UNITED STATES COPYRIGHT OFFICE

SECTION 512 STUDY

+ + + + +

PUBLIC ROUNDTABLE

+ + + + +

Thursday, May 12, 2016

9:00 a.m.

+ + + + +

Ninth Circuit

James R. Browning Courthouse

95 7th Street

San Francisco, CA 94103

+ + + + +

U.S. COPYRIGHT OFFICE:

JACQUELINE C. CHARLESWORTH

KARYN TEMPLE CLAGGETT

RACHEL FERTIG

KIMBERLEY ISBELL

1 P A R T I C I P A N T S

2 LILA BAILEY, Internet Archive

3 IAN BALLON, Stanford Law School Center for E-Commerce

4 JORDAN BERLIANT, Revelation Management Group

5 GEORGE BORKOWSKI, Recording Industry Association of

6 America

7 ANDREW BRIDGES, Fenwick & West LLP

8 ERIC CADY, Independent Film & Television Alliance

9 DAN COLEMAN, Modern Works Music Publishing

10 CARL CROWELL, Crowell Law

11 REBECCA CUSEY, Arts and Entertainment Advocacy Clinic

12 at George Mason University School of Law

13 DERON DELGADO, American Association of Independent

14 Music

15 PAUL DODA, Elsevier

16 EAST BAY RAY, Musician

17 STEVEN ELLERD, Graduate Student

18 EVAN ENGSTROM, Engine

19 ALEX FEERST, Medium

20 CATHY GELLIS, Digital Age Defense

21 JOSEPH GRATZ, Durie Tangri LLP

22 DAVE GREEN, Microsoft

1 P A R T I C I P A N T S

2 DEVLIN HARTLINE, Center for the Protection of

3 Intellectual Property

4 DAPHNE KELLER, Stanford Law School Center for Internet

5 and Society

6 WAYNE KRAMER, Movie Prose

7 KEITH KUPFERSCHMID, Copyright Alliance

8 JOSHUA LAMEL, Re:Create

9 JEFF LYON, Fight for the Future

10 STEVE MARKS, Recording Industry Association of America

11 MICHAEL MASNICK, Copia Institute

12 BRIAN MCNELIS, Lakeshore Records

13 CORYNNE MCSHERRY, Electronic Frontier Foundation

14 PETER MIDGLEY, Brigham Young University

15 GABRIEL MILLER, Paramount Pictures Corporation

16 TOM MURPHY, Content Creators Coalition

17 RYAN NOORMOHAMED, Tulane University Law School

18 SEAN O'CONNOR, University of Washington (Seattle)

19 DONALD PASSMAN, Gang Tyre Ramer & Brown, Inc.

20 BRAXTON PERKINS, NBC Universal

21 CHRIS RILEY, Mozilla

22 JAY ROSENTHAL, ESL Music/ ESL Music Publishing

1 P A R T I C I P A N T S

2 CHARLES ROSLOF, Wikimedia Foundation

3 ELLEN SCHRANTZ, Internet Association

4 JEFFREY SEDLIK, PLUS Coalition

5 ELLEN SEIDLER, Fast Girl Films

6 BEN SHEFFNER, Motion Picture Association of America

7 IRA SIEGEL, Copyright Enforcement Group Inc.

8 T.J. STILES, Author

9 JONATHAN TAPLIN, USC Annenberg Innovation Lab

10 JENNIFER URBAN, University of California-Berkeley

11 School of Law

12 ELIZABETH VALENTINA, Fox Entertainment Group

13 RUTH VITALE, CreativeFuture

14 FRED VON LOHMANN, Google

15 DEVON WESTON, Digimarc

16 BRIAN WILLEN, Wilson Sonsini Goodrich

17 STEPHEN WORTH, Amazon

18 BETSY VIOLA ZEDEK, Disney

19

20

21

22

1 A G E N D A

2 TOPIC

3 Introduction/ Opening Remarks

4

5 Session 1: Page 11

6 Notice-and-Takedown Process—Identification of

7 Infringing Material and Notice Submission

8

9 Session 2: Page 105

10 Notice-and-Takedown Process—Service Provider Response

11 and Counter-Notifications

12

13 Session 3: Page 212

14 Applicable Legal Standards

15

16 Session 4: Page 306

17 Scope and Impact of Safe Harbors

18

19

20

21

22

23

1 P R O C E E D I N G S

2 MS. TEMPLE CLAGGETT: We're going to get

3 started in just a few minutes. Thank you.

4 (Crosstalk)

5 MS. CHARLESWORTH: I've never heard such a

6 quiet room of copyright lawyers. We're about to

7 begin. I think Karyn's going to open the proceeding.

8 MS. TEMPLE CLAGGETT: Good morning. My name

9 is Karyn Temple Claggett. I'm the Associate Register

10 of Copyrights and Director of the Office of Policy &

11 International Affairs for the United States Copyright

12 Office.

13 To my immediate left is Jacqueline

14 Charlesworth, General Counsel of the U.S. Copyright

15 Office. And roughly to her left is Rachel Fertig, who

16 is a Ringer Fellow in the Office. And who will be

17 coming soon is Kimberley Isbell, who is a Senior

18 Counsel in the United States Copyright Office in my

19 department.

20 Thank you all for coming to our second set

21 of roundtables on section 512 of the Copyright Act.

22 We appreciate all of you who have attended formally as

1 one of the speakers to the roundtables because this
2 provides a great opportunity for us to hear from a
3 wide range of interested parties affected by the DMCA
4 from startup technology companies to individual
5 authors and artists to large and small corporations.
6 We also appreciate the interest that the
7 roundtables have generated in the general public and
8 are glad that many people have come and joined us in
9 the audience as well, which is why we do keep all of
10 our events like these free and open to the public to
11 attend.
12 Finally, we would like to thank the Ninth
13 Circuit for generously hosting us today and, in
14 particular, Meredith Blain of the Ninth Circuit staff,
15 who spent a tremendous amount of time helping us with
16 logistics and arrangements for the room.
17 A couple of quick logistics -- once we
18 begin, we will have to close the doors, per court
19 rules. So if you're in now, you'll be able to stay
20 throughout the session. But if you leave, we will
21 have to ask you to go to the overflow room where you
22 will be able to hear the proceedings for the remainder

1 of the session. After each session, we will open it
2 up again. And those who were in the overflow room
3 will be invited back in to this session if there is
4 space.
5 I wish I could say that we've solved all of
6 the questions and concerns regarding the efficacy of
7 the DMCA in our New York roundtables. But
8 unfortunately, that is not the case. So you all have
9 a heavy burden here today.
10 I will say several things did become clear,
11 to the extent that there are sides on these issues,
12 they are often not talking to each other but sometimes
13 past each other from fundamental disagreements as to
14 whether piracy is a huge problem at all to the causes
15 of piracy itself to whether the balance struck in the
16 DMCA remains or whether it has shifted in favor of one
17 industry over another. Similarly, there are
18 differences of opinions on proposed solutions, where
19 some believe that there is no need for any solution at
20 all because there is no problem to a strong belief
21 that the system must change in fundamental ways to a
22 recognition that the system isn't working but that

1 voluntary solutions, as opposed to legislative
2 options, are more appropriate.
3 Some may question whether the format of this
4 type of roundtable provides any real chance of a
5 resolution of some of these very, very complicated
6 issues. But I can't help but perhaps naively hope
7 that the dialogue itself will allow people to consider
8 moving away from their somewhat entrenched positions
9 to be able to listen to different perspectives.
10 From our perspective at the U.S. Copyright
11 Office, these roundtables help to highlight particular
12 issues that we might want to focus on from the various
13 90,000 comments that we received, and they allow us to
14 drill down at least somewhat on the underlying facts
15 and claims made in those comments. So while, again,
16 we don't expect to actually resolve anything here
17 today, we do believe that these roundtables serve as a
18 very important beginning of a necessary dialogue that
19 will help us as we continue to review section 512.
20 In terms of logistics for the panel itself,
21 we have a couple of things. First, if you would like
22 to speak, please tip your placard, and we will call on

