U.S. Copyright Alert System and Other Voluntary Initiatives

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Agenda

- Where We Are …. Setting the Context
- Copyright Alert Program
- Other Voluntary Initiatives
Current Economic & Legal/Policy Environment
Where We Are: By the Numbers

- After 4 years of significant decline, U.S. shipments essentially flat Y-o-Y in 2011
  - Physical down 8%
  - Digital Downloads up 17%
  - Subscription up 13%
  - Mobile down 38%
  - Digital Performance Royalties up 17%

- Going into 2012, have crossed 50% digital sales threshold

US Recorded Music Shipments 2005 - 2011

Note: Synchronization not included in market percentages because it can be either physical or digital
But the Majority of Music Acquired Still Comes From Illegal Sources

(US Internet Pop. Age 13+)
• Rogue Sites - SOPA/PIPA Debate

  – Legislation intended to deter infringements on foreign sites by obligating/encouraging intermediaries to take action

  – Important principle regarding intermediary responsibility, but legislation not likely to have been effective tool for music

  – Opposition to bills, activated by Google, went viral & bills are essentially dead

  – Anti-SOPA sentiment in netizens being used by opponents to oppose other copyright protection measures

  – Has companies on heightened alert
Recent Legal/Policy Developments, cont.

• **Lockers - MegaUpload Indictment/Shutdown in January 2012**
  – Caused several other locker or pirate sites to change their practices or shut down
  – RapidShare recently felt need to publish best practices for lockers
  – Seeing some backlash against indictment

• **P2P / Graduated Response**
  – LimeWire shutdown October 2010
  – Hadopi implemented October 2011
  – NZ process being tested/implemented now
  – IIINET case
Copyright Alert Program
Copyright Alert Program - Overview

- ISP and Content Industry Memorandum of Understanding (“MOU”) signed July 6, 2011
  - Landmark agreement between 5 major ISPs and the music/film/TV content creators
  - Set up framework for an enhanced education, notice and enforcement program to deter P2P infringement over ISP networks and promote legal sources for content
  - Creates and provides support for the Center for Copyright Information (CCI)
    - Focuses on educating the public about copyright protection and lawful ways to obtain content online
    - Will develop and confirm best practices for a system of Copyright Alerts
    - Will measure impact/effectiveness of the program
  - Provides for technical validation of process plus independent review to challenge Copyright Alerts
  - Applies only to residential wireline P2P activity
- Supplements existing P2P programs
Copyright Alert System: Impact

- Why – Anticipate Copyright Alerts will change consumer behavior to decrease infringing activity and increase sales
  - Evidence exists that most users would modify their behavior if alerted to the risks associated with using certain P2P services and/or made to believe they will face consequences if caught infringing
    - France: 69% said they would stop illegally downloading music or videos if the consequence was either loss of their Internet subscription or a €1,500 fine
    - New Zealand: 62% said they would probably stop illegally downloading movies if the ISP could suspend or terminate their Internet connection; 61% would stop if there was a fine; 71% would stop if they received a notice from an ISP
    - U.K.: 80% (45% definitely and 35% probably) said they would stop downloading unauthorized content under a “3 strikes model” (i.e., warning email, termination of Internet connection, and then 12-month blacklist by ISP)
  - Study concerning HADOPI/French system suggests system resulted in increased sales/decreased infringing activity
    - Increased consumer awareness of HADOPI resulted in 22.5% to 25% increase in iTunes song and album sales when compared to control group
Copyright Alert System - Steps

Contemplates a 5/6 step process

- **Alert 1 and Optional Alert 2:** Online alert(s) with educational messages.
- **Alert 3:** Online alert with mechanism for acknowledging receipt.
- **Alert 4:** Online alert with mechanism for acknowledging receipt.
- **Alert 5:** Alert and mitigation measure to deter future content theft.
- **Alert 6:** Alert and mitigation measure to deter future content theft.
Mitigation Measures

• Gives ISPs a range of mitigation measures and flexibility in selecting mitigation measures
  — Temporary reduction in speed
  — Temporary step-down in service tier
  — Redirection to landing page until subscriber contacts ISP
  — Temporary restriction of Internet access
  — Redirection until subscriber completes of meaningful education on copyright

• Does not require ISPs to terminate subscribers’ accounts.

• However, a termination policy for “repeat infringers” ... “under appropriate circumstances” already exists as a condition of the DMCA safe harbor provision.

