far from the first to
16 speak of intellectual property. In fact, in this
17 country it was our Founding Fathers who thought
18 this right to create was so fundamental that it
19 was the only one created in the original U.S.
20 Constitution. Our members are concerned about
21 what happens on the Internet because they know
22 what it takes to create that magic. And knowing

1 that, they see into the future and worry that that
2 magic will not be there for your children or
3 grandchildren.

4 MR. HERRIGAN: Thank you very much,
5 Kathy. We're going to turn now to Frederick
6 Huntsberry from Paramount. And I think we're
7 going to have a little bit of a show-and-tell in
8 addition to your statements, so I'm going to let
9 you do the show-and-tell and get our show going.

10 MR. HUNTSBERRY: You can stay there.
11 Thank you, John. And thank you to the FCC for
12 allowing Paramount to be here today. What I'd
13 like to do is have you look at the banner behind
14 you first. The banner represents the first three
15 weeks of the release of Star Trek, the Movie, that
16 was released on May 8th of this year. We have
17 tracked on this banner digital piracy worldwide
18 over those first three weeks.

19 If you look at the top of the banner you
20 see different color codes. Each color represents
21 a separate pirated video of the film.

22 It was released, as I said, on May 8th.

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1 We saw the first cam version available that was
2 made in Russia on May 8th, that same day. That's
3 the red banner at the top. After that you see the
4 yellow banner. That was a copy that was made in
5 the Philippines. The third row is the Ukraine.
6 And the reason the Ukraine is of particular
7 importance is because the Ukrainian copy was a
8 better quality image than the Russian cam. And
9 what we've discovered is the moment that a better
10 quality image of a version is available, demand --
11 piracy demand will immediately shift to that
12 version. And then the green copy is a Spanish
13 one. And then we go to a German copy that was
14 made a week later. And then on May 15th, we have
15 an American cam that was made.

16 On the bottom you see demand. We
17 actually see the number of downloads on
18 peer-to-peer network sites. And we've also
19 color-coded it so you can see that the greatest
20 demand was for the Ukrainian cam, which goes back
21 to the point I made earlier that quality drives
22 demand. By the end of 3 weeks, the number of

1 downloads had reached over 1.7 million, and I can
2 tell you that as of today, the number of downloads
3 of that film is over 5 million worldwide. And
4 that's just file downloads. It does not include
5 streaming of the file.

6 Now I'd like to direct your attention to
7 the presentation behind me. Okay.

8 We're going to start with, as I said,
9 the piracy propagation. But here we're showing
10 you now a chart of the top 100 Alexa websites.
11 Alexa tracks unique views -- viewers on websites,
12 thousands of them worldwide. These are just the
13 top 100. Any one of the URLs that we have
14 color-coded here are sites where you can either
15 locate or directly download pirated content from a
16 website. Roughly one-third of the top 100 now
17 give you that ability to do so.

18 What we've seen now that there's been a
19 huge development shift in piracy -- if you go back
20 a few years it was strictly -- you know, you have
21 to be computer-literate as a user. Today, anyone
22 can pirate a movie. A few years ago, it was a

1 lengthy download process. Today, it's converted
2 into instant streaming. You are still -- you
3 still have the ability to download today, but
4 streaming, we find, is becoming the preferred
5 method.

6 A few years ago, when you looked at one
7 of these websites you could clearly distinguish it
8 from a legitimate website. In other words, you
9 could tell that it was a site where content was
10 being pirated. Today, these sites have actually
11 now a legitimate look and feel to the consumer,
12 which becomes extremely concerning in the wake of
13 identity theft and so forth.

14 I'm going to walk you through an example
15 now of what it was like a few years ago and still
16 today to actually download a movie through a
17 peer-to-peer website. This is a site where, you
18 know, that is clearly an illegal website. The
19 technology has been in existence now for a number
20 of years. We're going to type into the search
21 field at the top "Star Trek 2009." The site is
22 called Mininova.com. Now the site gives back to

1 us actually 63 instances of Star Trek, the Movie.
2 We then go and select one of those movies to
3 download.

4 Now, once the movie -- once we've
5 selected this movie, we need to have the Bit
6 Torrent software on our PC. So, you need to first
7 download that. And once that's been downloaded,
8 you are able to actually download the Torrent --
9 excuse me, the movie to your computer to then view
10 it later.

11 Now, the download process on
12 peer-to-peer can be a lengthy process. It can be
13 minutes sometimes, but also hours, and sometimes
14 even over a day. So from a user experience
15 perspective, not the best necessarily.

16 Now we're going to walk you through the
17 sort of latest technology. This is an example of
18 how easy it is to upload a file. We're on a site
19 called Drop.io. At the top left we're now
20 inputting the name of the file that we want to
21 create on the Internet. We're going to call it
22 "Box Drop." And then we're going to select the

1 file from our hard drive.

2 We're selecting in this case a file
3 called Cloverfield. This is the opening credits
4 of the movie Cloverfield. And then we say create
5 a drop. Now we're literally uploading the file
6 directly from our computer to the Internet. It's
7 extremely easy. We're loading it effectively to a
8 cyberlocker, which is nothing more than an
9 electronic locker on the Internet that gives us a
10 specific URL address where that file is located.

11 We can now take that specific URL
12 address and we can Twitter and Facebook that
13 address to the world instantaneously. And then
14 anybody who has that address can then access that
15 file that same time.

16 I want to draw your attention for a
17 minute on the right. We have Time Magazine, the
18 New York Times, and Mashable, who are giving
19 comments about this website and I would say in a
20 constructive way; in other words, users can
21 actually upload, you know, files that are not
22 illegitimate onto this website. The problem we

1 have today is that sites like this are used to
2 actually house digital pirated content.

3 But obviously, by having these brands on
4 their site, they're giving this legitimate look to
5 the consumer.

6 So the file upload has finished. Now
7 we're going to show you how easy it is to actually
8 find the file and to view it. And to do this we
9 go -- the average consumer will do a search on
10 Google. So we've decided in this case to go to
11 Google and to type in "watch movies online for
12 free." Hit enter. We come back with a bunch of
13 websites. We're going to go to the first one
14 called Watch Movies Online. That's the first
15 result that actually comes up. before Hulu, which
16 is a legitimate site. On this site -- this is now
17 the site Watch Movies Online. And what I'd like
18 to show you here is that on the top left, these
19 are films that have just been released within the
20 last couple of weeks -- the last two weekends.
21 And on the bottom we also have films that have
22 been -- where the DVD has not yet been released.

1 In this case we're going to select 9.
2 That's the movie that was released last Friday.
3 So the movie has not even been in the theatres for
4 a week. What you see here, we're scrolling down
5 and you can see the various instances of this
6 movie that is now already available on various
7 other websites. And in this case we're going to
8 select a website called zSHARE where the file is
9 located.

10 Now, before we actually hit Play, I want
11 to show you on this website the advertising
12 banners. This is another thing that we find is
13 that a lot of these sites now have revenue models
14 that are based on advertising and on subscription
15 models. You can also hear -- if you note above
16 the screen, you can Facebook this address to your
17 friends. But what we can also do is we can then,
18 instead of viewing it in a small window, we can
19 blow it up to a full screen mode. And here you
20 have it. This is the movie that was just released
21 last Friday in theatres. As easy -- I mean,
22 anybody can literally pull up this movie. And you

1 have to download no other software; it was just
2 streaming directly from your computer.

3 Okay. This is an example of a site
4 called ZML.com. And again, I mentioned
5 legitimacy-looking. If you look on the bottom you
6 see "iPod-ready." It would indicate to the
7 consumer that this is something Apple endorsed,
8 which it hasn't, obviously. So, this site is
9 offering the consumer to download a pirated film
10 to an iPod or simply to their hard drive or to
11 burn the disks.

12 And then finally, I also want to
13 demonstrate to you that it's become easy now to
14 actually view these pirated films in your living
15 room on your living room TV. So, we have new
16 technology that's been introduced, legitimate
17 technology. We have Apple that has introduced the
18 Apple TV, Sony with the BRAVIA TV, and LG. And
19 residing on these legitimate platforms are also
20 legitimate third-party applications, such as Boxy
21 or Yahoo! widgets. However, these new user
22 interface applications permit individuals to

1 program applications that can reside within that
2 that can access now the content that I just
3 demonstrated to you directly to your TV in your
4 living room.

5 And then we also would like to highlight
6 the fact that if you go back a few years you had
7 sort of secondary advertisers that were driving
8 these business models. Now these are premium
9 advertisers and financial institutions.

10 Here you see an ad for Netflix on the
11 right side. On the top you have TiVo, you have
12 Ann Taylor, Citibank.

13 This is an example of the subscription
14 models that are now readily available to be paid
15 through PayPal, which is owned by eBay.

16 And here you have an especially good
17 example of how the consumer is lured into giving
18 credit card information and personal data. We
19 discovered just in the last few days that this
20 site that shows on the bottom Hacker Safe, the
21 logo, which should indicate to the consumer that
22 it is safe to use this site, inappropriately used

1 this logo. We contacted the company. The company
2 confirmed that there is no licensing arrangement
3 with this company in particular.

4 MR. HERRIGAN: You're going to have
5 about 30 more seconds.

6 MR. HUNTSBERRY: Okay. And we're just
7 about done. This is an example of a customer
8 loyalty program.

9 The more that you can -- the more that
10 you upload files, the more points you earn, and
11 then you can earn things like USB webcam missile
12 launchers. Clearly, these are gifts that are
13 targeted at teenagers.

14 And then finally, I want to make the
15 point that, you know, this industry embraces
16 broadband. We, you know, each one of the studios
17 has a separate distribution organization that is
18 -- whose charge it is to go out and to enter into
19 licensing arrangements with broadband companies to
20 offer our films over broadband. In the case of
21 Paramount, by the end of this year, we will
22 actually have 200 of these deals in place. We are

1 offering already 600 of our films for download and
2 200 for streaming. So it's something we totally
3 embrace. It's part of the growth of our business
4 going forward.

5 Thank you.

6 MR. HARRIGAN: Thank you very much.

7 We'll turn to Mike Carroll from American

8 University. Thank you, Mike.

9 MR. CARROLL: Thanks. Thanks very much.

10 So, I think the elephant in the room here is that
11 there are policy choices on the table. Nobody is
12 denying that intellectual property is an important
13 part of the U.S. Economy, but nobody is also
14 denying that copyright law already provides the
15 content owners to my right with a set of rights to
16 control their content and to use technological
17 protection measures to wrap around that content.

18 So, the law already -- all the talk of
19 respect for law, the law is there; the problem is
20 an enforcement problem.

