

Statement of Jill Lesser
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The Role of Voluntary Agreements in the U.S. Intellectual Property
System

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Chairman Coble, Ranking Member Watt, Chairman Goodlatte, Ranking Member Conyers, Members of the Subcommittee, I appreciate the opportunity to testify today on the important issue of digital copyright. My name is Jill Lesser and I am the Executive Director of the Center for Copyright Information. I am particularly pleased to be testifying on the issue of voluntary initiatives aimed at protecting copyright in the digital age, a new area of cooperation and progress in a policy debate that has long been characterized by sharp differences of opinion.

The Center for Copyright Information (CCI) was established in 2011 as part of a ground-breaking voluntary initiative among the nation's five leading internet service providers (ISPs) and virtually the entire movie and music industries. The agreement among the parties set out to stem the tide of digital piracy by accomplishing two goals: 1) establishing the Copyright Alert System (CAS); and 2) creating an organization that could educate users about the importance of protecting digital content, while offering them a better way to find movies and music online safely and legally. In the two short years since CCI's formation, we have successfully implemented the CAS and have begun a series of educational efforts aimed at helping users make better choices about the way they enjoy digital creative content, while enhancing the ability of recording artists, filmmakers and television producers to be compensated for the compelling and creative programming they deliver.

Still in its early stages, this voluntary cooperative initiative illustrates the importance of multi-stakeholder, market-driven solutions to address the problem of digital piracy, and more generally, CCI and its members believe it can be a model for addressing challenging technology policy issues through collaboration.

Background

As the Members of the Subcommittee know well, the last 15 years have witnessed a sea of change in the creation and delivery of all manner of content to consumers. After many decades of distribution through channels easily managed by content owners, like records, DVDs and on-air broadcasting, the digital revolution has

turned distribution models – and the ability to protect content against piracy – on their heads. While this wave of innovation in digital delivery wasn't designed to undermine copyright protection, an unfortunate side effect has been the dramatic rise in piracy. Exacerbating the effects of these technological innovations has been the perception by a generation of consumers that content distributed over the internet is or should be free, and that the rules that apply to the physical world don't apply to the virtual world.

Against this backdrop, representatives of the movie and music industries and major ISPs came together in 2009 to begin discussions that ultimately led to the creation of the CAS and the CCI. Those ground-breaking discussions focused on what the parties could do to stem the tide of piracy online, particularly through the growing use of peer-to-peer file sharing systems. After three years of negotiations, the nation's largest ISPs - AT&T, Cablevision, Comcast, Time Warner Cable and Verizon - along with the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA), and their member companies¹ signed the Memorandum of Understanding (the MOU) that established the framework for the CAS and the structure of CCI. The MOU was the first, and remains the only, purely voluntary, industry-led agreement of its kind.

The Copyright Alert System

The CAS, which is overseen by CCI, is an entirely voluntary educational initiative that enables copyright holders to notify consumers when their internet access accounts are alleged to have been used illegally to download and share copyrighted movies, music or TV shows. Such notices are sent in a manner that respects users' privacy, educates them about how to correct their behavior and offers them an independent review process to ensure that users' accounts are not inadvertently misidentified as having been used to engage in digital piracy.

¹ In partnership with MPAA and RIAA, the Independent Film and Television Alliance (IFTA) and the American Association of Independent Music (A2IM), the representatives of the independent music and film distributors are also participants in the CAS.

Importantly, the CAS is intended to educate consumers and is largely targeted to the casual infringer. Indeed, large-scale pirates looking to game the system will undoubtedly be able to find other ways to engage in illegal activity. Our system, instead, seeks to inform and change the behavior of the vast majority of users who want nothing more than to enjoy the content they love when and how they desire. It is not intended to be punitive in nature but to assist users in finding digital content legally and understanding the consequences of sharing content illegally over P2P networks.²

While each participating ISP's CAS implementation has unique elements, the key common components of the CAS present in each program are as follows:

- Copyright owners use a methodology that has been reviewed and validated by technology experts to identify instances of copyright infringement over P2P networks and generate notices associated with particular IP addresses;
- Copyright owners forward those notices to the ISP to which the IP address has been assigned;
- The ISP, in turn, matches the identified IP address to a particular account holder and passes on the copyright owner notice to the primary account holder in the form of a Copyright Alert (Alert). Each Alert is a one-way notice and no information about the individual account holders is sent back to the content owners;
- Primary account holders may receive up to six Alerts with a seven-day grace period in between each Alert to allow the consumer time to correct his or her behavior or to identify who in the household (or through an external hack of the account) might be intentionally or unintentionally engaging in copyright infringement;

² The CAS as an educational program does not require any ISP to terminate any account holder's internet service. However, the program does not affect any obligations ISPs may have pursuant to the DMCA, nor does it alter existing provisions in ISPs' terms-of-service relating to illegal behavior using their accounts.

