

December 14, 2010

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication
GN Docket No. 09-191, WC Docket No. 07-52

Dear Ms. Dortch:

On December 13 & 14, 2010, I spoke via telephone with Zac Katz, Legal Advisor for Wireline Communications, International and Internet Issues for Chairman Genachowski. This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

On both calls, we discussed how the Commission's Open Internet rules should address voluntary agreements between broadband Internet access providers and content owners to address copyright infringement. To the extent that the Commission cites to the CBS Corporation, *et al.* "Principles for User Generated Content Services"¹ as an example of a voluntary "agreement" (albeit between edge companies and content owners), I urged it also to cite to other such agreements, for example, the Electronic Frontier Foundation, *et al.* "Fair Use Principles for User Generated Content."²

I also addressed language proposed by the Motion Picture Association of America, the Directors Guild of America, the International Alliance of Theatrical Stage Employees and the Recording Industry Association of America (MPAA, *et al.*) in their *ex parte* letter dated December 8, 2010. In that letter, MPAA, *et al.* "urged the Commission to clarify that cooperative efforts by broadband Internet access service providers and other service providers, which are designed to curtail infringement in response to information provided by rights holders in a manner that is timely, effective, and accommodates the legitimate interests of providers, copyright owners and users, are fully consistent with and should be encouraged by the Commission's Open Internet rules." I stated that Public Knowledge could not support this language, because it is possible that some "cooperative efforts...designed to curtail infringement" might well be inconsistent with the Commission's Open Internet rules, and as a result (and because copyright enforcement is not within the Commission's jurisdiction), the Commission should not be encouraging these efforts.

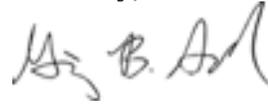
To the extent that MPAA, *et al.* are concerned that Internet access providers will use the existence of Open Internet rules as an excuse not to consider entering into cooperative efforts, Public Knowledge would support language that clarifies that nothing in the Open Internet rules discourages cooperation between Internet access providers and content owners to address

1 <http://www.ugcprinciples.com/>

2 <http://www.eff.org/issues/ip-and-free-speech/fair-use-principles-usergen>

copyright infringement.

Sincerely,

A handwritten signature in black ink, appearing to read "Gigi B. Sohn". The signature is fluid and cursive, with the first name "Gigi" being the most prominent.

Gigi B. Sohn
President

cc. Zac Katz