



The **WALT DISNEY** Company

Susan L. Fox
Vice President
Government Relations

December 10, 2009

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FILED/ACCEPTED

JAN 13 2010

Federal Communications Commission
Office of the Secretary

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in GN Docket No. 09-191; WC Docket No. 07-52

Dear Ms. Dortch:

On December 10, 2009, Bruce Gottlieb, Sherrese Smith, Priya Aiyar, Zach Katz, William Lake, Ruth Milkman, Cathy Seidel, Julie Knapp, and Shomik Dutta met with Jonathan Whitehead (The Walt Disney Company, Vice President & Counsel, Anti-Piracy – Film & Television) and Susan Fox (VP, Disney). During this meeting, the Disney executives reviewed the attached presentation on Internet piracy. The Disney executives also reiterated the points made in the attached comments filed by the Motion Picture Association of America and walked the Commission staff through the attached Copyright Principles for UGC Services.

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice of this meeting. The proceedings at issue are not restricted and therefore presentations are permitted, but must be disclosed.

Sincerely,

Susan L. Fox

cc: Bruce Gottlieb
Sherrese Smith
Priya Aiyar
Zach Katz
William Lake
Ruth Milkman
Cathy Seidel
Julie Knapp
Shomik Dutta
John Peha

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Secretary
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445 12th Street, S.W.
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Re: Ex Parte Presentation in GN Docket No. 09-191; WC Docket No. 07-52

Dear Ms. Dortch:

On December 9, 2009, Commissioner Robert McDowell, Angela Giancarlo, Rosemary Harold, and Christine Kurth met with the following Disney representatives: Jonathan Whitehead (Vice President & Counsel, Anti-Piracy – Film & Television), Preston Padden (EVP, Disney), Susan Fox (VP, Disney) and Bill Bailey (VP, Disney). During this meeting, the Disney executives reviewed the attached presentation on Internet piracy. The Disney executives also reiterated the points made in the attached comments filed by the Motion Picture Association of America and walked the Commissioner and his staff through the attached Copyright Principles for UGC Services.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Susan L. Fox', written in a cursive style.

Susan L. Fox

cc: Commissioner Robert McDowell
Angela Giancarlo
Rosemary Harold
Christine Kurth



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Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in GN Docket No. 09-191; WC Docket No. 07-52

Dear Ms. Dortch:

On December 9, 2009, Blair Levin, Phil Bellaria, Carlos Kirjner, and Andrew Nesi met with the following Disney representatives: Jonathan Whitehead (Vice President & Counsel, Anti-Piracy – Film & Television), Preston Padden (EVP, Disney), Susan Fox (VP, Disney) and Bill Bailey (VP, Disney). During this meeting, the Disney executives reviewed the attached presentation on Internet piracy. The Disney executives also reiterated the points made in the attached comments filed by the Motion Picture Association of America and walked the Commission staff through the attached Copyright Principles for UGC Services.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Susan L. Fox', written over a faint, larger version of the signature.

Susan L. Fox

cc: Blair Levin
Phil Bellaria
Carlos Kirjner
Andrew Nesi



The **WALT DISNEY** Company

Susan L. Fox
Vice President
Government Relations

December 10, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in GN Docket No. 09-191; WC Docket No. 07-52

Dear Ms. Dortch:

On December 10, 2009, Commissioner Meredith Baker, Brad Gillen, and Millie Kerr met with Jonathan Whitehead (The Walt Disney Company, Vice President & Counsel, Anti-Piracy – Film & Television) and Susan Fox (VP, Disney). During this meeting, the Disney executives reviewed the attached presentation on Internet piracy. The Disney executives also reiterated the points made in the attached comments filed by the Motion Picture Association of America and walked the Commissioner and her staff through the attached Copyright Principles for UGC Services.

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice of this meeting. The proceedings at issue are not restricted and therefore presentations are permitted, but must be disclosed.