1 you. We're going to ask, just because we have so many
2 people who are interested in speaking today, that you
3 limit your remarks to about two minutes. We will be
4 timing you, and we'll alert you when you're at the
5 one-minute mark as well as at the 30-minute and the
6 stop mark as well. Also -- and we will -- oh, 30
7 seconds -- sorry. Otherwise, that would be the whole
8 session.
9 Also, to the extent that, again, you need
10 get up anytime during the session, please remember
11 that you will, unfortunately, not be allowed back in.
12 If you are a speaker in the session, let us know if
13 you need to get up to go to the restroom so that we
14 would make sure that we can at least let speakers and
15 participants on the session back in to the room so
16 that you will be able to participate for the remaining
17 part of the session.
18 Also, please, briefly, when you do speak,
19 identify yourself by name so that the court reporter
20 can make sure that they have your name down. All of
21 these proceedings will be transcribed, and we will
22 make available the full transcripts of the proceedings

1 on our website shortly after the end of the sessions.
2 Are there any questions before we begin?
3
4 SESSION 1: Notice-and-Takedown Process—Identification
5 of Infringing Material and Notice Submission
6
7 I'm going to start the session first by just
8 asking everyone to briefly go around and identify
9 themselves by name and title. And then we'll jump
10 right in to our first question of the session. And
11 this session is on the notice-and-takedown process
12 overall, both identification of infringing material
13 and notice submission itself.
14 And I'll start on my right.
15 MS. ZEDEK: Do we push --
16 MS. TEMPLE CLAGGETT: Yes. If you have not
17 already, please push the "On" button for your
18 microphones, please.
19 MS. ZEDEK: Good morning. I'm Betsy Viola
20 Zedek. I'm principal counsel for Anti-Piracy at the
21 Walt Disney Company.
22 MS. TEMPLE CLAGGETT: Thank you.

1 MR. WORTH: Good morning. I'm Stephen
2 Worth, Associate General Counsel at Amazon.
3 MS. WESTON: I'm Devon Weston with Digimarc,
4 and I manage customer relations and operations.
5 MS. VITALE: I'm Ruth Vitale, CEO of
6 CreativeFuture. It's an advocacy organization for the
7 creative industries.
8 MS. CHARLESWORTH: Just -- I'm sorry. You
9 can pull the mic a little bit closer to you so you
10 don't have to do that, what I just did. The mics are
11 pretty sensitive. So you don't actually have to lean
12 in, but just make sure that you direct it toward -- to
13 the mic itself. Like a hand away was the advice we
14 got.
15 MR. STILES: Okay. And watch your pop and
16 peas (sic). I'm TJ Stiles. I'm an independent
17 author.
18 MR. ROSLOF: I'm Charles Roslof, Legal
19 Counsel at the Wikimedia Foundation, which is the non-
20 profit that runs Wikipedia.
21 MR. ROSENTHAL: Jay Rosenthal, Partner with
22 Mitchell Silberberg & Knupp, representing the "Music

1 Community" as well as ESL Music and the National Music
2 Publishers Association.
3 MR. PERKINS: I'm Braxton Perkins. I'm a
4 vice president in the Creative Content Protection
5 Group at NBCUniversal.
6 MS. URBAN: I'm Jennifer Urban, and I'm a
7 professor at the University of California Berkeley
8 School of Law.
9 MS. MCSHERRY: And I'm Corynne McSherry with
10 the Electronic Frontier Foundation.
11 MR. MCNELIS: Brian McNelis, SVP of
12 Lakeshore Records. Thank you.
13 MR. LYON: I'm Jeff Lyon, Chief Technology
14 Officer at Fight for the Future.
15 MR. KUPFERSCHMID: Keith Kupferschmid, CEO
16 of the Copyright Alliance.
17 MR. KRAMER: I'm Wayne Kramer, writer and
18 director.
19 MR. FEERST: I'm Alex Feerst, Corporate
20 Counsel at Medium.
21 MR. GREEN: I'm Dave Green, Assistant
22 General Counsel at Microsoft.

1 MS. CUSEY: I'm Rebecca Cusey. I'm a law
2 student at George Mason, and I'm representing artists.
3 MR. BORKOWSKI: George Borkowski, Senior
4 Vice President of Litigation and Legal Affairs at the
5 Recording Industry Association of America.
6 MR. BERLIANT: Jordan Berliant, Partner at
7 Revelation Management Group. We manage recording
8 artists. And fittingly, we're last to announce
9 ourselves.
10 MS. TEMPLE CLAGGETT: I don't think that was
11 intentional, but thank you. And thank you all for
12 participating today.
13 As I mentioned, our first session will focus
14 on the overall effectiveness of the notice-and-
15 takedown regime, particularly from the perspective of
16 identifying infringing notices and submitting them to
17 ISPs. As most of you all know, it's been nearly 20
18 years since the DMCA was adopted, and the online
19 environment has changed drastically from just the
20 number of websites that are available out in the world
21 to the speed at which content can be disseminated to
22 the overall scope of the internet as well as the

1 number of people that rely on it.
2 So the question I have, initially, is: Has
3 the DMCA kept up? If not -- if your opinion is that
4 the DMCA has not kept up with these radical changes in
5 the online environment, can you identify the key issue
6 or concern that leads you to that conclusion?
7 Okay. Most of you have raised your
8 placards. So I'm going to start on this side with Ms.
9 Zedek.
10 MS. ZEDEK: Thank you.
11 From our perspective, the notice and
12 takedown system imposes an enormous burden on
13 copyright owners of any size. At Disney, we have a
14 dedicated legal team operating with support from
15 multiple technical vendors, and we send takedown
16 notices regarding millions of infringements of our
17 copyrighted content annually. In 2015, for instance,
18 the six MPAA member studios sent takedown notices on
19 over 104 million infringing URLs.
20 Although we have seen improved efficiencies
21 in notice sending and notice processing over the past
22 few years -- for instance, through the offering and

1 use of takedown tools -- the more significant issue
2 from my perspective is the impact and the
3 effectiveness of all of those notices.
4 While we may be increasingly efficient at
5 identifying infringing copies of our copyrighted
6 content online and some online service providers may
7 be likewise efficient at processing our notices and
8 addressing individual infringing links or files, the
9 system is ineffective at diminishing the mass amount
10 of piracy online.
11 In just a three-month period, for instance,
12 we at Disney sent takedown notices regarding over
13 34,000 infringing copies of just one film -- that was
14 Marvel's Avengers: Age of Ultron -- to a single file-
15 hosting website. There was not a single day in that
16 period that we did not find the film reposted to this
17 site multiple times. In fact, we discovered an
18 average of 388 new copies per day on just this one
19 site.
20 I believe online service providers and
21 content owners need to work together to proactively
22 address the challenges of rampant online infringement

1 and to ensure that the substantial efforts invested in
2 notice and takedown on both of our parts can have a
3 real impact on piracy.
4 MS. TEMPLE CLAGGETT: Thank you.
5 Ms. Weston?
6 MS. WESTON: It's -- at Digimarc, we
7 specialize in notice and takedown as well as digital
8 watermarking for primarily rightsholders. Our notice
9 and takedown service focuses on the books publishing
10 industry. So we have sort of the unique position in
11 between OSPs and rightsholders to see sort of the
12 inefficiencies. And we're of a mind that,
13 unequivocally, you know, section 512 has not kept up
14 with the pace of change.
15 We have seen, you know, an incredible rise
16 in the amount of piracy over time. Repeat infringers
17 as well seems to be a problem that has been going
18 unchecked. We have very little visibility into the
19 actual policies of OSPs to prevent repeat
20 infringement.
21 Additionally, although there have been some
22 efficiencies on the OSP side in terms of standardized

1 submission forms, by and large, when you're working
2 across hundreds of thousands of, you know, notice and
3 takedown over thousands of websites, the
4 inefficiencies just stack up. And it becomes
5 impossible for a small rightsholder to manage that
6 kind of enforcement on their own and necessary to
7 engage with a group like ours, which of course comes
8 at a price that outstrips the individual
9 rightsholder's ability to keep up with that.
10 Additionally, I think the counter-notice
11 system is broken. So the idea that counter-notices
12 can be issued without any sort of discrimination in
13 terms of whether there's any validity to it, that the
14 rightsholder has to respond by bringing a federal
15 lawsuit -- you're left with the choice to either, you
16 know, take on an extremely costly and probably
17 ineffective federal lawsuit versus taking no action at
18 all and the content being re-enabled.
19 So we think it's high time that it changes.
20 MS. TEMPLE CLAGGETT: Now, you mentioned
21 that the -- a number of different things, including, I
22 guess, just the sheer volume as well as, you mentioned