21 And as I'm hearing it, the question is
22 what job can the Commission do to help enforce

1 these intellectual property rights? And here we
2 have to look at -- the question is are there
3 technological measures that can be used to protect
4 intellectual property? And the answer may be yes,
5 but the nature of technology is to operate on the
6 basis of standards, standards that don't
7 discriminate against good content and bad content.

8 And so to the extent that technological
9 measures would be involved, that the Commission
10 would start mandating technological measures in
11 one way or another, then it would not be the
12 Federal Communications Commission, but the Federal
13 Culture Commission that's being asked to protect
14 one set of cultural producers in the country. But
15 there are a range of other cultural producers,
16 including Alex to my left, who rely on the
17 Internet for their basis for communicating with
18 their public.

19 And so the concern I want to register
20 here is that their voices get added to the table,
21 that all the amateur creators, professional
22 creators who are not members of the associations

1 to my right, interactive users of broadband -- the
2 video game industry isn't here. There's a range
3 of other interactive media that is drawing the
4 attention to folks.

5 And so to the extent that technology is
6 on the table as a question about what the
7 standards ought to be and standards don't
8 discriminate between packets that are good or bad
9 -- it's a video file, then it's going to get
10 treated differently; it's a music file, it's going
11 to get treated differently -- then we want all
12 video producers, all music producers to have a say
13 in that debate, not just -- unless this is the
14 Federal Culture Commission and the view is that
15 the video files produced by the Directors Guild
16 and the MPAA are the files that count.

17 And so if we're really going to have a
18 democratic process about technology standards,
19 then we need all of the producers who would be
20 affected by technology to be -- have a voice in
21 that process. Unless we want to say there's a
22 difference between good content and bad content.

1 So, I'm also on the board of Creative
2 Commons. Our organization provides copyright
3 licenses to copyright creators who choose to
4 license their materials in a way that are open,
5 designed for sharing, designed for use on peer-to-
6 peer networks because these creators understand
7 that peer-to- peer networks sometimes work as the
8 vehicle for piracy; other times act as the vehicle
9 for music discovery or other kinds of marketing.
10 And again, the problem is these technologies can't
11 be labeled good or bad. They have a variety of
12 uses, some of which are quite harmful, some of
13 which are quite beneficial. And so I would urge
14 the Commission to take a regulatory modest view of
15 their approach. We can't predict the future. We
16 shouldn't predict the future. The only thing we
17 know from experience is that open platforms create
18 innovation that we never would have predicted.
19 So, there's a strong case for open networks
20 meanwhile working with rights owners to provide
21 them with the ability to enforce their rights
22 without prejudicing those rights owners who want

1 the open networks, who want to be able to share.

2 One other thing. The Internet we're
3 talking about right now is not going to be the
4 Internet any of us will be experiencing in the
5 next 5 or 10 years. As developments in cloud
6 computing and the power of these machines
7 increases, the challenges for controlling digital
8 files will increase as you can not only break up
9 the file into multiple torrents, but you can break
10 up the tracker file into multiple torrents.

11 And so I worry about the Whac-a-Mole
12 problem just getting more intense as we try to
13 chase down the digital copies as the digital
14 copies get spread out into the cloud.

15 The good news there, though, might be
16 that more broadband could be the answer to the
17 challenges that broadband is currently posing to
18 these industries because as more of us have ready
19 broadband access wherever we go, then we may turn
20 to streaming in exchange for building our own
21 libraries. And streaming models, while also an
22 unauthorized use of copyright works, are easier to

1 license. Right? So I have a choice. I can
2 listen to my iPod, my music collection, or I can
3 tune in Pandora, a licensed music service. I tune
4 in Pandora because I want to discover new music.
5 I want to watch TV. Do I want to turn on my
6 television or do I go to Hulu? I'm watching my
7 kids' behavior. My kids want Video on Demand and
8 they go on the Internet to stream the media. So
9 streaming may well be the answer here because
10 there's a revenue model that can be built around
11 streaming that is different than the one for
12 peer-to-peer exchange. And so I'm actually
13 thinking broadband-on-the-go may be the solution
14 to some of the problem we're talking about.

15 My time is up. Thank you.

16 MR. HERRIGAN: Thank you very much.

17 Alex Shapiro.

18 MS. SHAPIRO: Thank you, John, and the
19 FCC for inviting me to participate. This is
20 wonderful.

21 My use of the Internet has significantly
22 shaped the evolution of my career and has allowed

1 me to reach audiences around the world as I obtain
2 commissions, sell scores and recordings, all from
3 a fairly isolated outpost of San Juan Island from
4 Washington state.

5 The transformation of communication
6 technologies has been enormously empowering to
7 many artists and small business people like
8 myself. No longer are gatekeepers, like record
9 labels, publishing companies, commercial radio,
10 and big box retail stores, solely responsible for
11 how music and other forms of art are accessed and
12 distributed. In today's technology-enabled world,
13 artists themselves are free to connect with
14 audiences, patrons, and peers from around the
15 world in an unprecedented way. Thanks to my
16 presence on social networking sites, blogs, many
17 websites, I do business every week in several
18 countries at once, several continents.

19 From recordings and collaborations in
20 India, Australia, Germany, Bulgaria, to a
21 commission from the U.S. Army Concert Wind Band
22 here in Virginia, clients who may never have known

1 about me before hear excerpts of my music on the
2 web and contact me out of the blue. One didn't
3 formerly expect to see commanders and majors
4 trolling for composers on MySpace, but apparently
5 things have changed.

6 All of this online interaction presents
7 an amazing opportunity for creators. That is,
8 provided that they have sufficient access. It's
9 been said that 80 percent of success is just
10 showing up, but many Americans aren't able to show
11 up at all due to a lack of quality, competitive
12 broadband in their communities. On my own street
13 on San Juan Island, I can't even get cable TV or
14 satellite because of the trees and connection
15 problems. I feel lucky to have any degree of
16 Internet access at all. What makes so many like
17 me who live in rural areas -- what we all need is
18 higher Internet speeds and more connectivity. The
19 problem is not just for content creators, but for
20 anyone who depends on the web as a significant
21 means by which to do business. No one should be
22 prevented from using what I deem to be the most

1 significant communications technology since the
2 printing press.

3 Unreliable connectivity is also a
4 problem for consumers. You can't run a successful
5 digital storefront if customers can't get to your
6 shop. Even in more urban areas people often have
7 no real choice for broadband providers, and what's
8 available too often is overpriced and subpar,
9 particularly compared to international standards.

10 In addition to affordability and access,
11 speed is crucial to making the online experience
12 more successful. The nature of music and video
13 files is that they require a lot of bandwidth to
14 smoothly stream and download. And it's not a
15 stretch to say that America's global
16 competitiveness is tied to the quality of our
17 broadband service.

18 We must expand broadband connectivity so
19 more creators and consumers of culture outside of
20 cities can participate in this exchange of
21 creativity and capital. Additionally, there are
22 economic benefits to living in rural areas. They

1 are almost less expensive than cities. I lived in
2 Los Angeles for 24 years before moving up to
3 Friday Harbor, and I can tell you it now costs me
4 half as much to live as much. For many artists,
5 this is a significant bonus and can help to make
6 them more self-sufficient.

7 The Internet is Ground Zero for
8 innovation and entrepreneurship. Currently, an
9 artist like myself is able to compete on a more or
10 less equal footing technologically with the
11 biggest content providers on the planet. This is
12 just amazing. It really is. This is incredibly
13 important for those of us working in genres like
14 contemporary concert music, classical music, jazz,
15 blue grass or other cultural forms that are
16 considered outside of the popular mainstream, both
17 in style, and, too often, in income generation.

18 In our highly consolidated (off mike) we
19 consistently hear about broadcast media, like
20 terrestrial radio, dropping programming.
21 Classical radio stations are becoming more and
22 more scarce, even in the biggest cities. In the

1 absence of radio exposure, artists like myself
2 depend on the Internet to reach audiences and
3 connect with others who help promote American art
4 and culture. Many industries that existed before
5 the Internet came along are now facing dramatic
6 changes due to longstanding business models. I
7 respect and understand the concerns of those in
8 the mainstream content community about
9 monetization and the protection of intellectual
10 property rights.

11 As the owner of many copyrights I share
12 their concerns, yet digital networks also present
13 incredible opportunity, which I believe should be
14 fostered and encouraged. Are there unsolved
15 questions about how to implement sustainable
16 structures for compensation? Absolutely. We're
17 dealing with two separate issues: The achievement
18 of a powerful tool -- the Internet -- and the need
19 to devise ways for creators and copyright owners
20 to be paid, regardless of the delivery format of
21 their content.

22 But we can't turn our backs on

1 potentially awarding innovations to protect
2 yesterdays' business models, especially when
3 paying customers are migrating to online
4 platforms. We should instead be thinking about
5 how to build even more monetizable structures for
6 lawful acquisition, whether it's via cloud-based
7 access or value-added downloads.

8 From mobile to desktop, access is
9 crucial to the establishment of a legitimate
10 digital music marketplace where listeners can find
11 what they want easily and creators are
12 compensated.

13 I strongly believe that other creators
14 should have the same opportunity I've had to touch
15 people around the world with their music or with
16 whatever expressive medium they prefer. I'm very
17 glad to know the FCC is taking steps to determine
18 how best to achieve competition and quality in the
19 broadband marketplace. And as one creator who is
20 dependent on the technology, I thank you.

21 MR. HERRIGAN: Thank you. Thanks very
22 much. Charles Slocum from the Writers Guild of

1 America.

2 Charles?

3 MR. SLOCUM: It's a great honor to be
4 here today. Thank you. I appreciate the FCC
5 holding these workshops, exploring the ways that
6 the vitality and creativity of an open Internet
7 can be preserved and yet the threat of piracy on
8 the Internet can be addressed.

9 I'm Charles Slocum. I'm the assistant
10 executive director of the Writers Guild of
11 America, West. The WGA is a labor union
12 representing 8,000 writers of motion pictures,
13 television, radio, and Internet programming,
14 including entertainment, news, and documentaries.

15 Piracy of online content is a problem.
16 Shoplifting a DVD is universally unacceptable, and
17 yet piracy online is thought trivial often. And
18 that has to change. We applaud the work of the
19 Copyright Alliance and the MPA and our other
20 colleagues in protecting copyrighted works which
21 often are written by our members. Indeed, our
22 members benefit from deferred payments when

1 viewers revisit favorite programs. These payments
2 are the lifeblood of individual writers facing the
3 fluctuations and uncertainties of the
4 entertainment industry. And on the Internet,
5 piracy threatens these payments.