Sincerely,

Susan L. Fox

cc: Commissioner Meredith Baker
Brad Gillen
Millie Kerr



Internet and Media Industry Leaders Unveil Principles to Foster Online Innovation While Protecting Copyrights

October 18, 2007— Several of the world's leading Internet and media companies today announced their joint support for a set of collaborative principles that enable the continued growth and development of user-generated content online and respect the intellectual property of content owners.

The principles serve as a comprehensive set of guidelines to help user-generated content (UGC) services and content creators work together towards their collective goal of bringing more content to more consumers through legitimate channels. The principles acknowledge a collective respect for protecting copyrights and recognize that filtering technologies must be effective and are only a part of what is necessary to achieve this goal.

The companies supporting these principles include CBS Corp., Dailymotion, Fox Entertainment Group, Microsoft Corp., MySpace, NBC Universal, Veoh Networks Inc., Viacom Inc. and The Walt Disney Company.

The principles, which are attached and available in full at www.ugcprinciples.com, call for a broad range of constructive and cooperative efforts by copyright owners and UGC services. They include:

- Implementation of state of the art filtering technology with the goal to eliminate infringing content on UGC services, including blocking infringing uploads **before** they are made available to the public;
- Upgrading technology when commercially reasonable;
- Cooperating to ensure that the technology is implemented in a manner that effectively balances legitimate interests, including fair use;
- Cooperation in developing procedures for promptly addressing claims that content was blocked in error;
- Regularly using the technology to remove infringing content that was uploaded before the technology could block it;
- Identification and removal of links to sites that are clearly dedicated to, and predominantly used for, the dissemination of infringing content; and,
- Promotion of content-rich, infringement-free services by continuing to cooperatively test new technologies and by collaboratively updating these principles as appropriate to keep current with evolving developments.

The ease of uploading video content on the Internet has led to the creation of millions of original works by new creators – works that range from scripted programs, to virtuoso musical performances and to humorous skits and social parody. It also has resulted in the proliferation of uploaded content that infringes copyrighted works.

The companies backing these principles believe that they can collectively find a path that fosters creativity while respecting the rights of copyright owners. Distributors of copyright-infringing content stifle both technological innovation and artistic creation in ways that ultimately will hurt the consumer and hinder the digital economy.

These principles also reflect a strongly-held commitment to work cooperatively and constructively across industries to address the challenge of developing new modes of distribution while protecting intellectual property and, with a shared goal of promoting a rich, legitimate, and compelling environment for consumers of online content. While the supporters' current practices may not strictly adhere to each and every principle, they are all committed to fully implementing these principles by year's end.

The companies believe that adopting such principles is essential to achieving the enormous potential opened up by the Internet through UGC services. Widespread adoption of these principles will encourage innovation, enable new creative expression and further the goal of eliminating infringing content from UGC services. It will allow innovative business models to develop. Most importantly, it will benefit consumers by encouraging further cooperation between the creators of content -- from the largest entertainment company to the individual artist -- and the companies that distribute their works.

The supporters urge others to embrace these principles. While recognizing that adhering to these principles may require each company to yield some from positions it has held, at the end of the day the supporters believe all will benefit from such compromise. The supporters look forward to further discussions with other parties to attain their support.

Statements from the Participating Companies:

Bob Iger, President and CEO, The Walt Disney Company

"These principles offer a road map for unlocking the enormous potential of online video and user-generated content. Cooperation among us, aided by emerging technologies, can clear the way for further growth in the availability of online video in ways that will be good for consumers, good for copyright owners and good for uploading services."

Steve Ballmer, Chief Executive Officer, Microsoft Corporation

"The cross-industry dialogue that resulted in these principles are an important step forward in establishing the Internet as a great platform for video content – a platform that allows services to innovate and preserves incentives for all creators, big and small, by respecting copyright. With this new, consensus-based foundation, the technology and

entertainment industries are demonstrating how we can work collaboratively to build great new video experiences for our mutual customers."

Peter Chernin, President and COO, Fox Entertainment Group

"In the end, technical innovation has always proved to be a positive driver in shaping our businesses and spurring greater and more robust distribution models. The principles unveiled today underscore that conviction by enabling a path that will reward content owners, distributors, and most importantly, consumers."