1 a couple of times, repeat infringement. If you could
2 identify just one key issue that makes you think that
3 the DMCA has not kept up, what would that be? Both of
4 those issues or just one over the other?
5 MS. WESTON: Yeah, I think the submissions -
6 - the submission forms themselves, you know, the
7 incredible inefficiency that comes along with the
8 diversity of submission forms and the fact that
9 whether you're a large entity like us or a small
10 copyright holder, you have to conform to every single
11 different website's takedown operation. So …
12 MS. TEMPLE CLAGGETT: And is there -- are
13 there a large variety of different types of forms out
14 there? Or are -- is there any kind of unofficial kind
15 of standard in terms of the submissions?
16 MS. WESTON: Sure. So obviously, the
17 standard language of the DMCA being, you know, the
18 thing that holds it together, but there's email
19 submissions which we find to be relatively convenient
20 that a lot of websites have. However, the registered
21 DMCA copyright agent for a lot of these websites
22 that's on the Copyright Office is extremely out of

1 date. These are scanned copies of old sort of
2 registrants that may or may not even go to a live
3 email address, from what we found.
4 But additionally, there's the web forms that
5 different OSPs utilize. They can vary quite greatly.
6 Some of them are great. We're given access to, like,
7 an admin panel where we can effectively remove URLs
8 from behind the scenes on a website. Others require
9 captchas, different sort of very manual procedures
10 that sort of preclude anyone doing this at scale for
11 copyright holders. You have such a significant
12 problem, so it varies tremendously.
13 MS. CHARLESWORTH: Can I ask? In terms of
14 the services you provide, what is the ratio -- or how
15 would you relate -the automated services versus manual
16 intervention? How do you integrate those in your
17 offerings?
18 MS. WESTON: Sure. So we do utilize both
19 automated and manual search as well as a manual
20 component in the validation. So somewhat
21 differentiating from other automated crawl services,
22 we have basically a human component so that we kind of

1 can be a little bit more discreet about that.
2 And then every single link that we find or
3 file that we find on the internet is reviewed by two
4 different trained customer service personnel before we
5 actually issue a takedown, with a mind to be, you
6 know, extremely thorough -- taking only full
7 infringing copies of the work down, being mindful of
8 fair use, which is, of course, a sort of quickly
9 deepening issue.
10 So yeah. So there's a definite -- I would
11 say it's probably 70 percent automation, 30 percent
12 manual in terms of the search. And then the manual
13 component, of course, plays into every single file
14 that we find before we take any course of action.
15 On the enforcement side of that, again, the
16 balance is always shifting between the ability to
17 submit notices automatically and then the need to
18 engage with, you know, a human level to, say, enter a
19 captcha, to configure page reads when a new website
20 comes up. Or a website can use a configuration so
21 that our automated services can't read those pages.
22 So it's -- there's always sort of a constant change,

1 fluidity, between the manual component and the
2 automated component.
3 MS. CHARLESWORTH: And one other follow-up -
4 - you said that you had seen a rise in piracy. Can
5 you explain how you measure that?
6 MS. WESTON: Sure. So our business started
7 working for books publishers in about 2009 on one side
8 of our business. And since then, we've worked with
9 increasingly more customers. But we've also just
10 seen, you know, if we look at our statistical data
11 internally, an incredible rise -- diversity of sites -
12 - far more linking sites. We've seen piracy for book
13 publishers go from existing only on, say, generic
14 file-sharing websites, the cyberlockers of the world
15 that are mixed use to having dedicated book piracy
16 websites that have really sort of taken over, you
17 know, the bulk of what we see for book publishers.
18 So it's really a new diversity of sites,
19 just a huge increase in volume of the number of
20 notices that we send on a daily basis and then, also,
21 sort of the diversity of the content that's being
22 shared -- where it went from potentially, you know,

1 just sort of trade and maybe textbooks to really the
2 entire range of what book publishers are producing.
3 MS. TEMPLE CLAGGETT: And you primarily work
4 for book publishers, or are your services available
5 for individual authors?
6 MS. WESTON: They are available for
7 individual authors. But you know, again, I think this
8 is part of the issue, is that it's -- you know, it's
9 really an enterprise-level service, given the number
10 of sort of, you know, the systems and the human
11 element that go in to it. So it's primarily designed
12 for large rightsholders.
13 MS. TEMPLE CLAGGETT: Which I think maybe
14 appropriately leads us to our next participant, Mr.
15 Stiles.
16 MR. STILES: Thank you very much.
17 Well, intellectual property only exists
18 because of government intervention in the marketplace.
19 But for small individual creators like myself who have
20 no staff, no reserve fund for hiring services, we feel
21 like the DMCA takedown notice provisions are designed
22 to fail and that we've been completely abandoned.

1 When -- we feel like enforcement of the law and of our
2 rights has been privatized. So of course, being the
3 smallest players in this economy, that we've -- we are
4 the ones who are priced out of that market.
5 So as a result of piracy, we spend a lot of
6 our time, which is a direct cost to creation -- it's a
7 direct cost to our income -- scouring the entire
8 internet looking for piracy. And there's so much that
9 many of us give up, and many of us send out a handful
10 of notices. And of course, as you know, they
11 immediately -- websites pop back up. Or the -- even
12 the advertisements for them -- a lot of advertising
13 for sites are on YouTube. I've seen documents, books
14 hosted on Google Docs, et cetera. So it's not just
15 the remote websites.
16 Part of the problem is -- for me is that,
17 you know, our absolute income is so small that even
18 the small marginal impact is devastating. So for
19 example, I just received my second Pulitzer Prize for
20 my most recent book. The total sales so far is 38,000
21 copies. So that means if, you know, I lose through
22 piracy a few hundred copies of sales, that is the

1 equivalent of, you know, a mortgage, a month or two --
2 a few months of health insurance. I mean, it's
3 devastating to me.
4 And then there's the larger problem of the
5 erosion of the value of digital works -- creative
6 works in digital form. My own mother-in-law came to
7 me asking me excitedly about a website where you could
8 get books for free. And that shows how the social
9 compact in which you pay for something that's made for
10 sale has been destroyed by piracy.
11 MS. TEMPLE CLAGGETT: And just going, I
12 guess, kind of following on some of the things that
13 Ms. Weston said and some of the things that you just
14 said, in terms of individual authors getting the
15 services of organizations to try to address, you know,
16 online piracy and to use the DMCA notice-and-takedown
17 process, is -- are there services available to
18 individual authors? Are they priced out of those
19 services?
20 MR. STILES: Well, it brings -- it's a very
21 good question. It depends, really, in part, upon who
22 your publisher is or if you're a self-published or if

1 you have a small publisher. A good friend of mine,
2 you know, is a senior editor for Graywolf, a fantastic
3 press, a tiny non-profit. I've been advised of self-
4 publishing. And as a traditionally published author,
5 I think that's great. It means that these are people
6 who are doing everything for themselves.
7 And like I said, you know, when I'm talking
8 about sales of a Pulitzer Prize new book and 38,000 so
9 far in sales are now going down, I mean, that -- you
10 know, that margin to be able to go out and then buy
11 services is tiny. Now, I'm published by a very large
12 publisher. So you know, they work with Digimarc, and
13 they have their own budgets. But you know, they're
14 also, relatively speaking, small players. I mean, the
15 entire publishing industry is not as large as, of
16 course, Google. But then who is?
17 And so there are a lot of interests. And I
18 recognize the validity of those interests. Authors
19 are critical to this entire -- in the literary sphere,
20 the entire ecosystem. But you know, we have no market
21 power whatsoever. And our publishers have their own
22 interests, which are not always often aligned with us

1 on -- in piracy as they often are. But you know, how
2 far do they rock the boat? They've got other business
3 relationships. They've got other concerns.
4 And so this is a sphere where we feel like
5 we need enforcement, wise -- you know, not harsh, not
6 throwing people in jail. But we need actual
7 professional enforcement as opposed to individuals
8 taking time away from creation. It might take 20
9 minutes a day. I mean, that's a huge amount of my
10 working time. That's someone not creating. And the
11 threat of piracy by driving down creative works has
12 prevented me from creating new works that would
13 eventually cost more than a standard eBook.
14 So the world sees -- it's actually -- the
15 impact of piracy imposes limitations on my creativity.
16 So my -- the book that I just published, I wanted a
17 new, expansive, digital edition that would have had
18 all kinds of new features. It's just not feasible.
19 People don't believe that books have any value in
20 digital form, or very little at least.
21 MS. TEMPLE CLAGGETT: Thank you.
22 Mr. Rosenthal?