6 But we differ a little bit with the MPA
7 and others on the exact solution to digital
8 piracy. Content is why the Internet matters. The
9 open and free flow of content is the aspect of the
10 Internet that must be preserved. Piracy threatens
11 the availability and viability of that content.
12 However, to meet that threat with a solution that
13 itself threatens the free flow of content is to
14 prescribe a medicine worse than the illness. The
15 FCC should create careful and clear rules to allow
16 ISPs to police piracy, but with techniques that do
17 not infringe openness, do not create new barriers
18 to entry, and do not disadvantage independent
19 producers as they compete for viewers with
20 billion-dollar conglomerates.

21 The demise of the financial interest and
22 syndication rules led to an unprecedented and

1 regrettable consolidation of our nation's media
2 outlets, but the Internet offers to open up
3 distribution. A corporate conglomerate is no
4 longer a necessary gatekeeper. Net neutrality is
5 simply fencing for the Internet.

6 Already Writers Guild members have taken
7 to the Internet to distribute topnotch independent
8 content to consumers. For example, WGA member
9 Joss Whedon created a series called Dr. Horrible.
10 This program went viral and Joss controlled the
11 project from start to finish. That's vastly
12 different from his experience on Buffy the Vampire
13 Slayer and other programs that he's created with
14 entertainment conglomerates. Dr. Horrible went
15 virable -- went viral because the Dr. Horrible
16 website was available, unimpeded, to any viewer
17 who sought it out. It also appears that Dr.
18 Horrible faced a manageable amount of piracy.

19 A basic step the FCC should take in
20 order to address piracy is to conduct a study of
21 the extent of pirated content online. The MPA
22 claims 50 to 80 percent of Internet content is

1 illegal. Bernstein Research on Wall Street
2 contends that's an urban legend. The FCC should
3 bring concrete data to this policy process with
4 its own studies.

5 We appreciate and share the sentiment of
6 Chairman Genachowski that Net neutrality and
7 copyright protection are not mutually exclusive.
8 Internet freedom should not become a pirate's
9 holiday, but neither should anti-piracy techniques
10 frustrate legal distribution and access to
11 content. Even well-intentioned attempts to root
12 out piracy may have the unintended consequence of
13 prioritizing certain web traffic at the expense of
14 other traffic. Deep-pocketed content owners will
15 seek to buy a fast lane through piracy policing
16 software. Independent providers who can't afford
17 the same preclearance would be disadvantaged.
18 Consumers watching online video move to the next
19 option in seconds if the video does not start
20 quickly, play continuously, and have the expected
21 video quality. All content providers must have a
22 level playing field in getting to that consumer.

1 Lastly, the Commission should require
2 ISPs to disclose their network management
3 practices. A user- friendly, plain English
4 clearinghouse for consumers to discover the
5 techniques their ISPs are using to manage traffic
6 would create transparency and empower the consumer
7 to make an informed choice of Internet provider.
8 Preserving the openness of the Internet while
9 protecting the works of creative artists can be
10 done with better data, clear rules, and
11 transparency on the part of ISPs.

12 Thank you.

13 MR. HERRIGAN: Thank you very much.
14 Last, but not least, Gigi Sohn.

15 MS. SOHN: Thanks, John. Thanks for
16 inviting me. It's great to see all my friends out
17 here. I know we're all friends out here in the
18 content industry and elsewhere. So, good morning
19 to all of you.

20 When the Commission considers what role
21 content plays in the broadband ecosystem, it
22 really has to keep in mind that content doesn't

1 just mean Hollywood's content. I think several
2 other people here have made that point.

3 Much of the content that drives
4 broadband adoption and consumption is
5 user-generated and uses copyrighted content for
6 purposes of parody, criticism, commentary, and
7 other lawful uses. So, the Commission really has
8 to be careful and ensure that any measures to
9 protect content online not obstruct the free flow
10 of information and not violate the privacy of end
11 users.

12 Some in the entertainment industry would
13 like to see the Commission either require or
14 permit automatic copyright filtering or so-called
15 graduated response -- what most people call three
16 strikes -- which allows an ISP to kick off a
17 subscriber after three allegations of copyright
18 infringement.

19 It's kind of interesting. I haven't
20 heard from my content industry friends the term
21 "filtering," and a number of people buttonholed me
22 beforehand and said, well, we're not talking about

1 filtering. We're not talking about filtering.

2 My response to that is look at the
3 record in the broadband inquiry that the FCC
4 started a number of years ago and also this
5 National Broadband Plan. There's a lot of talk
6 about filtering, a lot of talk about graduated
7 response. So, if people want to run away from it
8 now, great. But it's on the record.

9 Now, before the Commission considers
10 going down the road to graduated response and
11 filtering, it has to ask itself four questions.
12 First is where's the data? I really like what
13 Charles had to say. I'm really delighted that
14 Chairman Genachowski has announced that this FCC
15 is going to be data-driven. We know that hasn't
16 always been the case in the past. But I must say,
17 on the other hand, U.S. copyright policy tends to
18 be faith-based and not data-driven. And while
19 nobody doubts that the Internet -- that
20 individuals use the Internet for infringement --
21 and that is problematic; there's no doubt about
22 that -- the industry's data on the extent of

1 illegal activity and the actual harm to the
2 industry is suspect at best.

3 Now, Dan's going to beat me up, but we
4 have to recall the infamous LEK study which
5 claimed that 44 percent of all traffic on college
6 ISPs was infringing. Dan and the MPA were forced
7 to admit that the actual number was only 15
8 percent, and Educar, which represents higher
9 education, claimed it was just 3 percent. Content
10 industry studies assume that every illegally
11 downloaded song or its movie equivalent is a lost
12 sale. I mean, that's a very impressive charge.
13 But how much money did Star Trek make? Do we
14 really know that every single one of those illegal
15 downloads was a lost sale, that people didn't see
16 the movie and say, hey, I've really got to go see
17 this movie in the theatres? We need data. We
18 don't have that data.

19 To the contrary, there have been
20 independent studies indicating that users of P2P
21 networks buy more music than those that do not.
22 So I think it's time to get away from faith-based

1 policymaking and more into data-driven
2 policymaking.

3 Second question. What are the
4 unintended consequences of copyright filtering?
5 Copyright filtering is a blunt instrument. My
6 friends in the content industry who I met with
7 recently even admitted that to me. It cannot tell
8 a lawful use of copyrighted material from an
9 unlawful one. While some in the content industry
10 claim that these filters are 98 percent accurate,
11 again, no empirical basis for that -- that's just,
12 you know, a hand-waving number -- that two percent
13 of legal blocked content could be a time-sensitive
14 civic speech. Ask John McCain, okay, who had his
15 campaign video taken down from YouTube.

16 And there are other unintended
17 consequences of copyright filtering. First, it
18 alters the behavior of data networks, impeding the
19 operation of high latency applications and
20 compromising the privacy of Internet users. This,
21 in turn, will discourage investment in those
22 applications and deter users from fully utilizing

1 their broadband connections.

2 Second, filtering will inevitably lead
3 to an encryption arms race, which will decrease
4 the efficiency and speed of the network.

5 Third, as we saw just a few months ago
6 in Iran, the core technology behind copyright
7 filtering can be used to censor political and
8 other lawful speech, dirty words, violence. I
9 really urge my friends in the content industry to
10 really think about it. Think about what you're
11 asking for. It may do you more harm than good.

12 Third. Third question. Does the
13 Commission have the authority to mandate copyright
14 filters or three strikes?

15 No, it does not. I'm not going to
16 recount Public Knowledge's huge victory in the
17 Broadcast Flag case, although I just did. So any
18 copy protection mandate the FCC could devise here
19 would suffer the same fate. Others ask not for a
20 mandate, but for the FCC to declare that automatic
21 filtering is reasonable network management and,
22 therefore, does not violate the FCC's four

1 broadband principles.

2 Let me be really clear here. Filtering
3 is content management; it is not network
4 management. And to the extent that filters block
5 lawful content, they violate the FCC's four
6 principles.

7 Fourth and final question. Are there
8 other more narrowly tailored ways to limit
9 infringement online? Absolutely. Absolutely.
10 The best solution, in my opinion, is for copyright
11 holders to make their content widely available in
12 a form that allows for flexible use at a fair
13 price. Both Alex and Mike talked about all the
14 business models that are out there.

15 Streaming, I agree with Mike, is
16 absolutely the future. And, you know, there's a
17 lot of success. Online downloads are going up.
18 Streaming is going up. There are some very, very
19 positive signs that when you get your content out
20 there, people actually buy it. I think people do
21 want to buy content. They want it to be good
22 quality. They want it to be a fair price. They

1 want to be able to watch DVDs they download on
2 their television sets, not just their computers.

3 So if you make it available flexibly at
4 a fair price, people will buy it. Withholding
5 content or making it too expensive to obtain or
6 difficult to use in anticipation of perfect
7 protection -- which, by the way, is impossible as
8 most people will admit -- only encourages people
9 to get that content illegally.

10 A second proven method for curbing
11 infringement is when ISPs send warning notices to
12 alleged infringers. My good friend, Preston
13 Padden, made a presentation in February out in the
14 Silicon Flatirons Conference in Colorado and said
15 that 80 percent of the time when people get
16 notices from ISPs saying "I know what you're
17 doing, stop it," they stop it.

18 And the law. The law is still there.
19 The law provides strong remedies. The DMCA, which
20 I usually hate, but sometimes now I like, provides
21 a framework by which an ISP must take down
22 infringing content. And as always, the

1 entertainment industry has the ability to combat
2 unlawful sharing of content by cutting that
3 content off at the source by targeting large-scale
4 infringers, hard good counterfeiters, and others
5 who engage in unlawful activity online.

6 I'll agree -- I'll close by just
7 agreeing with Mike, is that the question is what
8 do you do about the problem of piracy? And the
9 only solutions that I've seen proposed involve
10 very blunt instruments, very widespread
11 technological measures that really, I think, could
12 have a negative impact both on professional and
13 amateur content.

14 So I thank you again and I look forward
15 to everybody's questions.

16 MR. HARRIGAN: Thanks very much. And we
17 do now have about an hour -- a bit more -- for
18 Q&A. And what I'm going to do is take the
19 moderator's prerogative and start off with one and
20 then move down the table with questioners from
21 other agencies. And I remind that the audience,
22 both here and in cyberspace, that you can pose

1 questions that I will pass on to the panelists as
2 well.

3 The one thing I want to start out with
4 is I noted Dan Glickman's statement that the FCC
5 and the Broadband Plan should recommend to
6 Congress that it's okay for solutions to be
7 devised that deal with both security as well as
8 using innovation to deal with some of these
9 copyright infringement issues. And then later on,
10 Mike Carroll said that the law is presently
11 sufficient to address these kinds of issues using
12 both technological solutions as well. So I
13 thought to start us off I might try to (a) get a
14 clear sense of what you mean by the kinds of
15 additional provisions that you may have in mind
16 that go beyond Mike's statement. And maybe Mike
17 could chip in to help resolve as what I saw as a
18 bit of a tension between the two remarks.