Philippe Dauman, President and CEO, Viacom Inc.

"We are delighted that so many leading companies have come together behind a set of principles that provide a framework for intellectual property to live in harmony with technical advances. These principles will enable innovative technology and great content to come together to spur greater innovation and, most importantly, much richer entertainment experiences for consumers."

Chris DeWolfe, CEO and co-founder, MySpace

"As part of one of the world's largest media companies and with original content of our own, we're vigilant about respecting and protecting copyrights. Internally, we've developed an industry-leading suite of copyright protections for content owners and we're thrilled to align forces with the world's top media and Internet companies to develop best practices."

Steve Mitgang, CEO of Veoh Networks

"Veoh firmly believes that industry cooperation like this is the key to encouraging innovation that benefits viewers, copyright holders and service providers alike. We wholeheartedly support these principles, and hope that other major media and technology companies will join in our effort to grow this emerging market and give viewers even more access to the high-quality video content they want."

Leslie Moonves, President and CEO, CBS Corporation

"The cornerstone of the CBS business is its audience. CBS believes that these principles will assist us in our on-going online delivery to our audience of all the great CBS content, and will help balance the rights and responsibilities of both content owners and sites accepting user generated content. I applaud the cooperation among the participating online operators and the networks."

Mark Zaleski, Executive Chairman, DailyMotion

"Dailymotion strongly believes in the respecting the rights of all copyright owners. As such, our company has been involved in the drafting of these Principles since it began. We are confident that this cooperation with content owners, further aided by audio and video filtering technology that we are currently implementing, is a win-win for all involved. We are proud to continue to be at the edge of innovation in both our product and in copyright protection."

Jeff Zucker, President and CEO, NBC Universal

“Today’s announcement marks a significant step in transforming the Internet from a Wild West to a popular medium that respects the rule of law. By recognizing the mutual benefits of a technology-based framework to control piracy, technology and content companies have laid the foundation for the lawful growth of video on the Internet.”

COPYRIGHT PRINCIPLES FOR UGC SERVICES

Leading commercial copyright owners (“Copyright Owners”) and services providing user-uploaded and user-generated audio and video content (“UGC Services”) have collaborated to establish these Principles to foster an online environment that promotes the promises and benefits of UGC Services and protects the rights of Copyright Owners. In this context, UGC Services are services such as Soapbox on MSN Video, MySpace, Dailymotion and Veoh.com, and not other technologies such as browsers, applets, email, or search services. While we may differ in our interpretation of relevant laws, we do not mean to resolve those differences in these Principles, which are not intended to be and should not be construed as a concession or waiver with respect to any legal or policy position or as creating any legally binding rights or obligations. We recognize that no system for deterring infringement is or will be perfect. But, given the development of new content identification and filtering technologies, we are united in the belief that the Principles set out below, taken as a whole, strike a balance that, on a going-forward basis, will result in a more robust, content-rich online experience for all.

In coming together around these Principles, Copyright Owners and UGC Services recognize that they share several important objectives: (1) the elimination of infringing content on UGC Services, (2) the encouragement of uploads of wholly original and authorized user-generated audio and video content, (3) the accommodation of fair use of copyrighted content on UGC Services, and (4) the protection of legitimate interests of user privacy. We believe that adhering to these Principles will help UGC Services and Copyright Owners achieve those objectives.

1. UGC Services should include in relevant and conspicuous places on their services information that promotes respect for intellectual property rights and discourages users from uploading infringing content.
2. During the upload process, UGC Services should prominently inform users that they may not upload infringing content and that, by uploading content, they affirm that such uploading complies with the UGC Service’s terms of use. The terms of use for UGC Services should prohibit infringing uploads.
3. UGC Services should use effective content identification technology (“Identification Technology”) with the goal of eliminating from their services all infringing user-uploaded audio and video content for which Copyright Owners have provided Reference Material (as described below). To that end and to the extent they have not already done so, by the end of 2007, UGC Services should fully implement commercially reasonable Identification Technology that is highly effective, in relation to other technologies commercially available at the time of implementation, in

achieving the goal of eliminating infringing content. UGC Services should enhance or update the Identification Technology as commercially reasonable technology that makes a meaningful difference in achieving the goal becomes available.