1 MR. ROSENTHAL: Yes, thank you.
2 First of all, I'd like to draw on TJ's
3 comments and support them and move this from the book-
4 publishing world for small authors to music. And I'd
5 like to talk about, for a second or two, the example
6 of small labels and small music publishers and, in
7 particular, my client, ESL Music, who used -- quite
8 extensively tried to use the DMCA to help their
9 situation with the whack-a-mole problem, which to a
10 small label is the biggest problem. It is this
11 repeated use and inability to use the DMCA to their
12 benefit. And what they finally did was they woke up
13 one morning and realized that maybe copyright offers
14 them a right, but the DMCA offers them no remedy
15 whatsoever. And they stopped using it.
16 And in fact, they have quite recently
17 decided, because they can no longer be the stewards of
18 the copyrights for their particular artists, they have
19 released those artists from the label. That is a
20 tragedy. That is the antithesis of progress. And if
21 there's any more compelling point that should be taken
22 in as to why we need to take the DMCA from a notice-

1 and-takedown system to a notice-and-stay-down system,
2 this is it -- because small copyright owners do not
3 believe anymore that the DMCA works for them in any
4 way, shape or form.
5 And I think that where we need to move to is
6 more shared responsibility. Certainly, the courts
7 have not helped in any way in terms of their
8 interpretations of the DMCA and the provisions that
9 initially were put in the DMCA to have a shared
10 responsibility. And I think that Congress must do
11 something. Otherwise, you'll have a whole category of
12 authors, generally with very limited resources, that
13 cannot use the DMCA at all. And that, again, is a
14 tragedy.
15 And I know that we have a panel on
16 solutions, and we can talk about those. But right
17 now, keep in mind that for small copyright owners,
18 this isn't working at all.
19 MS. TEMPLE CLAGGETT: Thank you.
20 Ms. Urban?
21 MS. URBAN: Thank you.
22 Again, Jennifer Urban from Berkeley. So the

1 perspective that I bring to this problem is a little
2 bit different. I hope that it's helpful to a wide
3 variety of people around the room.
4 As researchers, my colleague, Brianna
5 Schofield, Joe Karaganis and I were interested in
6 trying to get a sense of how section 512 works in a
7 broader sense because one of the things that is most
8 notable about it is that it's a black box. It takes
9 what would otherwise be a public dispute resolution
10 system in the courts, and it puts it into notices sent
11 by copyright owners to online service providers,
12 potentially with a counter-notice. And that means
13 that it's hard to understand how it's working because
14 there isn't a public record.
15 So to try to get at that problem, we did
16 three studies. The first study is a qualitative study
17 in which we developed -- and I'd be happy to talk
18 about the methodology to anyone who would like -- what
19 we think is a good cross-section of the online service
20 provider sector. We started with them because they're
21 in the middle of the dispute resolution process,
22 number one; and number two, because one of Congress's

1 goals was to provide some measure of comfort and
2 ability for online service providers to start up and
3 to flourish.
4 And we included then as well in-depth
5 interviews with large rightsholders with valuable
6 properties. We really did want to be able to expand
7 out into a more diverse set of rightsholders. And I
8 hope to do that in the future, and I'm glad to hear
9 from everybody around the table. But the large
10 rightsholders with valuable properties, obviously, are
11 a very important perspective.
12 So we started with those two groups, and
13 then we added to that two quantitative studies of
14 takedown notices that are housed at the Lumen
15 database. It's hard to get takedown notices to study,
16 but we were able to look at the ones that are housed
17 there.
18 What we found in the qualitative study that
19 I think is most important for this -- the question set
20 to this panel is that the section 512 is working quite
21 well in a number of ways. The main way is that it is
22 capacious. The online service providers we talked to

1 vary widely in the type of service and how big they
2 are, what they do and very much in the way notice and
3 takedown operates for them.
4 So two-thirds of them -- and this may be
5 surprising; it was kind of surprising to me -- are
6 what we call "DMCA Classic" online service providers
7 in the paper, meaning that they get a relatively
8 small, manageable number of notices. They review them
9 by hand, and they operate the way we kind of all
10 thought 512 was going to operate in 1998.
11 The remainder are what we call "DMCA Auto,"
12 or "DMCA Plus" online service providers. Those are
13 the service providers who are receiving automated
14 notices like the ones Ms. Zedek from Disney was
15 talking about trying to deal with large-scale
16 infringements. And sometimes they move on to measures
17 that are not required by section 512 for the safe
18 harbor like filtering but that are also automated
19 methods.
20 So the second big -- so it -- for those DMCA
21 Classic providers, it's working very well, but they're
22 terrified of an onslaught of notices or a requirement

1 for the sort of filtering mechanisms that they don't
2 need because they don't have that kind of experience
3 and that they can't afford.
4 For the large rightsholders, everyone agreed
5 that 512 is really important. It's certainly a lot
6 better than filing lawsuits, and it does help with
7 enforcement. But there is a real challenge when it
8 comes to large scale, particularly offshore
9 infringement.
10 And then the quantitative studies allowed us
11 to kind of drill down and look at notices from
12 automated systems in one and from individual senders
13 in other -- in the other. And we were able to kind of
14 see the sort of mistakes that can creep in, in hopes
15 that we might be able to improve the system both for
16 senders and online service providers, but also for the
17 ultimate beneficiary, which is of course everyone who
18 is the public and is online.
19 MS. TEMPLE CLAGGETT: Thank you.
20 I think in the New York roundtable, your
21 colleague mentioned that automated systems are an
22 important process of or are an important part of the

1 DMCA process. Is that something that you agree with
2 as well, that in terms of being able to deal with the
3 large scale or the large amount of online
4 infringement, automated systems are always going to be
5 an important part of the process even if they may need
6 to be improved in certain aspects?
7 MS. URBAN: So yes, the important thing that
8 we found out about that, again, is -- though, is that
9 the ecosystem is highly diverse. So there is a large
10 chunk, the majority of the online service provider
11 sector that is simply not in this discussion about
12 automation at present. And that's because they don't
13 have -- they just don't get as many notices. They
14 don't -- you know, they're not dealing with the same
15 kinds of challenges. About a third of them got fewer
16 than 100 a year.
17 So then -- so there's a large sector that
18 really does look like 512 originally looked. And I
19 think it's really important to remember that because
20 if we make policy changes, we have a real risk of
21 collateral damage and unintended consequence.
22 But for people who are dealing with

1 infringement at scale, I think -- you know, we talked
2 to rightsholders. And we agree that we don't see any
3 way that you could do that effectively without some
4 kind of automated detection system, automated noticing
5 system. They do have flaws. We uncovered, you know,
6 a variety of flaws. But we also uncovered best
7 practices that both rightsholders and online service
8 providers talked about in our interviews that we
9 collected. And from the flaws, we saw that we could
10 make suggestions to try to improve those.
11 Importantly, I don't think any automated
12 system can ever operate in isolation without some kind
13 of human review, whether that's sample-based human
14 review or something -- as Ms. Weston from Digimarc was
15 talking about, you're going to need some judgment.
16 MS. TEMPLE CLAGGETT: And I -- and just one
17 last follow-up question -- in terms of the automated
18 versus the human notices, I think your study also
19 noted that on the side of kind of human notices that
20 were sent out -- it's weird to call them human notices
21 -- but that there was actually, in some instances,
22 more errors in the notices that were sent out by

1 humans as opposed to through the use of a professional
2 automated system. Is that correct?
3 MS. URBAN: That is true. It's really
4 important to understand the sample that we were
5 looking at there. Those were notices sent to Google
6 Web Search. And the -- some -- it's interesting that
7 the notices sent -- sorry -- notices sent to Google
8 Image Search. The notices sent to Google Web Search
9 also tended to come from a handful of people; same
10 with Google Web Search -- a completely different set
11 of people and probably quite a different set of people
12 from some of the people around the table. Mr. Stiles,
13 for example, isn't going to be sending notices to
14 Google Web search.
15 So be aware that in -- you're going to get
16 different problems and different successes within
17 different sectors. But with regards to those notices,
18 they had a large number of substantive flaws, by which
19 I mean trying to use the copyright notice when the
20 concern is something completely different, like
21 defamation, not appearing to recognize the limitations
22 on copyright like fair use and those types of things.

