



May 27, 2015

By Electronic Mail (securityRFC2015@ntia.doc.gov)

Ms. Angela Simpson

Deputy Assistant Secretary for Communications and Information

National Telecommunications and Information Administration, U.S. Department of Commerce

1401 Constitution Avenue NW, Room 4725

Attn: Cybersecurity RFC 2015

Washington, DC 20230

RE: Request for Public Comment – Stakeholder Engagement on Cybersecurity in the Digital Ecosystem: Comments of the IIPA, 80 Fed. Reg. 14360 (March 19, 2015); 80 Fed. Reg. 27292 (May 13, 2015) (extending deadline).

Dear Deputy Assistant Secretary Simpson:

The International Intellectual Property Alliance (IIPA)¹ – a coalition of associations representing the creative industries² – appreciates the opportunity to provide input on the NTIA’s RFC seeking comments “to identify substantive cybersecurity issues that affect the digital ecosystem and digital economic growth where broad consensus, coordinated action, and the development of best practices could substantially improve security for organizations and

¹ IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association of America (www.mpaa.org), and Recording Industry Association of America (www.riaa.com). IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These include entertainment software including interactive video games for consoles, handheld devices, personal computers and the Internet, and educational software; motion pictures, television programming, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software in all formats.

² In December 2014, IIPA released the latest update of its comprehensive economic report, *Copyright Industries in the U.S. Economy: The 2014 Report*, prepared by Stephen E. Siwek of Economists Inc. According to the report, the “core” copyright industries in the U.S. generated over \$1.1 trillion dollars of economic output in 2013, accounting for 6.71% of the entire economy. The core copyright industries also employed nearly 5.5 million workers in 2013, accounting for over 4% of the entire U.S. workforce, and nearly 5% of total private employment in the U.S. These workers earn on average 34% higher wages than other U.S. employees. The core copyright industries also outpaced the U.S. economy, growing at 3.9% between 2009 and 2013, while the U.S. economy grew by 2.25%. When factoring in other industries that contribute to the copyright economy (which together make up the “total” copyright industries), the numbers are even more compelling. Finally, the report highlights the positive contribution of selected copyright sectors to the U.S. overall trade balance. In 2013, these sectors contributed \$156 billion in foreign sales and exports, exceeding that of many other industry sectors, including: chemicals, aerospace products and parts, agriculture, and pharmaceuticals and medicines.



consumers.”³ Quoting then- Secretary of Commerce Gary Locke in the Internet Policy Task Force’s June 2011 Green Paper, “Cybersecurity, Innovation and the Internet Economy,”

[t]oday, the Internet is again at a crossroads. Protecting security of consumers, businesses and the Internet infrastructure has never been more difficult. Cyberattacks on Internet commerce, vital business sectors and government agencies have grown exponentially.

That statement is even more apt today, as recent cyber breaches roundly demonstrate. The international dimension of the cybersecurity challenges are daunting. Also, as is noted by the Task Force,⁴ one of the “four key areas where the Internet must address significant challenges” is “Protecting intellectual property.” We therefore note the importance of addressing intellectual property challenges in all future engagements on cybersecurity in the digital ecosystem, and of including the creative community – companies and associations under the IIPA umbrella – in the range of stakeholders participating in processes on these issues going forward.

We also take this opportunity to underscore the importance of the application of the rule of law to enhance accountability within the digital ecosystem so that societies can combat all cybercrimes, including those involving copyright infringements as identified by the Budapest (Cybercrime) Convention. Ensuring that all players in that ecosystem, including creators,

³ Many of our members have already weighed in and participated actively in the process leading up to, and subsequent to, issuance of the July 2013 “Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy.” The Department of Commerce Internet Policy Task Force, *Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy*, July 2013, at <http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>. See, e.g., pre-meeting comments of the Association of American Publishers, at http://www.uspto.gov/ip/global/copyrights/comments/Association_of_American_Publishers_Comments.pdf; the Entertainment Software Association, at http://www.uspto.gov/ip/global/copyrights/comments/Entertainment_Software_Association_Comments.pdf; the Independent Film and Television Alliance, at http://www.uspto.gov/ip/global/copyrights/comments/Independent_Film_and_Television_Association_Comments.pdf; the Motion Picture Association of America, at http://www.uspto.gov/ip/global/copyrights/comments/Motion_Picture_Association_of_America_Comments.pdf; and the Recording Industry Association of America, at http://www.uspto.gov/ip/global/copyrights/comments/Recording_Industry_Association_of_America_Comments.pdf. See also post-meeting comments of the Association of American Publishers, at http://www.uspto.gov/ip/global/copyrights/comments/association_of_american_publishers_post-meeting_comments.pdf; the Motion Picture Association of America, at http://www.uspto.gov/ip/global/copyrights/comments/motion_picture_association_of_america_post-meeting_comments.pdf; and the Recording Industry Association of America and related music organizations, at http://www.uspto.gov/ip/global/copyrights/comments/ascap_bmi_cmpa_nsai_nmpa_riaa_sesac_post-meeting_comments.pdf.