- a. If a Copyright Owner has provided: (1) the reference data for content required to establish a match with user-uploaded content, (2) instructions regarding how matches should be treated, and (3) representations made in good faith that it possesses the appropriate rights regarding the content (collectively, "Reference Material"), then the UGC Service should apply the Identification Technology to that content to implement the Filtering Process described below. UGC Services should ensure that reasonable specifications, as well as any tools and/or technical support, for the delivery of Reference Material are made available to Copyright Owners. If a Copyright Owner does not include in the Reference Material instructions regarding how matches should be treated, the UGC Service should block content that matches the reference data.
- b. The Identification Technology should use Reference Material to identify user-uploaded audio and video content that matches the reference data and should permit Copyright Owners to indicate how matches should be treated.
- c. If the Copyright Owner indicates in the applicable Reference Material that it wishes to block user-uploaded content that matches the reference data, the UGC Service should use the Identification Technology to block such matching content before that content would otherwise be made available on its service ("Filtering Process"). The Copyright Owner may indicate in the applicable Reference Material that it wishes to exercise an alternative to blocking (such as allowing the content to be uploaded, licensing use of the content or other options), in which case, the UGC Service may follow those instructions or block the content, in its discretion.
- d. Copyright Owners and UGC Services should cooperate to ensure that the Identification Technology is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.
- e. UGC Services should use the Identification Technology to block user-uploaded content that matches Reference Material regardless of whether the UGC Service has any licensing or other business relationship with the Copyright Owners who have provided such Reference Material (except that UGC Services may require that Copyright Owners enter into agreements with respect to the specifications for delivery of Reference Material that are commercially reasonable and that facilitate the provision of Reference Material by Copyright Owners and promote the goal of the elimination of infringing content). If a Copyright Owner authorizes specific users to upload content that would otherwise match Reference Material submitted by the Copyright Owner, the Copyright Owner should provide to the UGC

Service a list of such users (a so-called white list).

- f. UGC Services may, at their option, utilize manual (human) review of all user-uploaded audio and video content in lieu of, or in addition to, use of Identification Technology, if feasible and if such review is as effective as Identification Technology in achieving the goal of eliminating infringing content. If a UGC Service utilizes such manual review, it should do so without regard to whether it has any licensing or other business relationship with the Copyright Owners. Copyright Owners and UGC Services should cooperate to ensure that such manual review is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.
 - g. Copyright Owners should provide Reference Material only with respect to content for which they believe in good faith that they have the appropriate rights to do so, and should update rights information as reasonable to keep it accurate. The inclusion of reference data for content by, or at the direction of, a Copyright Owner shall be deemed to be an implicit representation made in good faith that such Copyright Owner has the appropriate rights regarding such content. Copyright Owners should reasonably cooperate with UGC Services to avoid unduly stressing the Services' Identification Technology during limited periods when Copyright Owners, collectively, may be providing an overwhelmingly high volume of Reference Material. UGC Services should reasonably cooperate with Copyright Owners to ensure that such Reference Material is utilized by the Identification Technology as soon as possible during such overload periods.
 - h. Promptly after implementation of Identification Technology, and at intervals that are reasonably timed throughout each year to achieve the goal of eliminating infringing content, UGC Services should use Identification Technology throughout their services to remove infringing content that was uploaded before Reference Material pertaining to such content was provided.
 - i. Copyright Owners and UGC Services should cooperate in developing reasonable procedures for promptly addressing conflicting claims with respect to Reference Material and user claims that content that was blocked by the Filtering Process was not infringing or was blocked in error.
4. UGC Services and Copyright Owners should work together to identify sites that are clearly dedicated to, and predominantly used for, the dissemination of infringing content or the facilitation of such dissemination. Upon determination by a UGC Service that a site is so dedicated and used, the UGC Service should remove or block the links to such sites. If the UGC Service is able to identify specific links that solely direct users to particular non-infringing content on such sites, the UGC Service may allow those links while blocking all other links.