1 It's hard to know based -- just looking on the
2 notices.
3 But by inference, our guess would be that
4 there's a combination of senders who don't have as
5 sophisticated an understanding of copyright law as
6 others do. And in some cases, there was probably a
7 desire to get a competitor knocked out of Google Web
8 search. But it was kind of hard to tell.
9 So humans aren't a panacea.
10 MS. TEMPLE CLAGGETT: Right.
11 MS. URBAN: Sometimes they need better
12 information. And computers aren't a panacea.
13 Sometimes they need humans.
14 MS. TEMPLE CLAGGETT: And so I guess just
15 like as you said, you need to consider different ISPs
16 differently than you would need to consider different
17 senders, I guess, in terms of what the concerns might
18 be in terms of the validity of notices or issues that
19 arise in the notices. You can't kind of just put a
20 broad brush against all notice senders -- large
21 corporations and individuals. But you need to kind of
22 address them individually or by category.

1 MS. URBAN: Right. The diversity of the
2 system, I think, would be the main theme of our study
3 -- the enormous diversity of the system.
4 MS. TEMPLE CLAGGETT: Thank you.
5 MS. CHARLESWORTH: I just had a, I think,
6 related question. You said you didn't interview
7 smaller, like, individual authors. Was there a reason
8 for that? What was the reason? I assume there was
9 one.
10 MS. URBAN: Money and time and hopes that we
11 could do it eventually, I think. But there are also
12 some methodological reasons. I mean, it took us about
13 two and a half years to do what we did. We had hoped
14 to develop a group -- a sample to do -- to interview
15 smaller rightsholders as well, and we simply weren't
16 able to do it. We were able to talk to online service
17 providers since they sit in the middle about their
18 experiences, which gave us some information. And of
19 course, we went to the Department of Commerce, multi-
20 stakeholder meetings and read people's testimony just
21 to try to, like, add in a little bit of that
22 perspective.

1 But at the end of the study, we called for
2 more research. One of those is to look into the
3 diversity of senders. Another is to try to look into
4 targets, which is very difficult because of human
5 subjects. We really need to understand that sector as
6 well. And the third is to look into the rights
7 enforcement organization sector. We were able to talk
8 to some of them, but our information is relatively
9 thin.
10 I think all of those groups could really --
11 we could really benefit from knowing more. And I
12 think that the Copyright Alliance's survey that they
13 did of their membership is -- you know, is one
14 interesting and useful piece of information. And I
15 would love to see a more -- you know, some more
16 comprehensive, qualitative research on that as well.
17 MS. CHARLESWORTH: So is it fair to say that
18 the results of your study or your -- I think you
19 opened by saying, generally, you think 512 is working
20 well --
21 MS. URBAN: Mm-hmm.
22 MS. CHARLESWORTH: -- or sort of limited to

1 the areas that you examined and looked at in the study
2 and might not extend to groups that you didn't look
3 at?
4 MS. URBAN: Well, it was kind of surprising
5 to me, actually, how broadly well it seemed to be
6 working in a number of ways. And I always do try to
7 remember the alternative, which of course is lawsuits,
8 but that -- which is very high burden.
9 On the other hand, there is no question that
10 the scale of infringement in some situations has
11 become difficult for certain groups. And while we
12 couldn't make specific recommendations for certain
13 groups like small senders because we didn't know
14 enough, we were able to sort of ask some questions and
15 try to kind of get at ways that it might be a little
16 bit more useful for them.
17 MS. CHARLESWORTH: Okay. Thank you.
18 MS. TEMPLE CLAGGETT: And I said I was going
19 to ask my final question, but I have one quick one
20 because I don't think that you're on the next panel.
21 And that is just in terms of the study's review of
22 improper notices or notices that didn't comply with

1 section 512. One of the issues that, you know, we
2 often, you know, want to focus on is the potential use
3 of section 512 to go after lawful content.
4 MS. URBAN: Mm-hmm.
5 MS. TEMPLE CLAGGETT: And I know that you
6 identified kind of percentages of what you viewed as
7 improper notices. But one question I had was whether
8 you separately calculated those improper notices in
9 your view that actually were targeted at lawful
10 activity as opposed to those notices that might have
11 just had a procedural defect --
12 MS. URBAN: Mm-hmm.
13 MS. TEMPLE CLAGGETT: -- but that they were
14 actually targeted against otherwise unlawful activity
15 or infringing content.
16 MS. URBAN: Yeah, that's a great question.
17 And it's -- and I'm glad to verify -- to talk about it
18 because I think it's important in a couple of ways.
19 Again, it really differed between Study 2,
20 which was the automated sending, and Study 3, which
21 was more the human-based sending. In Study 2, about
22 15 -- I should start out with the fact that for 26

1 percent of the notices we didn't have enough
2 information to make a determination. So we just
3 assumed that they were good.
4 Then there were about 15 percent that had
5 issues that I gathered -- in New York were sort of
6 described as procedural. They had to do with
7 identifying the content. I don't know that I agree
8 with that because this is a copyright dispute where
9 you can think of it as, you know, Comes Now plaintiff
10 -- I have a copyright, this is what I say is
11 infringing and because we heard from the online
12 service providers that they really sometimes have
13 difficulty finding the content to take it down.
14 So I think that that's an important defect,
15 but it's not a -- but a lot of those notices were
16 targeted towards large-scale file sharing. So maybe
17 we don't care as much about any impact on speech there
18 because, you know, it looked like there was a lot of
19 infringement.
20 There were also some questions about fair
21 use and such in the first study. And what we were
22 trying to do because we couldn't adjudicate the cases

1 was to look for situations where you definitely would
2 want human judgment. And that was about 7 percent of
3 the notices.
4 In the third study, however, then you really
5 got into, as I mentioned earlier, a lot of sort of
6 substantive things around something that might be
7 defamation or it might just be a difference of
8 opinion. It might be competition that was a lot --
9 there was a fair percentage of fair use-type issues,
10 fair or permissioned uses. And those were
11 particularly concerning because the notices tend to be
12 directed against social media, blogs, the kinds of
13 things that one thinks of as online expression where
14 you might worry more about a mistake.
15 MS. TEMPLE CLAGGETT: And were there any
16 characteristics of the senders with respect to those
17 type of notices that, you know, we -- you would be
18 able to kind of glean in a trend or characteristic?
19 Were these automated notices or human notices in terms
20 of that category you just mentioned?
21 MS. URBAN: There were some of the automated
22 notices, and Study 2 did present questions where you'd

1 want to look to see if it was fair use, that kind of
2 thing. In Study 3, again, most of them were either
3 individuals or very small companies. And while we
4 couldn't interview them or get a sense of their
5 intent, a lot of the time, it really appeared to be a
6 lack of sophistication with copyright law and/or
7 perhaps a, you know, strong sense of grievance and
8 dispute that might have led them to use a mechanism
9 that really wasn't perhaps appropriate for that.
10 MS. TEMPLE CLAGGETT: Great. Thank you.
11 Ms. McSherry?
12 MS. MCSHERRY: Thank you.
13 So first, I would like to thank Professor
14 Urban and her colleagues for doing a study, which I
15 know was an enormous effort and I think is the kind of
16 study that we need more of to really understand what's
17 happening with section 512.
18 Three points I'd like to make -- first of
19 all, I think it's really important when we start to --
20 when we try to think about whether section 512 is
21 fulfilling its purpose is to remind ourselves of what
22 its purpose was. And it's not hard to figure that out