19 MR. GLICKMAN: Well, I think part of the
20 issue is that I think there are some who don't
21 trust the movement of technology to try to deal
22 with these problems. I mean, the fact of the

1 matter is that I'm gratified to hear Alex,
2 particularly, and others talk about using these
3 new technologies to get their stuff online. I
4 think that's terrific and nobody wants to stop
5 that. But we also can use new technologies to
6 deal with the problem that is ubiquitous and we
7 shouldn't be afraid of that. And what I don't
8 want to see is the FCC encouraging Congress to not
9 permit these technology developments at all.
10 That's crazy. The technology is moving a thousand
11 different directions at one time, and we ought to
12 be open enough to see if we can develop sensible
13 technologies dealing with some of the problems
14 that have been mentioned over here that can help
15 deal with these problems. We have no idea what
16 these technologies are going to look like in the
17 future.

18 I'd make one other point, too. As a
19 society, as a culture, we've always accepted the
20 fact that there is a difference between lawful and
21 unlawful. And what worries me with the ubiquity
22 of infringed stuff on the web is that we could be

1 opening the door to tolerate a whole vast culture
2 of illegality by people who see this opportunity
3 for good to begin an opportunity for perfidious
4 action by which creators are not compensated for
5 their work.

6 So, we shouldn't be afraid of exploring
7 these new technologies. And I'm not going to deny
8 that some of them may -- you know, you take the
9 issue of filtering which you raised. Okay. I
10 don't know what filtering could look like in the
11 future with more sophisticated ways to target it
12 better so that things in which Alex and others
13 would submit on the Internet wouldn't be covered
14 by it, but let's not stop the development of the
15 potential to deal with vast amounts of illegal
16 content from going on the Internet. And what
17 strikes me is that the attitude that technology
18 can improve in terms of use of the Internet, but
19 that technology can't improve in terms of
20 protection of the Internet, that seems to be a
21 back way of looking at the issue.

22 MS. SOHN: Hey, John, I hope that my

1 comments are not interpreted to mean that I think
2 the FCC should somehow prohibit the development of
3 technological protection measures. Absolutely
4 not. I'm just concerned -- I'm more concerned
5 with a mandate that says you must use technology
6 or that permits the kind of technology that is a
7 blunt instrument that prohibits both legal and
8 illegal content. This is where, you know, Dan,
9 you and I and Pat and I -- Pat and I have had this
10 conversation -- we agree that, you know, there's
11 no place for unlawful content and Internet
12 neutrality. Okay? That's not my concern.

13 My concern is that when you use a blunt
14 instrument, then you block the legal stuff. And
15 some of that legal stuff -- I know that your stuff
16 is really important, no doubt, but some of that
17 legal stuff that's being blocked is critically
18 important and time-sensitive, as well.

19 MR. CARROLL: And if I can just jump in.
20 I think Dan is -- which technological innovation
21 are we talking about, right? The DMCA
22 contemplates -- content owners went to Congress

1 saying we want to develop and innovate new
2 technologies that will protect our content. And
3 those technologies have largely failed. Right?
4 The Content Scrambling System does not adequately
5 protect your members' content.

6 And so the question now -- and nobody is
7 arguing that you can't keep spending money in that
8 arms race -- but the policy question is should you
9 now ask network providers, broadband providers, to
10 in some way bake in technologic technology there?
11 And there "permit the technology," I think, is a
12 slippery term because these technologies depend on
13 standards. And the standards are measuring zeros
14 and ones, and those standards are blunt
15 instruments, as Gigi said. And so the concern is
16 having lost the digital arms race on the file
17 level around each individual file, the move seems
18 to be to bake this technology into the network,
19 and that can have huge collateral consequences for
20 a range of other content providers.

21 And of course, we're only talking about
22 one segment of broadband use at this panel. So

1 the concern is to solve this one problem because
2 the digital arms race has failed at the file level
3 can change the behavior of the entire network for
4 all the rest of the users.

5 MR. GLICKMAN: I just want to make sure
6 you understand to fight piracy is -- requires a
7 holistic comprehensive approach from education to
8 enforcement, to getting at the camcord, which is
9 the movie theatres where most of this piracy
10 begins. It's a comprehensive amount of things,
11 but we're dealing with technological issues now.
12 The Internet is a technological advance of
13 enormous proportions in the past and it would be
14 crazy not to look at technological solutions to
15 keep unlawful material off the Internet.

16 MR. WEISER: I'm going to follow
17 quickly. First, both Mike and Dan. Dan, do you
18 think the Content Scrambling System has failed?
19 Would -- do you agree to that?

20 MR. GLICKMAN: I don't agree with it,
21 but my technological guru here might want to
22 comment. Steve?

1 MR. WEISER: And also, maybe before
2 Steve goes, Mike, what was your basis for saying
3 that, that the CSS Center has failed? Because
4 there are a lot of people today who don't know how
5 to rip DVDs and aren't ripping them. So I'm not
6 sure when you say "failed" what you're referring
7 to.

8 MS. SOHN: Of course it's illegal to
9 rip.

10 MR. CARROLL: Well, the behavior that's
11 being complained about. Right? That these movies
12 are all on the Internet. So the Content
13 Scrambling System was the technological protection
14 measure that was supposed to stop that, right?
15 But that's only --

16 MR. GLICKMAN: That's not what -- what
17 Dan is saying is people are going to movie
18 theatres before it even gets to DVD.

19 MR. CARROLL: That's one source of the
20 movie. That's one source of the movies. Right?
21 But it's also once it's in the wild, once it's
22 been -- once somebody has run DCSS, now you have

1 an open file. You put that up on a peer- to-peer
2 network. Right? So I understand the reason that
3 we're getting the camcorders is that that's just
4 faster. Right? You have -- the CSS fails if the
5 content hasn't been made available until it gets
6 to DVD. But assume for a minute you got rid of
7 all the camcorders in the world, would you not
8 have these movies on the Internet? Of course you
9 would. Somebody would use DCSS, rip the content,
10 and put it up on the peer-to-peer, and then we'd
11 be talking about that. So it's failed in that
12 way.

13 MR. HERRIGAN: If Steve could just
14 stand. Actually, a microphone would be helpful.
15 So come up. We want to make sure people in
16 cyberspace can hear the comment.

17 MR. WEINSTEIN: Yeah, I mean, DCSS has
18 been -- there are products that allow you to rip
19 DVDs, but two things. One, to reiterate -- one,
20 this is four months -- three months before any DVD
21 is out in the market of the cams.

22 So the cams is the first source of

1 material. In fact, you don't see any DVDs or
2 screeners in that list up there on that chart on
3 Star Trek.

4 The second thing is CSS is a friction.
5 Is there one case where you can get one copy out?
6 You'll always be able to do that. The question is
7 are you preventing the flow of illegal content
8 even in, you know, in ripping DVDs? And you are.
9 CSS protects it at some level. All right. I
10 mean, you have to go out and buy certain products.
11 And, in fact, in the Blu-ray world there's only
12 like one product in the world, maybe two that
13 actually can rip those Blu-ray disks.

14 So, yes, if you're looking for the
15 source of piracy, there are lots of ways to get
16 it. If you're looking for an individual consumer,
17 how they get content, one way they don't bother to
18 get content a lot anymore is rip DVDs. It turns
19 out to be easier to get it on the broadband
20 through streaming or downloading or peer-to-peer.

21 MR. ROSS: If I could follow up on this
22 whole notion, because what we're hearing basically

1 is technologies aren't perfect that target piracy,
2 so let's move on from that. Let's encourage
3 business models. We heard a lot of talk about
4 streaming maybe being the magic bullet.

5 I mentioned Juliette Tworsey and Rowena
6 Cherry and Leif Skoogfors. I have something in
7 common with them. Not an unusual name; I wish I
8 did. But they recognize -- I'll steal "holistic"
9 as a word. The creative community is holistic.
10 We've heard a lot about music. We've heard a lot
11 about streaming. Juliette streams her music now,
12 but that's not a revenue stream for her. She's
13 doing that promotionally. I'm not sure who would
14 stream Rowena Cherry's novel and I'm not sure who
15 would stream Leif Skoogfors' photographs.

16 So, we need to think bigger than the
17 narrow pockets that we think, and we need to think
18 about all creators and all ways to enforce, and we
19 need to keep our options open.

20 MR. HERRIGAN: Do we have other
21 questions? By the way, Patrick, I think it's okay
22 to steal words from an IP perspective.

1 MR. ROSS: Thank you. Yeah, I pirated a
2 friend of mine, so, you know.

3 MR. HERRIGAN: Kris.

4 MS. MONTEITH: Sure. I was just
5 interested from Alex, if you could talk a little
6 bit about how you protect your works online and if
7 you're aware of any instances where your works
8 have been subject to piracy.

9 MS. SHAPIRO: Sure. Basically, my first
10 strategy always is since I post a great deal of my
11 work -- that's how I do my business -- I only post
12 excerpts of my pieces. That's very key. Concert
13 music, my genre, is a long form genre for the most
14 part. And even if it's a short solo piano piece
15 for five minutes, I'm still only going to give you
16 about two minutes of it to listen to. Presumably
17 you'll want to hear how it ends and you'll buy it.
18 So, what I've noticed online because, of course, I
19 track with Google alerts, you know, every upload,
20 download, whatever is going on -- whether it's
21 associated with my name or my music -- what I
22 notice is, yes, from around the world, a lot in

1 China, a lot of these uploading -- I mean,
2 downloading -- free downloading sites carry my
3 stuff. But I think people are really disappointed
4 when they open the file and listen to it because
5 the music trails out just when it's getting good.
6 So, that's how I've been dealing with it and
7 that's how I encourage my peers to deal with it.
8 I say to my colleagues don't -- if you can avoid
9 it, don't put up the entire file.

10 Now, that does not address when
11 commercial CDs, of which I'm on, what, over 20 of
12 them -- pieces of mine -- it does not address when
13 people rip those CDs. So I have no control over
14 that, unfortunately. But creators who are active
15 on the Net certainly can control what they choose
16 to put up there, just like with photographs,
17 anything else that represents you.

18 MR. HARRIGAN: Phil?

19 MR. WEISER: So I have a few different
20 questions. Let me share off the one that Gigi
21 kind of talked about with respect to Preston's
22 talk. And I've learned a lot from Preston in this

1 topic.