5. UGC Services should provide commercially reasonable enhanced searching and identification means to Copyright Owners registered with a service in order: (a) to facilitate the ability of such Copyright Owners to locate infringing content in all areas of the UGC Service where user-uploaded audio or video content is accessible, except those areas where content is made accessible to only a small number of users (not relative to the total number of users of the UGC Service), and (b) to send notices of infringement regarding such content.
6. When sending notices and making claims of infringement, Copyright Owners should accommodate fair use.
7. Copyright Owners should provide to UGC Services URLs identifying online locations where content that is the subject of notices of infringement is found – but only to the extent the UGC Service exposes such URLs.
8. When UGC Services remove content pursuant to a notice of infringement, the UGC Service should (a) do so expeditiously, (b) take reasonable steps to notify the person who uploaded the content, and (c) promptly after receipt of an effective counter-notification provide a copy of the counter-notification to the person who provided the original notice, and, at its option, replace the content if authorized by applicable law or agreement with the Copyright Owner.
9. When infringing content is removed by UGC Services in response to a notice from a Copyright Owner, the UGC Service should use reasonable efforts to notify the Copyright Owner of the removal, and should permit the Copyright Owner to provide, or request the UGC Service to provide on its behalf, reference data for such content to be used by the Identification Technology.
10. Consistent with applicable laws, including those directed to user privacy, UGC Services should retain for at least 60 days: (a) information related to user uploads of audio and video content to their services, including Internet Protocol addresses and time and date information for uploaded content; and (b) user-uploaded content that has been on their services but has been subsequently removed following a notice of infringement. UGC Services should provide that information and content to Copyright Owners as required by any valid process and consistent with applicable law.
11. UGC Services should use reasonable efforts to track infringing uploads of copyrighted content by the same user and should use such information in the reasonable implementation of a repeat infringer termination policy. UGC Services should use reasonable efforts to prevent a terminated user from uploading audio and/or video content following termination, such as blocking re-use of verified email addresses.

12. In engaging in the activities set forth in these Principles outside the United States, UGC Services and Copyright Owners should follow these Principles to the extent that doing so would not contravene the law of the applicable foreign jurisdiction.
13. Copyright Owners should not assert that adherence to these Principles, including efforts by UGC Services to locate or remove infringing content as provided by these Principles, or to replace content following receipt of an effective counter notification as provided in the Copyright Act, support disqualification from any limitation on direct or indirect liability relating to material online under the Copyright Act or substantively similar statutes of any applicable jurisdiction outside the United States.
14. If a UGC Service adheres to all of these Principles in good faith, the Copyright Owner should not assert a claim of copyright infringement against such UGC Service with respect to infringing user-uploaded content that might remain on the UGC Service despite such adherence to these Principles.
15. Copyright Owners and UGC Services should continue to cooperate with each other's reasonable efforts to create content-rich, infringement-free services. To that end, Copyright Owners and UGC Services should cooperate in the testing of new content identification technologies and should update these Principles as commercially reasonable, informed by advances in technology, the incorporation of new features, variations in patterns of infringing conduct, changes in users' online activities and other appropriate circumstances.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
A National Broadband Plan)
For Our Future) GN Docket No. 09-51
)

**COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
IN RESPONSE TO THE WORKSHOP ON THE ROLE OF CONTENT IN THE
BROADBAND ECOSYSTEM**

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October 30, 2009

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Introduction and Summary

If the National Broadband Plan is to serve as a successful road map for ubiquitous broadband for all Americans, the government must recognize the vital role that high quality, high value content plays in driving adoption of new technologies. Compelling content is an essential ingredient in the consumer Internet experience and a key driver of broadband adoption. Inadequate respect for creative rights online will impede the roll-out of creative new content offerings, undermining the Commission's, Congress' and the Administration's goal of ubiquitous national broadband. For this reason, MPAA urges the Commission to make respect for creative content online a core and guiding principle of the National Broadband Plan.