1 because you can just look at the title of the act.
2 It's called Online Copyright Infringement Liability
3 Limitation Act. And its purpose, as very clear from
4 the legislative history, was to foster the growth of
5 the internet as an engine of free expression and
6 commerce. And I think it's been extraordinarily
7 successful at doing just that.
8 I make this point because I want to be clear
9 that section 512 wasn't supposed to just be about an
10 enforcement tool. It wasn't supposed to just be an
11 enforcement tool. That wasn't its intent. It
12 includes -- it does include a tool, but that wasn't
13 actually the fundamental purpose of it. And if you
14 keep in mind what its fundamental purpose of, you can
15 say my goodness, it's been extraordinarily successful.
16 It's really been amazing. We've seen the
17 internet has exploded as a vehicle for all kinds of
18 expression and commerce -- including commerce that
19 benefits artists. So there's a number of studies that
20 are collected, especially by CCIA, whose comments, I
21 think, do a nice job of putting these together. But
22 it shows that lots of people are making money. The

1 lawful alternatives are flourishing. And as a result,
2 artists are making money.
3 Two other points -- section 512 did,
4 however, give copyright owners an extraordinary tool.
5 Where else in law can you take speech offline with
6 nothing more than an email? Nowhere. It's an amazing
7 thing. I think you have to sort of take yourself back
8 to 1997 when you would have had to go to court to have
9 content taken offline to now where all you have to do
10 is fill out a form or send an email. That's
11 extraordinary to me.
12 My third point is that it is still true,
13 however, that this power is abused much too often.
14 And I think it's unfortunate that these incidents of
15 abuse, which go well beyond dancing babies, which
16 involve political advertisements, parody, satire,
17 commentary, all kinds of informational stuff, lectures
18 from copyright lawyers and people like Lawrence Lessig
19 and Jamie Boyle. That's the kind of things that I see
20 every day. That's just my docket. Automattic says 10
21 percent of the takedowns it gets seem to clearly
22 target lawful uses. So this isn't just a sort of

1 incidental, anecdotal event. This is a real thing
2 that happens. And if anything needs to get fixed with
3 section 512, that's it.
4 MS. TEMPLE CLAGGETT: Just a quick follow-up
5 -- do you, I guess, agree or disagree with Ms. Urban
6 in terms of where the improper notices, in your view,
7 are coming from? Do you see something different in
8 terms of them coming from automated large corporations
9 versus individual users and small businesses that
10 might not just be sophisticated in terms of their
11 understanding of the law? Or do you see a difference
12 in terms of just people understanding the law but
13 intentionally abusing it? Do you disagree --
14 MS. MCSHERRY: Well --
15 MS. TEMPLE CLAGGETT: -- with what Ms. Urban
16 said?
17 MS. MCSHERRY: I see all of the above. I do
18 think that more education would be very, very helpful.
19 I think if you've got a tool like this that you're
20 going to wield, you should do it wisely and carefully.
21 So you should know a little bit about fair use and
22 limitations of copyright. And even we see things

1 where people clearly don't own the copyright, but they
2 think, well, I'm in the picture, so I can send a
3 takedown notice.
4 But automated processes can also be a
5 problem. So for example, my colleague, Cory Doctorow,
6 was a target of a takedown notice for his book
7 Homeland because it shares the name of a Fox
8 television show, also Homeland. And when he reached
9 out to Fox and said, you know, what's going on here,
10 it was clear the left hand didn't know what the right
11 hand was doing. So automated processes can be a
12 problem just as much.
13 MS. TEMPLE CLAGGETT: And did he file a
14 counter-notice? Did it get -- go back up? Or how was
15 that resolved?
16 MS. MCSHERRY: They withdrew it in that
17 case. And a thing that can happen is sometimes when
18 you have the appropriate contacts, you -- maybe you
19 can reach out to the service provider and the service
20 provider might reach out to the rightsholder. But not
21 everybody has that ability.
22 MS. TEMPLE CLAGGETT: Did you have

1 something?

2 MS. CHARLESWORTH: Yeah, I was just going to

3 say, I mean, you -- it sounds like you think the --

4 that the main issue here is abuse of the takedown

5 process. But what do you say to -- say, an author

6 like Mr. Stiles over here, an individual creator who

7 doesn't have access -- well, he does -- but an

8 individual who doesn't have access to automated tools

9 and they're, you know -- just simply unable to remove

10 full-length, infringing content from the internet? I

11 mean, what's -- is there any sympathy for that person?

12 MS. MCSHERRY: Well, sure. I mean, of

13 course, you have -- going to be sympathetic for anyone

14 who, you know, is losing money as a result of the

15 changes we have now. I do think, though, that the

16 reality is -- the only thing that, in my experience,

17 works in combating piracy is the existence of

18 legitimate, easy access to lawful alternatives.

19 That's what --

20 MS. CHARLESWORTH: Okay. And that's

21 assuming the book's on sale on Amazon, which is -- I

22 think is in the room today.

1 MS. MCSHERRY: Yeah. And so we --
2 MS. CHARLESWORTH: And so there's easy
3 access --
4 MS. MCSHERRY: Right.
5 MS. CHARLESWORTH: -- to lawful
6 alternatives. But what we're hearing from a lot of
7 creators is -- especially smaller creators or
8 individuals -- is they can't finance their films.
9 They can't sell their book because they can't keep up
10 with the piracy because it's just impossible to use
11 this takedown system, even when it's not an abuse,
12 it's just straight piracy. And so that's -- in
13 addition to the abuse of notices, which you've
14 highlighted, isn't that another part of the problem
15 we're looking at here?
16 MS. MCSHERRY: Well, I think it's something
17 that we have to pay attention to. And I think that it
18 -- I think that two things are a reality. One is
19 we're probably going to have to accept that there's
20 going to be a certain amount of infringement and we're
21 never going to be able to root it all out unless we
22 decide we're just going to completely sacrifice a lot

1 of other competing important public interests. So I
2 think there's a certain amount of toleration that you
3 have to have.
4 And the other thing that I would say is --
5 and I think we saw this in a lot of the comments filed
6 by various people -- there are lots of creators who
7 will say I'm doing well today. I'm -- we've got
8 YouTube creators who are making millions. There's
9 lots of -- you know, there's a proliferation of
10 independent artists who are taking advantage of
11 services to reach out to fans and communicate with
12 them and connect with them.
13 So I think that of course there are people
14 who are not succeeding as well as they'd like to in
15 the new economy. But there's lots and lots of other
16 people who are. And the reason they're succeeding is
17 because these platforms exist. And I worry very much
18 that if we alter the safe harbors, it's going to be a
19 lot harder for those platforms to succeed. And I'm
20 not worried about Google. I'm worried about the next
21 Google. I'm worried about the next platforms that we
22 don't even know about yet that won't be able to

1 implement notice and stay-down regimes and things like
2 that. I want platforms to proliferate because I want
3 artists to be able to succeed. And lots and lots of
4 people are.
5 MS. CHARLESWORTH: But what we're also
6 hearing is a lot of them aren't. And so when you say
7 that we have to have toleration, I'm wondering if you
8 have a system where now we have millions of takedown
9 notices going around, isn't it -- aren't there going
10 to be errors made on both sides? I mean, doesn't that
11 principle tie to, say, automated services, too? Like,
12 there's just going to be a certain level of error,
13 perhaps. And there is a counter-notification
14 procedure in the Act in the way to address those
15 errors.
16 But you know, you can't -- you sort of --
17 once we've moved into this realm of millions of
18 notices, I'm just wondering how we can avoid some
19 level of error on both sides, perhaps.
20 MS. MCSHERRY: So I think that if you live
21 in a country that values free speech the way that we
22 do, you're always going to tilt a little bit towards

1 protecting lawful content, right, because every time
2 there's an error that targets a fair use, that means
3 you're taking down -- it's a prior restraint, right?
4 I mean, effectively, that's what you're doing. You're
5 taking down lawful speech. And in this country, we
6 don't appreciate that.
7 MS. CHARLESWORTH: What about the author who
8 can't write and publish the book --
9 MS. MCSHERRY: I don't --
10 MS. CHARLESWORTH: -- or the filmmaker who
11 can't finance the film?
12 MS. MCSHERRY: I guess I'm not seeing the
13 equivalence.
14 MS. CHARLESWORTH: Okay.
15 MS. TEMPLE CLAGGETT: And I guess I just --
16 one quick follow-up on that in terms of targeting
17 lawful speech, kind of the same question that I asked
18 Ms. Urban. Are you aware of any studies that focus on
19 the -- or have statistic on actual -- the number of
20 notices that actually target lawful speech as opposed
21 to that have procedural defects? I do think that,
22 obviously, procedural defects -- and we might talk

1 about this in the next section -- themselves are
2 problematic, obviously, because they do still have
3 great burdens on an ISP who has to respond to
4 potentially an improper notice.
5 But in terms of kind of our key concern
6 about protection of lawful speech, are you aware of
7 any statistic that breaks that out, improper notices
8 that actually target lawful speech as opposed to
9 otherwise unlawful content?
10 MS. MCSHERRY: So what I'm aware of is some
11 of the transparency reports that service providers
12 have put out like the one I referred to earlier from
13 Automattic where Automattic concludes quite clearly
14 that 10 percent of the notices it gets are targeting
15 lawful uses. So they -- without -- what's interesting
16 about Automattic is because they do a lot of human
17 review, they're able to come to that conclusion. But
18 they're also quite a sizeable service provider. So I
19 look to that.
20 I do think we need more empirical research.
21 I think it would be very helpful to have that.
22 MS. TEMPLE CLAGGETT: Great. Thank you.