- Within those six Alerts, there are three levels of notice - Educational, Acknowledgement and Mitigation – each designed to offer increasingly clear educational messages about how the user can ensure his or her account is not used for illegal purposes and where and how to find legitimate, licensed sources of movies, music and TV shows;
- If a user reaches the Mitigation Stage, (which happens after receiving either three or four previous Alerts) he or she becomes eligible to seek an independent review of the Alerts received. Our review process, administered by the American Arbitration Association, offers users the ability to challenge the Alerts they received if they believe the Alert were sent in error.

The CAS began operating early in 2013, after 18 months of research and development. Each ISP invested significant resources to design its implementation of the CAS, including the creation of consumer interfaces that would not simply identify instances of digital piracy, but help users understand how P2P technology works, when its use might be illegal and how to find content legally and safely.

To support the companies' work, the CCI engaged in consumer research that helped us understand what consumers do and do not know about P2P technology and their level of understanding about the copyright laws. We found that most consumers do not understand or appreciate concepts that many of us in the policy and legal communities take for granted – like the meaning of copyright. This research is helping us to better understand the drivers of consumer behavior around piracy and, we hope, will help us to improve the CCI's effectiveness in communicating our messages and ultimately reduce the level of online piracy and increase content consumption through legal means.

Consumer Advisory Board

Another very important aspect of the CAS is our consumer advisory board. The member associations and companies that designed the CAS recognized that the success of the program would depend, in large part, on whether the program was fair to consumers and was *perceived* as such by the user community. While, the

MOU signatories had worked hard to build in strong privacy protections, and to make each stage of the program (including the independent review process) fair, accurate and impartial, the participants recognized that external review and validation was critically important. Thus, the MOU provided for the establishment of a consumer advisory board, to be comprised of outside industry experts and consumer advocates, who would work with the CCI and its members to ensure that the interests of consumers were adequately considered and protected as the CAS was implemented. The consumer advisory board has provided and continues to provide an important oversight role and valuable advice to the CCI board on consumer privacy and other issues, including the building of a fair independent review mechanism for challenging Alerts.

CCI's Educational Activities

CCI's initial work has focused on implementation of the CAS and the creation of online support for the CAS, including helping users find better ways to access movies, music and television programming. However, an equally important part of our mandate includes helping to change the conversation about digital copyright – to enhance consumer understanding of and respect for creative content in the digital age.

Based on our research, we believe one of the most important audiences for our educational efforts is young people. As a result, we have developed a new copyright curriculum that is being piloted during this academic year in California. The kindergarten through sixth grade curriculum, entitled “Be A Creator”™, is the result of CCI's partnership with the California School Libraries Association and iKeepSafe, a leading digital literacy organization. The curriculum introduces concepts about creative content in innovative and age-appropriate ways. The curriculum is designed to help children understand that they can be both creators and consumers of artistic content, and that concepts of copyright protection are important in both cases. We hope to use this pilot period to enhance the curriculum and ultimately

encourage schools across the country to integrate it into their digital literacy programs.

Evaluation

Now that we have completed the challenging task of the initial implementation of the CAS and begun expanding our educational initiatives, we are working on a system to evaluate the impact of this innovative partnership among content owners and ISPs. Over the coming months, we will look internally at the CAS in order to evaluate user response to the program, including the impact it is having on the behavior of those receiving Alerts. We will also look more broadly at the impact on P2P piracy of the CAS and our broader educational activities. We hope these self-assessments will allow the CCI to continue to enhance the effectiveness of the CAS and our central mission of promoting lawful ways to find and consume copyrighted content and educating users of all ages about the importance of respecting copyrights.

We are aware that stakeholders around the world are watching the program with interest and we have been sharing our lessons-learned so far when asked. We also stand ready to expand here in the U.S. to additional members and will continue to look for additional opportunities to raise awareness and that our educational messages will expand consumers' respect for copyrights beyond P2P software to other methods of online piracy.

Once again, thank you for the opportunity to appear before the Subcommittee and provide information on this unique effort among content owners and ISPs, in consultation with consumer advocates. The creation of the Copyright Alert System marks the beginning of a new age of cooperation and innovation, as we all work to stem the tide of digital piracy and enhance consumers' ability to find the movies, music and TV shows they love in a safe and legal manner.