Indeed, if it is to become national policy that the Internet serve as the center of modern society – a digital intersection of Main Street, a town square and a mega-shopping and entertainment complex all-rolled-into-one – it must be a place governed by laws, standards and rules, just like the real streets and communities inhabited all across America. Anarchy and disrespect for the rule of law online are no less pernicious to society than the flouting of our laws would be anywhere else. The government cannot let the anonymity of the Internet become a cloak behind which people think that unlawful conduct can continue unabated.

Combating online content theft successfully also will substantially reduce or eliminate vast amounts of unlawful traffic that currently clogs the Internet and degrades service to law-abiding consumers. Simultaneously, reducing unlawful online conduct will help assuage the concerns that many law-abiding consumers have about whether their rights and freedoms adequately are protected in the online environment. If the Internet is treated like the wild, wild West, it will be exceedingly difficult, if not

impossible, for the Commission to achieve Congress' and the Administration's vision of a nation where all Americans not only have access to, but equally important adopt, broadband. If, in contrast, the Internet is seen by consumers as a place where safety and security are hallowed, and where miscreants and lawbreakers are not free to engage in illegal activity, they will be far more comfortable inviting the Internet to be a central part of their lives.

In addition to providing consumers with a better online experience, reducing the amount of copyright-infringing material on the Internet could substantially reduce the cost of bringing high-speed broadband access to all Americans. The Commission has projected that it could cost \$350 billion to ubiquitously deploy broadband networks capable of delivering 100 Mbps, which is rapidly becoming the international standard. The Commission, however, should not ignore that illegal content accounts for a vast amount of online traffic.² Thus, it could generate substantial savings in this tremendous build-out cost – to be borne by both government and private sector investment – by encouraging construction of networks that are designed not on the basis of accommodating capacity-hogging transmissions of unlawful content but rather with the goal of providing consumers a rich broadband experience. The Commission should ensure that broadband network operators and content providers have the tools, and the

² See, e.g., *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 923, 933 & 940 (2005) (“vast majority of users’ downloads are acts of infringement”; “90% of works available on one of the networks was shown to be copyrighted”; “evidence of infringement on a gigantic scale”); see also *Comments of AT&T Inc. on Petitions of Free Press and Vuze* (filed Feb. 13, 2008), at 14 (“P2P traffic ‘constitutes approximately 60% of all traffic that traverses the public internet’”) and 20 (“[t]he top 5% of users account for roughly 50% of all downstream traffic, indicating that it is these few ‘bandwidth hogs’ that are pushing the limits of network capacity through massive P2P file transfers”) (citing David Vorhaus, *Confronting the Albatross of P2P*, Yankee Group (May 31, 2007)).

flexibility to use those tools, to combat online content theft, which in turn would yield a more efficient network that provides more value to consumers.

Respect for copyrighted materials online also will ensure that consumers are given more legitimate opportunities to access compelling, high-value content on the Internet. A variety of approaches, including graduated response policies and technological tools, can meaningfully contribute to thwarting unlawful conduct online, ensuring the safety and security of the Internet and encouraging content creators to offer even more of their products online. The government can play a vital role in encouraging private industry to be flexible and employ multiple approaches to combat unlawful conduct online and other Internet threats while simultaneously protecting consumers' ability to safely access and enjoy the lawful online experiences of their choice.

The MPAA is confident that, through this multi-pronged effort, and in cooperation with Internet Service Providers ("ISPs"), emerging technologies can drive solutions to help address the threats posed by unlawful conduct online. If these techniques are to be part of the answer, however, the government must foster an environment in which they are permitted to develop. Private industry is capable of implementing existing and new technological tools to target and diminish unlawful activity on the Internet, and continuing to develop new innovations, but it will take a commitment of time and resources to make it happen. Because this investment of time and resources will serve important national goals, the government must encourage it by making it clear that industry efforts will not be hobbled by regulations that would inhibit the use of these increasingly effective tools for legitimate anti-theft purposes.

