

Before the
U.S. Patent & Trademark Office
National Telecommunications & Information Administration
Department of Commerce
Washington, DC

In re

Request for Comments on Department
of Commerce Green Paper, Copyright
Policy, Creativity, and Innovation in the
Digital Economy

Dkt. No. 130927852–
3852–01

**REPLY COMMENTS OF
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

In response to the Department of Commerce Green Paper Conference and prior requests for comments issued by the U.S. Patent & Trademark Office (PTO) and the National Telecommunications & Information Administration (NTIA), the Computer & Communications Industry Association (CCIA) submits the following brief reply, regarding future action and convening multi-stakeholder processes.¹

I. Future Action

As CCIA indicated during the panel on access to rights information, facilitating online transactions and reducing transaction costs will mitigate piracy by increasing consumers' options for lawful content consumption. In this sense, the policy matters explored in Part IV of the Green Paper will likely present the most effective solutions for the problems identified in the preceding parts of the report. No amount of enforcement will remunerate rights-holders if licit content is not readily available, and lawful services face many barriers to come to market. Future policymaking, therefore, should prioritize resolving barriers imposed by opacity, gridlock, and uncertainty, and reduce transaction costs to bringing new, lawful services to market.

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. CCIA members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A list of CCIA members is available at <http://www.cciagnet.org/members>.

II. Comments on Multi-stakeholder Dialogue

The Green Paper Conference assembled a diverse group of interests to discuss contemporary copyright-related issues. Further stakeholder dialogue should meet and exceed this degree of inclusiveness. With respect to improving notice and takedown, the relevant conference panel effectively represented both large and small rights-holder constituencies, as well as large and small service providers, and public interest representation. All of these constituencies are necessary, but not sufficient, to account for the stakeholders on this subject. Some stakeholders have yet to be brought to the table, however. Enforcement vendors, particularly those providing takedown-related services on behalf of rights-holders, have not been represented. The Green Paper identified this constituency as a necessary party, noting the phenomenon of increased use of “automated systems” by rights-holders, and stating that “the Task Force will convene a multi-stakeholder dialogue involving right holders (both large and small), ISPs, consumer representatives and companies in the business of identifying infringing content, on how to improve the operation of the notice and takedown system.”² Given that enforcement vendors have been absent from the conversation so far, this particular imperative has not been satisfied.

Additionally, as PTO and NTIA convene stakeholder conversations on the issue, these interactions should not be artificially subdivided. Questioning during the notice and takedown panel inquired whether it was necessary to conduct different conversations or options for different-sized rights-holders and providers. All panelists seemed to agree that separating small entities from large would not be transparent, or sufficiently inclusive to be meaningful and legitimate. Similarly, sub-groups formed along other arbitrary and often fungible distinctions, such as on the basis of different types of content, or different classes of entities (e.g., network hosts and mere conduits), would not be prudent. The advantage, indeed the very purpose, of a multi-stakeholder process is to share information across different groups in order to improve the system. Because convening the broadest array of different stakeholders will be necessary to develop a comprehensive picture of the complexities of DMCA compliance, artificially dividing those stakeholders into different groups or silos would be counterproductive.

² Department of Commerce Internet Policy Task Force, *Copyright Policy, Creativity, and Innovation in the Digital Economy* (July 2013), at 57-58.

Respectfully submitted,

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January 17, 2014