• And ISP’s terms of service/acceptable use policies prohibit infringement and permit the ISP to terminate the account if it is used for infringing activity.
Consumer-Friendly Approach

• Provide Information to Consumer
  — Consumers have a right to know that when their Internet accounts are being used for content theft
  — Will likely provide information on steps consumer can take to identify and stop such activity

• Multiple Alerts and Grace Period
  — Contemplates multiple alerts to give consumer time to change behavior before mitigation is imposed
  — Provides for Grace Period between alerts to give consumer time to change behavior before next alert is sent

• No Personal Information
  — No personal information about subscribers will be exchanged between content owners and ISPs without subscriber consent, and then only in connection with certain challenges under the independent review

• Essential Services Maintained
  — ISPs are not required to impose any mitigation measure that could disable a subscriber’s essential services, such as telephone service, email, or security or health service
Independent Review Process

• **What It Is**
  - Before mitigation measure is imposed, subscriber can request an independent review to invalidate alerts and avoid mitigation measures
  - Minimal cost
  - Non-exclusive process

• **Who Is Administering It**
  - Well-known arbitration outfit - American Arbitration Association
  - Guidance to be provided to neutrals by well-known copyright attorney

• **Potential Challenges**
  - Fair use
  - Authorized use of work
  - Pre-1923 work
  - Misidentification of account
  - Unauthorized use of account
  - Misidentification of file

• **Streamlined Process**
  - Should be all on papers/digital evidence
  - No oral argument
  - Have timelines to make process move efficiently
Center for Copyright Information

• **Separate Non-Profit Entity Formed Pursuant to MOU**
  – Executive Director – Jill Lesser
  – Board – includes representatives from content owners and ISPs

• **Mission**
  – Educate public about copyright, and legal alternatives to consume content
  – Provide technical validation of copyright alert system and assist in its design/implementation
  – Measure impact/effectiveness of system
  – Help provide communication about the system

• **Advisory Board to CCI**
  – Includes notable consumer advocates, and privacy and Internet education specialists
  – Purpose to provide advice on implementation of the system
Costs

• **Identification and Processing alert**
  – Content owners pay costs to identify infringements and send notice to ISP
  – ISPs pay costs to process notice, identify subscriber, and sent alert to subscriber

• **Center for Copyright Information**
  – Content owners and ISPs share costs to operate CCI on a 50/50 basis

• **Independent Review**
  – Content owners and ISPs share costs to operate independent review process on a 50/50 basis
Other Voluntary Initiatives
Voluntary Best Practices: Payment Processors

• Payment Processors
  — Finalized last year under auspices of IPEC with Visa, MasterCard, Amex, Discover and PayPal
    • Terminate relationship if site engaged in repeated “widespread and pervasive” infringement; payment for sales of infringing products
    • Since MegaUpload shutdown, some payment processors have expressed willingness to expand what constitutes infringing activity under their policies
  — IACC has developed portal to implement these best practices for its members
  — We also work with individual payment processors regarding individual sites
Voluntary Best Practices: Ad Networks

- **Industry.** Ad network industry has voluntary ad network guidelines
  - But they are not clear regarding prohibition of ad placements on sites engaged in copyright infringement, and do not apply to exchanges/networks that don’t have direct relationship with publisher site
  - Have seen mixed results to date

- **IPEC.** U.S. IP Enforcement Coordinator leading industry negotiations for broader approach
  - Includes Microsoft/Yahoo, AOL, and Google

- **Google.** Separately, Google has promised to remove advertising served with Google AdSense on sites we identify through notice program for infringing search results (pursuant to Google AdSense repeat infringer policy) . . . and suggested it will expand policy to “sell-side” DoubleClick exchange, too
Voluntary Best Practices: Advertisers

- Content community encouraging the Association of National Advertisers (ANA) to issue guidelines for its members
  - Pledge not to advertise on infringing/rogue sites

- Awareness of issue has increased
  - Some advertisers being proactive to protect their brand
  - Some ad agencies being proactive in raising concerns
Voluntary Best Practices: Search Engines

• Continue to work with Google to have more effective delinking, and tie delinking to termination of ad networks services to the corresponding site, where applicable.

• Also exploring delinking of entire site when repeat delinking notices to the same site.

• Still have caps on number of delinking requests that can be sent in one day with automated tool.

• To date, Google has resisted voluntary best practices, but keep pushing.
Voluntary Best Practices: Mobile

• Mobile App Storefronts
  — Continue to push Google, Apple, Amazon and others to take action to screen and/or remove infringing apps from their storefronts, and to expand recognition of which apps are infringing

• Mobile Ad Networks
  — Exploring ways to make traditional online ad network policies apply to mobile space
    • Apps removed from storefronts
    • Apps not removed, but that facilitate infringement
• Registrars/Registries
  — Lobbying for better “whois” practices generally and for proxy registration best practices
    • Require better diligence in whois data collection
    • Require termination of domain if whois is false/registrant doesn’t respond
  — For new gTLDs, working with content community and governments to publish enhanced safeguard guidelines for content-focused gTLDs
    • Require enhanced diligence, certification, and rapid takedown if site engages in infringing activity
    • Hope to use to set “norm” for these type of enforcement practices on new gTLDs and hopefully then back to existing gTLDs
Questions?

Thank You