Moreover, as the United States seeks to maintain its international leadership on technology issues, it should take the opportunity to study other nations that already have been down the road of rolling out ubiquitous broadband access. A number of countries have adopted proactive policies to deal with online content theft, and the Commission should learn from these countries' experiences in advising Congress about the threats posed by this unlawful conduct. South Korea, in particular, represents a sobering case study with regard to both the consequences of inaction and the array of potential responses. Disregard of widescale online content theft decimated the international and domestic film businesses in South Korea, but the government has now responded by making intellectual property rights enforcement one of the nation's core policy goals. Unless the United States learns from the mistakes of nations such as South Korea, it is at great risk of repeating them here.

Accordingly, the National Broadband Plan should include as a core component the elimination of infringing content and illegal material online. Specifically, the National Broadband Plan should:

- (1) encourage ISPs and the creative community to work on a variety of measures to deter unlawful online conduct and free up broadband capacity for legitimate activity;
- (2) recommend that government policies support these multiple efforts and not foreclose any particular anti-theft approach;
- (3) recommend that Congress encourage ISPs to work with the creative community to implement the best available, commercially practicable policies and technological solutions to diminish the theft and unauthorized distribution of copyrighted materials online;
- (4) recognize that flexibility is needed to encourage continuous advances in such technological solutions and their subsequent adoption; and

- (5) acknowledge, as the Commission proposed to do in its network neutrality notice of proposed rulemaking, that using technological solutions to combat the transmission of unlawful content online constitutes a reasonable network management practice.³

In short, the National Broadband Plan can serve as a landmark template for driving the roll-out of high-speed Internet to all Americans only if the government appropriately recognizes the critical need to combat online theft and permits industry to develop and implement the best available solutions to combat this acute and growing problem.

I. MPAA'S MEMBER STUDIOS CONSIDER THE INTERNET TO BE A TREMENDOUS OPPORTUNITY TO BUILD THEIR BUSINESSES AND CONNECT WITH CONSUMERS IN NEW AND EXCITING WAYS

Content creators across the country recognize the incredible power that the Internet holds to positively transform their businesses. The motion picture and television industries in particular are excited to embrace the expansion of broadband and to take advantage of the enormously positive impact that online distribution can have in enabling consumers to access a wide variety of content when and where they want it. MPAA's member studios fully appreciate that ubiquitous broadband can dramatically increase the potential audience for their entertainment products. So let there be no mistake: MPAA is profoundly supportive of the national effort to ensure that all Americans can access a robust, high-speed Internet.

At the same time, however, online content theft represents one of the most significant threats facing the motion picture and television industries today. Thus,

³ See Notice, at ¶ 139.

MPAA has made combating content theft – both on the Internet and in terms of so-called hard goods (*e.g.*, unauthorized copies of DVDs) – one of its highest priorities. This is no small task, which is why MPAA member studios already devote enormous time and resources to fighting back against the scourge of content criminals.

During the Workshop, Frederick Huntsberry of Paramount Pictures demonstrated the ease with which consumers can obtain unlawful content online, as well as the increasing sophistication of web sites intended to look and feel legitimate in order to lure consumers into accessing infringing downloads or streaming services.⁴ For example, Mr. Huntsberry showed that full-length, camcorder-recorded versions of the movie *Star Trek* were available on the Internet almost immediately upon the movie's theatrical release; within days, millions of copies had been downloaded by consumers worldwide.⁵

The *Star Trek* example demonstrates that, even as movie studios welcome a future of ubiquitous broadband, the threats from unlawful online activities to their businesses – and to a vital and growing sector of the American economy – are real and they are dangerous. In fact, the production and distribution of motion pictures and television programs is one of the United States' most valuable cultural and economic resources. In 2007, the motion picture and television industries were responsible for 2.5 million American jobs; more than \$41 billion in wages to workers in America; more than

⁴ See Federal Communications Commission, National Broadband Plan Workshop, *The Role of Content in the Broadband Ecosystem*, Transcript (Sept. 17, 2009) (the "Transcript"), at 31-32 (Testimony of Frederick Huntsberry).