⁴ This Department-wide Task Force includes experts across six agencies: the Economic and Statistics Administration, the International Trade Administration, the National Institute of Standards and Technology, the National Telecommunications and Information Administration, the Office of the Secretary, and the U.S. Patent and Trademark Office.



Internet service providers (ISPs), search engines,⁵ registrars and registries, advertisers and ad placement agencies,⁶ and payment processors are a part of the solution will help promote a rules based digital marketplace that is less distorted by the effects of infringement and unfair competition.

This process can hopefully drive greater security and accountability in the digital ecosystem, to the benefit of all. Such a framework should take a comprehensive and organic approach to promoting secure digital transactions, and in ensuring responsibility and accountability at all levels of the Internet distribution chain; and should follow best emerging practices for the creative industries and a healthy digital ecosystem.⁷

In conclusion, many have put forward the seemingly straightforward proposition, “if the Internet’s not broken, don’t fix it.” But this oversimplifies the current situation, and in many respects, overlooks the reality that the digital ecosystem is indeed being challenged by a significant wave (growing each day) of cybercrimes or attempted cybercrimes. Ensuring that the digital ecosystem is safe for legitimate commerce must be a significant goal for policymakers, businesses, and consumers. Governments, working together and with the private sector, simply have to find better solutions to these threats to allow the potential of the legitimate Internet marketplace to be realized.

⁵ Milward Brown Digital, *Understanding the Role of Search in Online Piracy*, 2013, available at <http://www.mpa.org/wp-content/uploads/2014/03/Understanding-the-role-of-search-in-online-piracy.pdf>. See Cary Sherman, *Google's 100 Million Notices*, The Hill, January 13, 2014, at <http://thehill.com/blogs/ballot-box/195107-googles-100-million-notices> (noting the music industry had sent its 100 millionth copyright takedown notice to Google in January 2014, without a “demonstrable demotion of sites that receive a high volume of piracy notices”).

⁶ See Digital Citizens Alliance, *Good Money Gone Bad* (February 2014), at <http://media.digitalcitizensactionalliance.org/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/4af7db7f-03e7-49cb-aeb8-ad0671a4e1c7.pdf>. See the follow-up study, Digital Citizens Alliance, *Good Money Still Going Bad: Digital Thieves and the Hijacking of the Online Ad Business* (May 2015), at <https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/298aec6-ceb0-4543-bb0a-edc80b63f511.pdf>. See Interactive Advertising Bureau (IAB), *Standards, Guidelines & Best Practices*, at <http://www.iab.net/guidelines/508676>. See also *Best Practices Guidelines for Ad Networks to Address Piracy and Counterfeiting*, July 2013, at <http://www.2013ippractices.com/>.

⁷ Many industry filings, including in the process leading up to the Department of Commerce Internet Policy Task Force, *Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy*, set forth some of these developing best practices. These may include, but should not necessarily be limited to: 1) establishing liability standards consistent with the U.S. Supreme Court’s *Grokster* decision, namely, that it is illegal to operate a service designed or operated with the clear intention of inducing or promoting infringement; 2) notice and takedown (and stay down), such that in the case of infringing content or links hosted on their services, ISPs should promptly take it down or block access to it once they become aware it is there, or become aware of facts and circumstances indicating infringement, with no requirement of a court order, no burdensome procedures, allowing electronic notices, etc.; 3) ensuring that safe harbors only apply to passive and neutral services that do not direct or organize transmissions or content and which do not effectively promote infringement; 4) fair mechanisms for disabling access to dedicated infringing services in which the content is hosted or linked; and 5) provision of notice to infringers to address infringements (including, e.g., voluntary approaches such as the Copyright Alert System (CAS)). Dozens of jurisdictions all over the world employ these practices to one degree or another without impinging on user’s freedoms or expectations of privacy, and without unduly burdening Internet providers.



We thank you for the opportunity to provide comments in this process, and look forward to onward dialogue with you on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Schlesinger". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Michael Schlesinger
Counsel for
International Intellectual Property Alliance