2 There is a powerful shaming norm, when
3 people get that notice and they're ashamed. And
4 so one question here is have you thought about and
5 what are strategies to develop that sense of
6 shaming, which is a less blunt instrument than
7 some of the ones that people were cautioning
8 against, in particular college campuses in their
9 educative function. You know, I come from one
10 (inaudible). Are there things that can and should
11 be done there that can develop a greater sense of
12 shame and respect for creative works that are
13 assured of some of the things that, you know, Gigi
14 mentioned? I don't know if, Gigi, you want to
15 start first on this because you averted to it, but
16 that 80 percent figure when people know, you know
17 -- because I think the thing that people often say
18 is in the real space, you know, people would feel
19 ashamed to, like, go into a store and walk out
20 with, like, a soda. They just kind of know
21 they're not supposed to do that. But if they
22 think no one is watching the Internet and they

1 think it's kind of okay, then the norms are more
2 tolerant.

3 Any thoughts on that front?

4 MS. SOHN: Well, I just have to say I
5 remember when you and I had lunch at Sam and
6 Harry's. I'm pointing to Preston. This was like
7 seven years ago and he said, you know, if people
8 know that somebody knows what they're doing is
9 wrong, they will stop it. And that's -- I mean,
10 and I do encourage ISPs to cooperate and I have
11 now for about seven or eight years with the
12 content providers. I don't think there should be
13 any mandate that they should do it, but I do think
14 they have some responsibilities and that they
15 should cooperate with the content providers to
16 send these warning notices.

17 Now, you know, if we want to start
18 talking about kicking them off the network, that's
19 an entirely different story, but I think, to me,
20 80 percent is a pretty good rate.

21 Now, let's get to the education part. I
22 think education is critically important, but it

1 has to be a balanced education. And,
2 unfortunately, sometimes what I've seen from some
3 of the content industries is you cannot, you
4 cannot, you cannot, you cannot, you
5 cannot. All right? Kathy mentioned the
6 Constitution and the, you know, Article 1, Section
7 7, which says Congress may -- not must -- you
8 know, protect works of the mind. Okay? But
9 Congress there said "to promote the progress of
10 science and useful arts," and that means there's a
11 balance. All right? So copyright is not just you
12 cannot, you cannot, you cannot, you cannot. There
13 are some cases where you can, you can, you can,
14 without asking permission of the copyright holder.

15 So, I think any education has to balance
16 those rights. And if it does not, people are just
17 going to say, pff, you know, don't tell me I
18 cannot. Tell me what I can do as well. So I'm
19 all for education. I believe that it's either the
20 American Library Association and/or the Electronic
21 Frontier Foundation have their own education. I
22 encourage all copyright holders to do the same. I

1 think it's critically important.

2 And I do think shaming is meaningful and
3 pointing the finger and saying I know what you're
4 doing is wrong, but I also think equally as
5 important is getting the content out there. And I
6 saw, you know, Mr. Huntsberry's last slide which,
7 you know, showed all the ways it's getting out
8 there, but it's got to get out there at a price
9 that people want to pay. Okay?

10 So, the first -- you know, I have to say
11 I haven't done recent research, so shame on me for
12 that, but, you know, the first DVD downloads that
13 were put out there -- I believe by Cinema Now and
14 Movie Link -- it was like \$24.99 to download a DVD
15 on your hard drive, which you could not watch over
16 your television set and it didn't have any of the
17 extras. That's a business model that's set up to
18 fail. In my opinion, you should be able to watch
19 it over your television set and it should cost
20 less than the hard good because you didn't pay for
21 any packaging and you didn't pay for any
22 distribution. So, getting at the right price

1 points and the right flexibility that meets
2 consumers' expectations is going to be critical.
3 But I firmly believe that the average consumer,
4 the average individual, actually wants to pay.
5 They don't want to steal.

6 And by the way, I thought that movie up
7 there looked like crap, so.

8 MR. ROSS: I'd like to get back to your
9 question if I could.

10 You know, I agree with Gigi that
11 education is important. I'm sorry she didn't
12 mention that we've created the Copyright Alliance
13 Education Foundation. It's a 501(c)(3) charitable
14 foundation. We're currently seeking foundation
15 support. I don't know that shame is a primary
16 message of the curricula that we're trying to
17 push. I would say we try to take a positive
18 approach. Gigi says you can't, you can't, you
19 can't. I'm not going to say that that isn't in
20 some of our materials. My philosophy is that we
21 need to say you can, you can, you can't. We need
22 to encourage the Alexes of the world to feel

1 empowered, to recognize what copyright brings. We
2 need to get all of us as consumers to recognize
3 how much we want those creative works to be out
4 there.

5 Gigi mentioned, you know, the incentive
6 -- the progress clause in the Constitution.
7 That's absolutely right. We want to encourage the
8 production of new creative works. We're
9 partnering with the Fairfax County School
10 District. We have one of their executives on our
11 board. We're currently in discussions with other
12 schools. There are tens of thousands that have
13 received our materials. We're getting tremendous
14 feedback, and we're encouraging the educators out
15 there to give us guidance as we revise and renew
16 curricula. And I would invite Gigi and her
17 colleagues to provide some constructive feedback
18 as well.

19 MR. HUNTSBERRY: I'd like to also just
20 add one point on the pricing. I mean, the pricing
21 today of films that you want to download or stream
22 are below \$10. The other thing is regardless of

1 what the pricing is, ultimately no industry can
2 compete with free for theft. I mean, if something
3 is stolen and it's free on the Internet, you just
4 can't compete with it. It doesn't matter what
5 your price point is.

6 MS. SOHN: I'd like to also --

7 MR. CARROLL: Can I just -- on that
8 question -- we've heard this. Can someone explain
9 to me why there are all those iTunes downloads? I
10 mean, because all that music is available on
11 peer-to-peer networks. So why did anybody pay for
12 an iTunes download if it's available for free?

13 MS. SOHN: Why do people pay for bottled
14 water? I mean, again, because you can't carry the
15 water cooler with you. All right? So if it's
16 well-priced, if it's good quality -- I'm sorry,
17 Fred. You know, that movie you showed looked like
18 garbage. I mean, that's not what movie buffs want
19 to see. Okay? They want to see Star Trek in the
20 theatres. So if it's good quality, flexible use,
21 fair price, people will buy it. Will everybody
22 buy it? Will there be people who want to screw

1 the, you know, Hollywood and the recording
2 industry and will download a million times? Yes.
3 Those people stink; they should be thrown in jail.
4 And I actually encourage the content -- I'm weird
5 that way -- I encourage the content industry to go
6 after people like that.

7 But, you know, you can compete with
8 free. It's not going to be perfect. You're still
9 going to have people who steal from you. That's a
10 fact of life. It's a sad fact of life. I think,
11 you know, let's go for, you know, good
12 technological protection measures that don't block
13 lawful use. But, you know, you can compete with
14 free and you are competing with free today.

15 MS. GARMEZY: I'm a little confused.
16 Why are we debating whether our industry knows how
17 to do good business models? We wouldn't be where
18 we were if we weren't dedicated to getting
19 something to the public. The public is us. We
20 are the public. So I get a little confused when
21 the argument becomes you don't have a good
22 business model and that's why people steal.

1 Obviously, we're all --

2 MS. SOHN: I didn't say that.

3 MS. GARMEZY: But that's the
4 implication. The implication is that if somehow
5 our industry doesn't have a business model that it
6 immediately has grasped onto that is going to
7 completely work, then it's our fault that people
8 are stealing?

9 MR. GLICKMAN: Can I just, Phil, go back
10 to your question?

11 MR. WEISER: Please.

12 MR. GLICKMAN: First of all, in some
13 sense this is a generational issue because younger
14 people are much more comfortable with this new
15 technology and they're using it quite
16 imaginatively.

17 But last year -- actually this past
18 year, we worked with Congress to pass amendments
19 to the Higher Education Act, which basically
20 requires universities in this country to deal with
21 this issue by setting up technologies which try to
22 work with students both positively as well as from

1 an enforcement mechanism to deal with the issue of
2 online -- or intranet in some cases --
3 infringement issues. And so the Congress has gone
4 on record saying this is a problem. And a lot of
5 the problem starts at the kid level.

6 And so at the university level we have
7 many, dozens of universities in this country who
8 are now working both positively to educate
9 positively, to provide legitimate hassle-free,
10 reasonably priced Internet services at the
11 university level, but also to have enforcement
12 mechanisms if people engage in online behavior.
13 And some of that is terminating service because if
14 there's total anonymity -- total anonymity for
15 wrongdoers, then they will continue to do wrong.
16 And so that's why the argument talking about
17 letting people know that they are infringing and
18 knowing that there are consequences for that is
19 all part of that strategy. But those
20 technological measures are now written into the
21 Higher Education Act. We're also working at the K
22 thru 12 level as well because a big part of this

1 is people under the age of 25 have grown up with a
2 new medium which is wonderful, is comfortable, but
3 it's also very, very easy to steal.

4 MR. CARROLL: Can I jump in on that?

5 MR. HARRIGAN: Sure.

6 MR. CARROLL: Because I want to answer
7 Kathy's question. It's exactly the right
8 question. Right? But those are business models
9 that were built around copyright law. Right?
10 Copyright law is public policy and those were
11 business models that depended on one understanding
12 of the balance of control that that public policy
13 gave between creators and users.

14 Now, what we hear is that that balance
15 provided by copyright law is insufficient to
16 sustain existing business models, and the request
17 is for additional public policy assistance for
18 those business models. And that's the debate, is
19 whether that's a legitimate public policy given
20 that it may have collateral consequences for lots
21 of other people. So then the question of revenue
22 streams and user behavior becomes in play because

1 we're asking is it good public policy to add
2 additional control on the content side in order to
3 sustain business models at the expense of
4 potential other creators and other users. And I
5 think that's where we are.

6 But I just want to clarify that point
7 because it's -- no one is telling you how to run
8 your business, but when you come to the government
9 and ask for additional assistance in running your
10 business, then we all have a stake in that
11 conversation.

12 MS. SHAPIRO: I want to ask Frederick, I
13 think copyright protection can often be headed off
14 at the pass by beating them to the punch. If
15 Paramount were to release on the very same day of
16 the theatre release, if you were to release a
17 high-quality DVD for a streaming download
18 available for \$3.00 or whatever -- you name the
19 price -- wouldn't that put a major dent into
20 what's going on with these silly looking camcorder
21 releases, these streams? I think the public does
22 want -- as Gigi said, they want quality. There is

1 no comparison to watching Star Trek, you know,
2 like that to watching it in a movie theatre. And
3 then the middle ground is watching it on your
4 nice, big LCD TV in good quality, you know, on the
5 quality that you get from your Netflix video from
6 which you would benefit. Why can't they be
7 released at the same time so that you can jump in
8 on that?