1 Mr. McNelis?

2 MR. MCNELIS: Thank you.

3 As a small content creator and a small

4 record label, my comments kind of echo the other

5 smaller creators in the room. We believe that there -

6 - we share a responsibility in the ecosystem to

7 protect our content and to do our fair share for

8 enforcement and identification. And we took resources

9 that we would otherwise put into content creation and

10 paying artists to create new works, and we diverted

11 that revenue to bring on a person to do nothing but do

12 takedown notices for us -- DMCA takedown notices.

13 It was a three-year experiment. We sent out

14 about 25,000 notices a year. We really couldn't

15 afford to do more than that. 25,000 notices a year

16 covers only my top 10 titles. In a catalog with about

17 300 line items, it just wasn't financially feasible

18 for us to target more than the top 10 titles at any

19 given time.

20 And what we discovered at the end of three

21 years was that there was no amount of notices that we

22 could send that would make a significant difference to

1 helping creators survive under 512. It was just not
2 possible. I don't know if we sent out 10 times more
3 notices, 100 times more notices, 1,000 times more
4 notices. But the amount of infringement was so much
5 larger than anything that we could handle as a small-
6 medium company that we stopped after three years.
7 We had invested at the time. We had
8 invested the money. We had done our fair share. We
9 had complied with the law. We had done what was asked
10 of us. And we found ourselves buried alive in an
11 avalanche of infringement that in no way was fair use.
12 And I'm talking about straight up piracy. I'm talking
13 about going to straight pirate sites. There is no
14 interpretation here. It is the actual product that we
15 are trying to sell wholly, widely and globally at
16 legitimate outlets. All of our products are available
17 easily and legally. This was straight up piracy.
18 Thank you.
19 MS. TEMPLE CLAGGETT: Thank you.
20 Mr. Lyon?
21 MR. LYON: I'm going to echo Corynne's point
22 about the public interest in these discussions. I do

1 think --

2 MS. TEMPLE CLAGGET: No, that was on.

3 MR. LYON: Oh, it was on?

4 I do think that we need to be very aware

5 that this just isn't a fight between publishers and

6 Google. There's a real public interest aspect to the

7 whole discussion of copyright. It's a public good.

8 And there are a lot of people right now who are upset

9 that the notice-and-takedown process under DMCA is

10 being abused systematically and used to suppress free

11 speech, fair use and lawful content on the internet.

12 My group, Fight for the Future, we helped

13 build the takedownabuse.org site that enabled people

14 to drive close to 87,000 comments to the Copyright

15 Office. And if you look at those comments and you

16 read those comments, there was temperate language, but

17 we invited people to edit them, and many people did.

18 It's full of stories about people who have -- either

19 had their own content taken down or had -- seen

20 content that they rely on and view every day taken

21 down and how it effects, basically, the cultural

22 environment on the internet.

1 We received a lot of smears saying that
2 these were robots or zombies, even. And the truth is
3 that people wrote so much text that we couldn't even
4 have time to print it out before the session this
5 morning. Having -- after we stripped out all our
6 template language, it was, like, over 2,000 pages of
7 text generated in a 24-hour period full of stories
8 about abuse.
9 And I don't think it's fair to say that we
10 need studies showing some of the systematic level of
11 abuse in order to take it seriously as a problem in
12 these discussions.
13 MS. CHARLESWORTH: Do you have a question?
14 MS. TEMPLE CLAGGETT: Well, actually, I'm
15 going to ask you about studies of systematic abuse
16 just because I think in the copyright arena that is
17 one thing that people have pushed for on both sides --
18 studies and empirical evidence to support greater need
19 for enforcement as well as studies and empirical
20 evidence to support other issues as well.
21 So are you aware of others, than the Urban
22 study, or did you do a separate study in terms of the

1 concept of systematic abuse and -- in the stories that
2 you had heard, what key characteristics in terms of
3 either the senders that these improper notices were
4 coming from? So if you were trying to address what --
5 in your view is systematic abuse of the system, were
6 there key characteristics or senders that would need
7 to be addressed more specifically as opposed to
8 others?
9 MR. LYON: Sure. So two points -- correct
10 me if I'm wrong, but Verizon at one of the previous
11 hearings brought up that they received over a million
12 bogus takedown claims from Rightscorp. That's a
13 systematic abuse. I don't need a study to show that.
14 On the other hand, even without a study,
15 just given the number of anecdotes, which are
16 important anecdotes because when you have someone
17 whose content is taken down unlawfully, that's just
18 suppression of free speech. And as a society that
19 values speech, like, we have to take that seriously.
20 It's like even if there wasn't a study showing that
21 handgun background checks would reduce crime, a lot of
22 communities have implemented those policies because

1 it's a straight-forward way of dealing with some
2 egregious anecdotes of actual, like, real-world
3 murder. The -- what I'm saying is that you have to
4 take the anecdotes seriously as an exception.
5 MS. TEMPLE CLAGGETT: Yeah, I mean, I would
6 say on the Verizon point, I think they were referring
7 to notices that were sent under section 512(a) that
8 doesn't have a notice-and-takedown regime. They might
9 be targeting otherwise unlawful content that was done
10 through file-sharing networks, but not necessarily.
11 But their view was that it's not appropriate to
12 actually send the notices at all, but it's not -- but
13 it's not directed at lawful content.
14 So that was one of the concerns that we
15 wanted to focus on, what was the level of systematic
16 notices or abuse going on with respect to lawful
17 content.
18 MR. LYON: Well, systematically speaking, we
19 have this Content ID system that is a major player in
20 almost all the takedowns people receive on YouTube.
21 And those scanning algorithms have no way of
22 determining what's fair use and transformative work

1 versus what's just pirated content. And so, yeah,
2 there's no study that, again, if you read the
3 comments, there are egregious violations of people's
4 rights to free speech, and that -- it's happening all
5 the time.
6 MS. CHARLESWORTH: And I had a question, if
7 that's okay. I was just going to ask if that -- given
8 that's your view, what would you suggest -- what
9 changes would you suggest to the current regime to
10 help mitigate that problem?
11 MR. LYON: Sure. I think there's a couple
12 of things. And one is, even within that authority
13 without any legislative changes, there should be a 30-
14 second exemption for any automated takedown claim. So
15 30 seconds is audio or video matching, is fair for
16 transformative work or fair use like we're not going
17 to be taking those videos down.
18 Secondly, I think there needs to be more
19 two-sided statutory enforcement of the rules. On the
20 copyright side, you infringe a copyright, you're
21 looking at jail time, possibly, and a $150,000
22 statutory fine. There's no such penalties limiting

1 companies or rightsholders from abusing the system.
2 And abusive takedowns should be treated with an
3 extreme amount of disdain by the courts, that there
4 should be similar statutory penalties for proven
5 abuse.
6 MS. TEMPLE CLAGGETT: Okay. Thank you.
7 MS. ISBELL: Actually, can I follow up?
8 MS. TEMPLE CLAGGETT: Oh, sure.
9 MS. ISBELL: Okay. So we've heard that
10 there's certainly going to be some number of abusive
11 notices. There are going to be some number of piracy
12 that's going to have to happen. And you mentioned
13 that your users have explained a number of times where
14 they feel like they were the subject of an invasive
15 notice. How do you think the counter-notice process
16 works in those situations? Is beefing up counter-
17 notice a potential solution? Or does it not work?
18 And if it doesn't work, why do you think it doesn't
19 work?
20 MR. LYON: The counter-notice is broken, at
21 least in terms of how it applies to the vast majority
22 of the takedowns we've been talking to people about,