⁵ See *id.*

\$38 billion in payments to U.S. vendors and suppliers, small businesses and entrepreneurs; and \$13 billion in income and sales taxes.⁶

Moreover, the industries are comprised of more than 115,000 businesses in all 50 states – greater than 80% of which employ fewer than 10 people. The industries carry a positive trade balance around the world and a \$13.6 billion trade surplus – which accounts for 10% of the total U.S. private-sector trade surplus in services. The 2007 trade surplus for motion picture and television exports was larger than the combined surplus of the telecommunications, management and consulting, legal, and medical services sectors, and larger than sectors such as computer and information services and insurance services. In 2007, the enduring value and appeal of U.S. entertainment worldwide resulted in \$15 billion in audiovisual services exports, a 23% increase over 2006 and more than 50% higher than in 2003.⁷

The threats facing this industry from content theft, particularly online, are demonstrably serious. As MPAA Chairman and CEO Dan Glickman referenced at the Workshop,⁸ the Institute for Policy Innovation (“IPI”) released a study in 2007 concluding not only that industries that rely on copyright are important contributors to the American economy, but also that unlawful distribution of intellectual property costs Americans hundreds of thousands of jobs and federal, state and local governments

⁶ See *The Economic Impact of the Motion Picture & Television Industry on the United States*, Motion Picture Association of America, Inc. (April 2009).

⁷ See *id.*

⁸ See Transcript, at 93 (Testimony of Dan Glickman).

billions of dollars in annual revenues.⁹ Equally important, IPI explained that the “economic impact of copyright piracy is not limited to the companies that design, create and sell copyright protected works. The impact of piracy flows throughout the U.S. economy. Piracy in one segment of the economy can affect other industries because the economy is an interdependent system.”¹⁰ Thus, losses from copyright theft cascade down the economic pipeline, harming not just content producers, but also all of the various small businesses whose revenues are tied to content production. In particular, using *conservative* estimates, IPI found that copyright theft from the motion pictures, sound recordings, business and entertainment software and video games industries costs the U.S. economy \$58 billion in total output, results in the loss of nearly 375,000 jobs for American workers, and costs Federal, state and local governments \$2.6 billion in lost tax revenue.¹¹

In this regard, the Commission should pay no heed to assertions by some members of the advocacy community that the problem of content theft can be ignored

⁹ See *The True Cost of Copyright Industry Piracy to the U.S. Economy*, Institute for Policy Innovation, Policy Report 189 (October 2007) (“*IPI Study*”), at i, 11-13.

¹⁰ *Id.* at 3.

¹¹ See *id.* at i, 11-13. Some in the advocacy community have criticized studies such as the IPI analysis for purportedly calculating economic loss by assuming that every stolen product is the equivalent of a lost sale. See Transcript, at 94-95 (Testimony of Gigi Sohn). This criticism is plainly wrong, however, since the *IPI Study* makes clear that it employed a “conservative approach” and did “not assume[] that each pirated product served to deprive the industry of a legitimate sale.” See *IPI Study*, at 8. In any case, the advocacy groups’ criticism appears designed mainly to cause distraction. Regardless of whether any particular product would have been purchased if it had not been taken by theft, the stark reality is that theft is occurring in dramatic volumes. The key takeaway from the IPI studies and others drawing similar conclusions is not the precise *amount* of economic *loss* but rather the incredible *amount* of property *theft*. No one rationally could argue that widespread stealing is not occurring, nor could anyone reasonably claim that theft of this magnitude has little or no impact on the economic fortunes of the content industries and, thus, the American economy. The bottom line is, no matter what the actual losses measure up to in economic terms, a decrease in the amount of piracy necessarily would increase overall revenues, which in turn would increase incentives for investment in the content industries. See *IPI Study*, at 3.