9 MR. HUNTSBERRY: Well, again, look, at
10 the end of the day -- it's a fair question, Alex.
11 We look at windowing all the time. And, in fact,
12 if you look at the windows over the last few
13 years, they've already changed dramatically. In
14 fact, you know, today in many cases you can get
15 the film day and date, VOD, and download with the
16 DVD. In fact, some of the studios, including us,
17 have made announcements about releasing already
18 prior to the DVD in an exclusive rental window.
19 Now, that's for DVD, but the point I'm making is
20 that looking at windows and now the change is
21 being evaluated all the time.

22 The point, though, you know, and to your

1 point, even if we moved it to day and date, the
2 problem we have is that, you know, once the film
3 is out it will get pirated. And if we do not
4 control piracy, we cannot compete against it, even
5 if we're going out day and date with the DVD
6 because it will be for free. A consumer will
7 always go for something that is absolutely for
8 free if that's the alternative.

9 MS. SHAPIRO: But there is a big quality
10 difference.

11 MR. HUNTSBERRY: See, you have to --
12 yeah, you're right. But what you have to realize
13 is if we go day and date with the DVD, then to the
14 point also that Michael made earlier, somebody
15 will rip the DVD that day and you will have a
16 perfect copy of that DVD image out that same day
17 and we cannot compete against that.

18 MR. HERRIGAN: Susan DeSanti, please.

19 MS. DeSANTI: Yes. I have a follow-up
20 question on the education point and the data
21 point.

22 I think it's very helpful to talk about,

1 you know, exactly what is the data on the piracy
2 that exists. What data are your industries going
3 about collecting about consumer views on different
4 technological approaches? And what would they
5 consider to be acceptable? What kinds of consumer
6 surveys are you doing to try to determine where
7 any of these technologies might work in terms of
8 consumer perceptions?

9 MR. GLICKMAN: First of all, there is
10 good data on losses for piracy. And contrary to
11 what Gigi says, there's a 2007 study by the
12 Institute for Policy Innovation that concluded
13 that there would be about 150,000 additional new
14 jobs created with a significant reduction in
15 digital and traditional hard goods piracy,
16 additional tax revenues generated; a 2005 study
17 that talked about losses in the multibillion
18 dollars in categories. And we'll get you all of
19 that particular information. All the studios do
20 consumer focus groups and testing on what
21 consumers would like to do.

22 The best focus groups are, in fact,

1 consumer purchases all the time. And the
2 consumers are speaking out that they want
3 reasonably priced, hassle free methods of getting
4 the material. I agree with you there.

5 They also, I think, understand that they
6 have to pay for this as well. And so if we can
7 combine the strategies that we're talking about
8 today, but underlying that strategy is a
9 recognition that it is not going to be for free
10 and that there are going to be technological
11 solutions to prevent piracy from occurring, our
12 judgment is that consumers will accept that.

13 MS. SOHN: Susan, if I could just
14 respond. I mean, Dan talked about the 2007 study
15 talked about hard goods piracy.

16 MR. GLICKMAN: No, I said Internet and
17 hard goods, both.

18 MS. SOHN: There is no good -- okay,
19 Dan. But you don't have a study that can really
20 show what losses -- what the actual losses are due
21 to Internet piracy. What you do is you say that
22 every download is equal to a lost sale and that's

1 absolutely false.

2 MR. GLICKMAN: No. No.

3 MS. SOHN: That's absolutely false. You
4 don't have any good -- and frankly, Senator
5 Specter is still waiting for the methodology
6 underlying your LEK study. He asked you for that
7 three years ago. You still haven't given it to
8 him. So let's see the methodology. Let's see
9 losses that are actually attributable to Internet
10 policy and not say, you know, well, we had a
11 billion downloads, therefore, we lost \$20 billion.
12 It's just -- that is not -- I'm not an economist,
13 but an economist could take apart something like
14 that in about five minutes.

15 MS. DeSANTI: I don't want to spark
16 another controversy that has been going on for
17 some time, but I was asking more about the
18 different types of technologies that you are
19 considering using in the future. And Gigi
20 mentioned the example of a product that limited
21 your use. You couldn't use it, you couldn't take
22 it from your computer and play it on your TV. How

1 do you anticipate educating consumers about those
2 different types of technological restrictions that
3 you may be considering and what consumers may or
4 may no find acceptable?

5 MR. GLICKMAN: Well, I repeat these
6 terms: Hassle free, reasonably priced. Almost
7 everything I've seen -- and I've spoken with an
8 awful lot of people who have done focus groups and
9 polling around the country on these issues -- say
10 that consumers will accept reasonable restrictions
11 on the ubiquitous use of a product, particularly
12 if it's piracy- related, if the product is
13 reasonably priced and easy to use.

14 MR. WEISER: And they're disclosed.

15 MR. GLICKMAN: Pardon?

16 MR. WEISER: And disclosed.

17 MR. GLICKMAN: And disclosed.

18 MS. DeSANTI: And disclosed.

19 MR. WEISER: So consumers know about it.

20 I think Susan is saying sometimes consumers may
21 buy something with no awareness. The Sony BMG
22 rootkit was sort of a very blatant example.

1 MR. GLICKMAN: Yeah, and again, Steve
2 may have some ideas about the products that are
3 out there -- that are coming out there to deal
4 with those issues. But they're there. They're
5 coming in large quantities.

6 MR. ROSS: If I could add, the Federal
7 Trade Commission has a good track record in this
8 area. They held a very compelling workshop in
9 Seattle earlier this year.

10 MS. SOHN: Yes.

11 MR. ROSS: I was asked to speak at that.
12 And I think one of the things that emerged there
13 were there were two or three examples where the
14 FTC stepped in. I think in one case they actually
15 proceeded with something. In the other cases it
16 woke people up. But in all cases the problems
17 were solved, but they were isolated. And I think
18 there is a general consensus that emerged that
19 obviously disclosure is important. You want
20 consumers to understand what they get with a
21 certain price point.

22 I think there was some resistance to the

1 notion of trying to come up with some kind of
2 government mandate or disclosure that might lead
3 us down a dangerous road. But it seems to me --
4 I'm very pleased with the Trade Commission's track
5 record here and with their ability to step in if
6 consumers are being harmed.

7 MS. DeSANTI: Well, I certainly agree
8 with that, and I wasn't asking about any
9 standardized approach necessarily. But it seems
10 to me that the potential, at least what I seem to
11 be hearing -- and maybe Steve Weiseman can speak
12 to this -- is that there are potentials for
13 different types of restrictions on how consumers
14 use particular products. And to your education
15 point, there may be some consumer education that
16 needs to go -- needs to happen if that actually is
17 the case so the consumers actually do understand
18 what it is that they're buying when they buy it.

19 MR. WEINSTEIN: Well, I mean, I think in
20 the last couple of years you've seen lots of
21 innovation. I mean, Gigi brought up, you know,
22 the early days of Cinema Now and how much it cost.

1 But, I mean, the last year -- I mean, couple of
2 years, you've seen Hulu, which has the rules, you
3 know, it says streaming. You know, a very
4 straightforward, watch it now. You've seen now
5 coming with Netflix and, you know, you can get a
6 subscription, I mean, which basically says you can
7 watch these movies, you know, on your TV set if
8 you have, you know, like an Xbox or some of the
9 other devices. Amazon. I mean, a bunch of
10 companies have put out products which I think are
11 relatively fairly clear in how they expect you to
12 use it in a digital way in a legal format. I
13 mean, I think, you know -- I don't think people
14 are that confused.

15 You know, you might ask some of these
16 companies who have been offering these movies in
17 all these different formats whether they are
18 getting a lot of pushback, but I think they're
19 not. You've seen adoption of a lot of these
20 things, so, I mean -- so I think it's becoming
21 more straightforward to use it.

22 Unfortunately, as, you know, Frederick

1 pointed out, sometimes the consumer is confused
2 between, you know, whether they've gone to a legal
3 site offering these things versus, you know -- not
4 because -- you know, it's an international
5 problem. Right? I mean, content comes from
6 anywhere and the site looks perfect, and I think
7 consumers can get confused that way. But in terms
8 of companies that we all know, they're offering, I
9 think, fairly clear models when they deliver that
10 content.

11 MS. SOHN: I mean, Susan, I would agree.
12 I think there is a role for the FTC. I mean, I
13 actually -- I would be in favor of mandatory
14 disclosure of DRM and what it does.

15 And the SONY rootkit debacle was a
16 perfect example of why that's necessary. I think
17 a lot of people don't know that you can't rip a
18 DVD to your iPod. All right? So I think that
19 kind of -- I actually think it would actually help
20 content owners because they can say, you know, you
21 can't use DCIS; that's illegal. That violates the
22 DNCA if you use this to put it on your iPod. So I

1 think actually a disclosure requirement would be
2 good on both sides.

3 I also think that, you know, again, a
4 lot of these problems with some of these streaming
5 sites -- they're jurisdictional. Right? They're
6 in Romania. They're in the Ukraine. And that's
7 something that you go to the USTR to help settle.
8 But to the extent that it's a U.S. company, that's
9 fraudulent and that's clearly within your
10 bailiwick to punish or fine companies like that
11 that fraudulently advertise that they're
12 legitimate.

13 MR. HERRIGAN: This goes to a question
14 that came from cyberspace or an element of this
15 discussion which is, as Frederick said, some of
16 those sites that look legit have advertising on
17 them that sort of add to their legitimate look.
18 And the question is if a significant part of the
19 business model of download sites has to do with
20 advertising by large corporations, isn't that
21 where the content providers need to put their
22 efforts by putting pressure on the advertisers?

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1 Do you care to comment on that?

2 MR. HUNTSBERRY: That's absolutely true,
3 John. We -- in fact, we're just in the beginning
4 phases right now of doing our research to
5 understand who the ad agencies are that are
6 actually driving this business model. Whether or
7 not there is a malice intent behind it, I can't
8 tell you that today. So -- but our intent
9 absolutely is to reach out to these ad agencies,
10 to sit down with them, and, of course, also to the
11 advertisers who, you know, I would wager to say
12 are not even aware that their ads are being used
13 on these sites.

14 MR. HERRIGAN: I can channel more
15 questions from the audience. I can entertain more
16 from our questioners.

17 Yes. If you want to come up and use the
18 microphone.

19 MS. YEMISI: Hello. My name is Olu
20 Yemisi and I'd like to address policing trademarks
21 and copyrights. I happen to produce programming
22 with music, dance, as well as film.

1 And my question is why can't the
2 government agencies act as polices to -- act as
3 police to shut down these different sites that are
4 repeat offenders whose sole purpose is to just
5 commit piracy on different people's work?

6 Because I keep hearing about filters and
7 how it will exclude certain people, but will there
8 be a remedy to those people who happen to be
9 independent artists or independent producers, to
10 make sure that they're included? Is there a
11 number to say, oh, I've been excluded; please put
12 me back on because I'm legitimate? Or will we
13 just be floating in the sea of not being able to
14 be accessed on the Internet?

15 I think that's a big issue. And when I
16 got my trademarks and copyrights, I read the area
17 of the website where it said that the government
18 will not police -- you have to police your own
19 intellectual property. And that is something that
20 probably needs to change.

21 MR. HARRIGAN: Do we have any comments
22 to that?

1 MR. ROSS: Kudos to you for that
2 comment. And, you know, I hear this every day.

3 We keep hearing about the large
4 corporations and not wanting them. I mentioned
5 Rowena. I mean, she's a published author with a
6 large publishing house. Does the publishing house
7 have the resources to do the Whac-a-Mole? No, so
8 she's doing it. So policymakers do need to keep
9 in mind that this isn't just about large companies
10 having ability to do things, but that there are
11 individuals, like Alex, who might actually want to
12 go after some of those CD things because maybe her
13 label is not doing it. She should have some kind
14 of option to do that.

15 I am not a technologist. I am not going
16 to sit here and say how this should be done, but
17 I'd like those options to be available for you and
18 for others who, frankly, in this age do have to
19 take it into their own hands.

20 MR. GLICKMAN: The other thing -- if you
21 have -- some of these sites are actually big,
22 massive, profit- generating worldwide sites, and

1 governments, at the prodding of copyright owners,
2 have taken action against sites that are engaged
3 in a rather large scheme to invade and infringe,
4 especially in Europe. But it is something that we
5 work with our own government on as well,
6 especially if they're involved in organized crime
7 or other kinds of criminal syndicate activities.

8 MR. HERRIGAN: Other questions? I can
9 put another issue on the table. The notion -- at
10 least I heard this as a notion of measuring
11 network traffic being a challenge of a
12 recommendation. I think it was Charles Slocum who
13 said that the FCC should try to determine, with
14 better precision than apparently has been done in
15 the past, how much pirated content is really on
16 the Internet. And I wanted to pick up on that to
17 see a little bit more what you meant by that.

18 Dan mentioned surveys. Surveys are
19 useful for a certain purpose. It seems to me that
20 you're getting to the issue of really looking at
21 the network and almost understanding at a network
22 science level what is going on with some of these

1 flows of potentially pirated content. Can you
2 expand on that a little bit and sort of lead us to
3 probably a different topic on the network science
4 and whether that needs to be better understood to
5 help understand these issues a little bit better?

6 MR. SLOCUM: Well, I'm not a
7 technologist either, so I can't go into too much
8 detail about exactly what it would be, what should
9 be measured and exactly where in the technology
10 system it should be measured. But, you know, it's
11 just struck us that we haven't seen any real
12 reliable information about exactly what the extent
13 of the piracy problem is; what the nature of it
14 is. I mean, I'm struck by the fact that I think
15 this chart does not include any U.S. Piracy.

16 SPEAKER: It does.

17 MR. SLOCUM: It does? Okay. So -- at
18 the end it does. So what is the international
19 dimension versus sites that are originating in the
20 U.S.? What's the scope of U.S. Law that could
21 address the piracy issue? Or is the problem
22 outside the U.S. more? So, I mean, those are the

1 issues. I'm not the one to answer the "how."

2 MR. BRACY: Let me jump on that if I
3 could, John. I'm not a scientist either, by any
4 stretch of the imagination. But we do agree very
5 strongly that there are some really important
6 questions that need to be asked right now and,
7 hopefully, we'll get some answers. What we see in
8 the music community is, you know, finally we're at
9 a place where there is this whole range of legal
10 licensed, you know, aboveboard alternatives for
11 how music consumers can access music. And what's
12 particularly exciting about it is that music fans
13 can access it through this variety of tools that
14 were previously unthought. You can listen to
15 radio; you can do digital downloads; (inaudible)
16 subscription; you can do -- you know, basically
17 they're all aboveboard. And this has all happened
18 really in the last, you know, couple of years. I
19 mean, this is a very new development.

20 And so what we're interested in is
21 looking at the interconnection between these new
22 legal licensed alternatives. What we'd like to

1 see in terms of access to competitive broadband
2 markets, more consumers have access to these
3 technologies at a lower price point so they
4 hypothetically have more disposable income to play
5 in the real market.

6 And then I think Patrick's point is very
7 important, is the growing sense of awareness and
8 accountability. You know, particularly for what
9 we see in the music community is we want music
10 fans to understand that this is not about P.Diddy
11 and MTV Cribs; this is about the overwhelming
12 majority. I mean, you know, we talk a lot about
13 the musicians with no class. The idea that if you
14 give a musician the deal where they can have
15 enough income from their work that they can pay a
16 mortgage, have health care for their kids, and get
17 on local radio, they'll take that deal. I mean,
18 this is generally what we're talking about in the
19 music community.

20 So, I think if you look at these
21 questions of what is happening in the illegal
22 marketplace, what is happening with increased

1 access to competitive broadband network, if you
2 have better education and awareness of the choices
3 that consumers need to make as music fans and
4 supporting that music ecosystem, we'll learn some
5 answers then about what the government could or
6 shouldn't do as we move forward.

7 MR. HUNTSBERRY: By the way, just one
8 quick comment on the statistical information. We
9 can actually -- there are services out there that
10 can tell us for every website that houses pirated
11 content, how much of the usage originated from the
12 United States versus Asia-Pacific and other
13 regions of the world. So that data is actually
14 traceable. We can provide that.

15 MR. GLICKMAN: And I don't think it's a
16 bad idea to try to seek additional data on this
17 issue. I don't disagree with that. I think the
18 ISPs probably have a lot of this data internally.
19 And I don't know how much of that they're willing
20 to share or not, but I think that's a reasonable
21 suggestion in this process.

22 I also want to make one other point.

1 The Rand Corporation did a study for us on
2 organized crime, particularly the syndicates,
3 worldwide syndicates, and how they impact this
4 issue and how they're involved in the top sites of
5 some of these large criminal conspiracies. And
6 they have a bunch of case studies there. We'll
7 get that to you because what it shows is the
8 amount of money being made in this business of
9 both Internet and hard goods piracy is greater
10 than it is in other traditional organized criminal
11 activities. And this is a worldwide phenomena.

12 MR. HERRIGAN: Do you have a question?

13 No? Another question from the audience. What
14 limitations or implications do copy protection
15 technical measures pose for digital devices?

16 MR. WEISER: Maybe I can rephrase or add
17 a little bit to it. This is building on a
18 question before, and one of the concerns is to
19 remix and reuse content in different sorts of
20 ways. There's concerns that in the digital world
21 there'll be a greater degree of content being
22 firmly locked down without an ability to exercise

1 creativity that is so promising in the digital
2 world. And I guess the question is how can that
3 creativity be fostered, understood by consumers?

4 And is there a risk that we're going to
5 miss out on that opportunity?

6 MR. HERRIGAN: And just to build back on
7 this a little bit, I think the question also goes
8 to could it somehow stifle innovation at the
9 device level or have unintended consequences on
10 innovation at the device level? So, maybe these
11 two things.

12 MR. WEISER: The trick is the type of
13 content people that you're here -- this may not
14 fit as easily in your kind of experience. I mean,
15 I think people talk about, for example, you know,
16 newspapers or books, you know, that if you can't
17 take from digital to digital you may lose
18 something.

19 The case that involved DCSS was one
20 where essentially the argument was -- in that case
21 it was a DVD. Could you get some scene from
22 Schindler's List that could be done, you know, in

1 a class project or something? How does that
2 opportunity get developed in a way that's
3 consistent with your concerns? Are there people
4 thinking about it, et cetera?

5 MR. GLICKMAN: Give Steve a mike.

6 MR. WEINSTEIN: It's a good point. I
7 mean, I think that the use of, you know, there
8 are, you know, some services that the industry is
9 offering, you know. I mean, Paramount had some
10 clips that they put up on Facebook to allow people
11 to mix and match with them, and I think there are
12 other cases of, you know, various people. I mean,
13 we're very much at the infancy, I mean, of this.
14 I mean -- and so I don't think -- you know, we're
15 not arguing that how can you get access to the
16 content because I think we'll all admit that you
17 basically can get the digital content if you want
18 it. I mean, I think as we go forward it's, you
19 know, how you end up using them. And I don't
20 think any of these technologies that we're looking
21 at are going to clamp that down and close that off
22 as an option to being used.

1 I mean, you know, Gigi brought up the
2 point of, you know, are we putting blunt
3 instruments -- are we trying to put blunt
4 instruments in place? And, I mean, we're in the
5 early days and some of these instruments, you
6 know, have in the past maybe been blunter than we
7 had hoped. But if you look at it, you know, there
8 are a lot of UGC sites that are constantly looking
9 at all the content that's going up there.

10 And what they've done is you don't use
11 the blunt instrument; you kind of do it like a
12 vague -- you know, you say vaguely -- say, you
13 know what? This is the full movie. This is, you
14 know -- and this shouldn't be there. I mean, I
15 think we're down on the edges when we're saying is
16 it 20 seconds or a minute or 5 minutes, 10
17 minutes? People, that's not what we're talking
18 about. We're trying to stop a large system. And
19 I think, you know, the digital content will be out
20 there. I mean, I think we're just trying to
21 change behavior a little bit through education,
22 inform people of what they're doing, and change it

1 a little bit, so.

2 MR. WEISER: (Inaudible) when you talk
3 about the user-generated content principles that I
4 know some have, you know, put out there as giving
5 guidance, both EFF and some group of companies.

6 MR. PADDEN: Yeah, last year several of
7 the entertainment companies together with several
8 of the user-generated content sites -- Microsoft
9 included -- developed -- Troy, come up here --
10 developed a set of -- agreed on a set of
11 principles for trying to deal with unlawful
12 content on user-generated content sites. And my
13 colleague, Mr. Dow, can speak to exactly what
14 those were.

15 MR. DOW: Sure. And for any who are
16 interested in seeing them, they're available at
17 UGCprinciples.com.

18 And as Preston said, it was a group of
19 leading content providers, leading user-generated
20 content site operators who came together and
21 figured out a set of principles to live by to both
22 try and promote the legitimate use and growth of

1 user-generated content services, while at the same
2 time trying to actually prevent piracy on those
3 sites. And it involved the use of technological
4 solutions best available and effective technology
5 to actually block infringing uploads onto those
6 sites in a way that accommodates fair use,
7 respects user privacy, and are being implemented
8 today in ways that seem to be pro-consumer, pro-
9 creator, and seem to be working very well.

10 MS. SOHN: John, if I could just address
11 that. And maybe I can ask my experts over there
12 to join in if they want to.

13 I actually -- you know, I think we
14 really have to distinguish what's being done on
15 the edge, all right, by YouTube. And we're fine
16 with YouTube's filtering system. Okay? But
17 that's different. All right? That's on the edge.

18 The kind of copying -- copyright
19 filtering proposals for network filtering are much
20 different. All right? Because they tend to
21 involve or they all involve deep packet
22 inspection, which is like the postman opening up

1 an envelope, reading your mail, and then sending
2 it on its way. It's much more invasive; it's much
3 more privacy invasive. As I said before, it's not
4 network management; it's content management.

5 So, all the stuff that's going on with
6 YouTube and the, you know, uploading, the finger
7 -- you know, uploading to their reference library
8 so they can block it. Steve, I feel like you
9 could work for me, quite honestly. Everything
10 you've said is completely reasonable.

11 All right. But it is a horse of a
12 different color than when you're looking at every
13 single packet because that slows down the network;
14 there's privacy implications. It will block
15 illegal content. What Steve talked about --
16 there's a human eye on that. And there's also the
17 DMCA. All right? So if YouTube takes down one of
18 my user-generated content videos and I think
19 they're wrong, I have recourse. If you block my
20 packets automatically and there ain't no human eye
21 there, I don't have any recourse. If that content
22 was time-sensitive, I'm screwed. So, we really,

1 really have to distinguish.

2 I also must put a pitch in to the
3 user-generated content principles that my
4 organization signed onto which were drafted by
5 EFF. Do you have the URL, Alex? You're not doing
6 your job.

7 So, I think that your principles are
8 generally sound except fair use kind of gets the
9 swift kick in the behind. Ours is more based on
10 sort of -- more based on fair use as a core
11 principle for UGC usage.

12 MR. GLICKMAN: I would just comment
13 that, you know, I understand some of the concerns
14 and limitations that have been raised by Gigi and
15 others in this area, but what we are encouraging
16 you all to do is just to further develop
17 innovation and technology in this area. Because
18 these review processes don't always have to be the
19 same. Times will change. Technology will change.
20 And we just hate to see you block the ability to
21 do that kind of thing.

22 MR. CARROLL: So, a couple of things. I

1 think we should recognize and applaud the
2 evolution in the views of many of the content
3 holders who initially viewed a lot of what some of
4 us would view as user-generated content that's
5 fair use. That also got lumped in under the
6 piracy umbrella.

7 And now I think with, for instance, the
8 use of watermarking filtering technology on
9 YouTube that sort of allows certain uses of the
10 content to go ahead, whether it's a fair use or
11 not, it's tolerated. But the idea that the
12 problem is more the consumptive downloads.

13 And I would agree with Dan that, you
14 know, the organized -- there is organized crime.
15 It's contraband. Right? They're in the game of
16 contraband, and that is a real problem that should
17 be addressed.

18 But now -- but I agree with Gigi that
19 addressing it through network technologies is the
20 biggest concern. And I want to add to that
21 conversation that I think there's strong demand
22 out there for wireless broadband. And those

1 technologies are in their infancy.

2 And another worry I want to put on the
3 table is that any technological innovation that's
4 based on today's network prejudices the ability to
5 develop tomorrow's network.

6 And I think particularly about wireless
7 broadband, broadband in the train, in the back of
8 the car. We have a problem with texting drivers,
9 but in the back of the car, if you had broadband
10 access and I could get access to Internet radio
11 readily in my car, that possibility as a consumer
12 excites me very much. And I would want to make
13 sure that the policies about broadband deployment
14 have that in mind.

15 MR. HARRIGAN: Let me ask -- try to
16 combine a couple of questions here that are --
17 since we're starting to run short on time. This
18 one goes: In the MPAA's filing in the NOI for the
19 National Broadband Proceeding, it's mentioned that
20 50 to 80 percent of all Internet traffic is
21 infringing, but they provided four links; three of
22 them didn't work and one wasn't there either. The

1 question is where does the 50 to 80 percent figure
2 come from?

3 And related to that is the question that
4 the Star Trek movie made about \$250 million in the
5 box office. Should it have made more than \$250
6 million given what we see on the poster over
7 there? And if so --

8 MR. WEISER: It was a really good movie.

9 MR. HORRIGAN: So I hear. And if so,
10 how much? So what was the loss on the Star Trek
11 story and where does the 50 to 80 percent figure
12 come from about that share being the degree of
13 Internet (inaudible) traffic?

14 MR. GLICKMAN: First of all, I'd say if
15 that person who asked the question wants to e-mail
16 us directly, I'd be glad to give them a more
17 complete response, but our data comes from folks
18 within the ISP community. It comes from
19 discussions with our member studios in terms of
20 their relationships with technological
21 manufacturers and data providers, who are pretty
22 clear that that number does exceed 50 percent and

1 can be higher in many cases. But I'd be glad to
2 get more precise information both to the
3 Commission as well as to this particular reader.

4 MS. GARMEZY: Can I just add --

5 MR. HUNTSBERRY: I just -- yeah, I just
6 wanted to comment on the economics of the business
7 a little bit because, I mean, when we talk about
8 box office, we need to realize that the studio
9 only brings home about half of the box office
10 because we share that with the movie theatres. So
11 when you quote \$250 million, \$125 million is what
12 comes back to the studio. Now, that's still a
13 large sum; no question about it. But we have to
14 realize also that to make the movie costs a lot of
15 money. You have a lot of special effects in the
16 film, so computer graphics do -- you know, are a
17 large portion of the budget of that film. Then
18 you have the marketing costs of the film.

19 We, effectively, in our business, are
20 releasing a new product, which is a new film,
21 every few weeks of the year. We have to create
22 basically an awareness in the marketplace around

1 that franchise that didn't exist previously. So a
2 lot of marketing dollars are spent to get that
3 film opened.

4 And I think as Dan said earlier, we
5 actually -- we're not actually in profit until we
6 are in the ancillary revenue streams. So to the
7 extent that we are, again, forced to compete with
8 free-by-theft content, right, which is really not
9 really hurting the theatrical window as much
10 because the theatrical window is really a social
11 experience -- people do love going to the theatre
12 -- it is an issue when it comes to DVD sales and
13 also online sales downstream.

14 MS. GARMEZY: I just wanted to add that
15 partly all of us are victims of the sort of
16 celebrity-driven and box office score-driven
17 things that come out every week. In fact, box
18 office is not where the bulk of money is made at
19 all that the industry recoups. It's actually made
20 from these ancillary sales. And that's what makes
21 it possible to make movies.

22 And the second thing I would say is that

1 one can get a little lost in the blockbuster
2 discussions, but, in fact, the bulk of the movies
3 made are not blockbusters. The movies that win
4 Oscars and that you think about a lot are not all
5 blockbusters. And, in fact, those movies that are
6 made in the 50 to 70 million range or even lower,
7 like --

8 SPEAKER: Slum Dog.

9 MS. GARMEZY: Well, whatever -- Little
10 Miss Sunshine -- those are the ones most
11 vulnerable to piracy. The movies most vulnerable
12 to piracy are the ones that cost the least to make
13 because they will lose their money much quicker.

14 So, I think sometimes our industry gets
15 misportrayed in terms of blockbusters and the
16 wealth of the industry, but, in fact, it's a much
17 more complicated picture.

18 MR. HERRIGAN: Kris, you had a question?

19 MS. MONTEITH: Yes. I think I heard a
20 couple of panelists mention ISPs and their
21 responsibilities. And Charles, it may have been
22 you that said that ISPs should disclose their

1 network management policies. And one, I wanted to
2 see if there's agreement among the panelists on
3 that. Two, what specifically should they
4 disclose? And three, how does it fit in this
5 context?

6 MS. SOHN: Well, I certainly agree that
7 they should disclose their network management
8 policies, including any prioritization or, you
9 know, any throttling they have to do during times
10 of congestion and that sort of thing. So,
11 certainly, it's completely -- I completely agree
12 with Charles on that.

13 MR. GLICKMAN: I mean, I don't know what
14 disclosure we're talking about and who discloses
15 what, what information, but the FCC has,
16 obviously, a regulatory interest in these issues.
17 And I presume that you will exercise your
18 responsibility fully in that regard.

19 MR. SLOCUM: I just want to focus on the
20 priority for us is that the consumer can take that
21 into account when choosing an ISP. I mean, there
22 are usually several choices, but it has to be an

1 informed choice for it to matter.

2 MS. MONTEITH: And how do you see it
3 fitting in this context is kind of what I'm
4 getting at? What would the consumer see that
5 would help with respect to digital piracy issues?

6 MR. SLOCUM: Well, I actually gave a
7 presentation to the FCC -- actually, I was telling
8 Susan on this -- testifying before them about this
9 very issue. It is one that there is, I think,
10 increasing awareness on instead of disclosure,
11 what companies are doing in terms of network
12 management I think comes out of the Comcast case
13 here.

14 MS. SOHN: I mean, certainly if there
15 was an agreement between a content company and an
16 ISP to do some sort of network-level filtering,
17 I'd want to know that. Or even if it wasn't for a
18 copyright filtering purposes. Let's say if it was
19 for third-party advertising purposes, right, the
20 whole, you know, DPI and NebuAd debate that we had
21 about a year ago. I'd sure as heck want to know
22 that as well.

1 MR. BRACY: I mean, the concern we're
2 seeing in the music community coming out of the
3 experience of consolidated commercial radio is
4 that there are structural barriers in the radio
5 industry that make it very, very difficult, if not
6 impossible, for independent, local artists to
7 connect to commercial airwaves. And that's been,
8 you know, pretty well documented over the last
9 decade. So the concern that we voice is to make
10 sure -- and this is kind of the way we talk about
11 Net neutrality -- is just to make sure that legal
12 licensed platforms for music are able to reach
13 consumers via ISPs. And certainly, there needs to
14 be complete transparency so we know if there are
15 economic incentives for consumers to be steered
16 towards, you know, applications where there are
17 business relationships, things like that. We
18 think that's absolutely critical.

19 MR. HERRIGAN: Do we have more questions
20 from our questioners for our panel?

21 Well, with that I want to thank
22 everybody for taking their time this morning to be

1 here. We really appreciate it. You've given the
2 National Broadband Plan a great deal to think
3 about as we develop a plan to make content flow --
4 contents of all sorts flow to consumers in the
5 right way.

6 So, let me ask the audience to thank our
7 panelists.

8 (Whereupon, the PROCEEDINGS were
9 adjourned.)

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