1 particularly on YouTube. You file a counter-notice
2 and the company, or whoever filed the claim, if they
3 stick to their guns, you get a strike on your account.
4 And after too many strikes, people's accounts are
5 taken offline permanently.
6 For creators who rely on YouTube as a source
7 of income, they're afraid to fight back because their
8 livelihood is at stake. And the process -- and that's
9 one small set of YouTube -- for a lot of other people
10 who just post a review and have it taken down because,
11 you know, the company doesn't like what they're
12 saying, those people just don't know how to deal with
13 this process. It's too opaque.
14 MS. TEMPLE CLAGGETT: Thank you.
15 Mr. Kupferschmid?
16 MR. KUPFERSCHMID: Thank you. Is this on?
17 MS. TEMPLE CLAGGETT: I think so.
18 MR. KUPFERSCHMID: Okay. Obviously having
19 mic problems here.
20 So I came here hoping to be the voice of
21 reason and moderation. Heck, I have -- before coming
22 to the Copyright Alliance, I worked for 16 plus years

1 for OSPs and for the tech industry. So I get it. I
2 get the issues on both sides of the equation.
3 And then I hate to say it. I mean, I hate
4 to come out of the gate like this, but Corynne had
5 some statements about the purpose of section 512
6 notice-and-takedown process as being solely or for --
7 or primarily for OSPs, and it just makes me absolutely
8 cringe because that just is not true. It's not the
9 case. When Congress passed the notice-and-takedown
10 provisions of the DMCA, it intended to encourage both
11 copyright owners and OSPs to work together -- that's
12 the key -- to combat existing and future forms of
13 online piracy. And it wasn't designed just to remedy
14 the hardships that are faced by large copyright owners
15 and large OSPs, but also small individual creators as
16 well as small OSPs as well.
17 And although section 512 may have been
18 achieving the Congressional purpose at the very
19 beginning, certainly, as you point out, that really
20 isn't the case anymore, and it's becoming less and
21 less effective. And if you've got a law that is
22 intended to benefit different sides that, shall I call

1 them, like, copyright owners and OSPs and one of them
2 is coming to the table saying it's working fine and
3 the other is saying it's not, well, then guess what?
4 That means it's not working fine, and it needs to be -
5 -
6 MS. TEMPLE CLAGGETT: You actually did -- I
7 was going to ask that question because that is
8 something that -- a theme that I think we've heard in
9 both roundtables that on the -- certainly, on some --
10 from the perspective of some, primarily on the ISP
11 side, we have heard that it is working very well.
12 We've heard, I think, from others, primarily on the
13 content side,that it isn't. And what should we make
14 of that? Does that mean that the balance is not being
15 maintained? Can you say that the balance is
16 maintained if one side says it's completely failing
17 and the other side says that it's working perfectly?
18 MR. KUPFERSCHMID: Yeah. I mean, that's,
19 you know, like I said. If you have a law and
20 provisions that are intended to balance -- attempt, at
21 least, to balance the interests of both sides and
22 you've got one group that's saying my interests aren't

1 being served here -- we're not even talking about 100
2 percent, but we're not even coming close to 100
3 percent -- and you've got another group that's saying,
4 yeah, no, no, no, everything is fine, well, that means
5 the law is failing. It's not effective as it could
6 be.
7 MS. TEMPLE CLAGGETT: And one other follow-
8 up question on that point, something that Mr. Lyon had
9 just raised and, I think, Ms. McSherry as well, how do
10 you incorporate into that balance the perspective of
11 the user? Because you talk about the sides and the
12 balance, kind of the technology side versus the
13 content side. How do you incorporate the interests of
14 the users of the internet in that perspective as well?
15 MR. KUPFERSCHMID: Yeah, so I think the --
16 certainly, the counter-notification process, that was
17 the element that was intended to address that. And I
18 don't want to get too far afield here, but another
19 issue we're talking about outside this venue is small
20 claims process. And that may also help to address,
21 depending on how that is set up, to some extent the
22 counter-notice process to the extent there are

1 complaints with that.

2 But I have a feeling with those 87,000, or

3 whatever, notice submissions that were sent to the

4 Copyright Office, which, yes, I did call zombie

5 submissions because virtually all of them were exact

6 duplicates and could have just put -- been put on a

7 petition and sent to the Office and made a lot easier

8 for everyone else to read all other comments. But

9 aside from that, I doubt that a lot of those

10 individuals, or most of those individuals, did file a

11 counter-notice.

12 If I could answer your -- second part of

13 your question, which is, you know, what's the biggest

14 concern here, which is the small creators. It is the

15 -- that -- you know, we did a survey of our creators

16 that was referenced earlier. And it showed that 68

17 percent of the small creators, individual creators, we

18 represent do not use the notice-and-takedown process.

19 They have never heard of it. It was too much effort.

20 It was too difficult. They were skeptical it wouldn't

21 do anything.

22 And then of those who did file a notice at

1 some point, as we also heard earlier, they've given up
2 on the process. It's just too overwhelming or it
3 doesn't work, one of the two. So what we need to do
4 is we need to do better. We need to do more. And to
5 do that, I think we have to stop arguing with each
6 other. See, I told you I'd be reasonable minded. We
7 have to stop arguing with each other and try to sit
8 down together, frankly, maybe out of the limelight of
9 the Copyright Office or any government entity, okay,
10 and try to figure out what solutions we can come up
11 with that will be beneficial and improve the system.
12 I know from my perspective at the Copyright
13 Alliance, we need to do more, too. I'll take some
14 responsibility for that. We need to do more. And in
15 the fall, okay -- you've got to give me some time.
16 I've only been on board seven months. In the fall, we
17 are going to start educating those small creators,
18 those individual creators that we do represent. And
19 also, to the extent possible, not only advocating for
20 them, but also providing services.
21 So we heard Devon talk about the fact that
22 the system is designed for large rightsholders. Well,

1 at the Copyright Alliance, we can bring together all
2 those individual creators. Maybe then we become a
3 large sort of representative -- be able to represent
4 the small rightsholders and be able to do more for
5 them and help them out.
6 But we need help. We can't -- we're a small
7 organization. We need help to do that, be it from the
8 government or from other stakeholders.
9 MS. TEMPLE CLAGGETT: Thank you.
10 Mr. Kramer?
11 MR. KRAMER: I'm here today to give the
12 perspective of film -- independent filmmaker, mainly,
13 who works in the system and sees these abuses on the
14 work that I do. And as someone who doesn't own the
15 copyright of my work because I will write and direct a
16 film, I'll get paid for that and I'll earn residuals
17 from it and net points that I'll never see, I witness
18 on YouTube or many sites illegally uploaded versions
19 of my films. And for me to -- I can't file a DMCA
20 takedown. I would have to go through Warner Brothers
21 or whoever the distributors are. And for me to
22 contact them in the legal department and get hold of

1 the right person each time is very frustrating.
2 There was a case. One of my films, I
3 noticed, was up on YouTube for over a year in HD
4 content. And I think it had several hundred thousand
5 views. And I let Warner Brothers know. And that was
6 the first time that that particular version was
7 getting taken down. I tried to contact the uploader
8 on YouTube of that particular film. I said, look, I
9 am the writer, the director. And you're directly
10 impacting me on the ability to earn residuals or for
11 this film to sell any copies. Could you please take
12 it down? And I was told in no uncertain terms by this
13 person who liked the movie enough to want to share it
14 with the world to go F myself.
15 From the -- from my point of view, I've seen
16 budgets of films be completely eroded. I -- the last
17 film made was a $5 million budget. I put my own
18 salary back into the film to get more production value
19 so we could actually make this film. That film
20 receives what most independent films -- this is the
21 most important point I want to make today -- most
22 independent films that are not Disney, that are not

1 Raiders of the Lost Ark, they're not getting
2 theatrical releases anymore where they can make 150 to
3 200, 500 million, a billion in theatrical revenue that
4 isn't that badly impacted by piracy. I mean, there
5 are camcorder versions that get put up on the
6 Internet. But they're not -- until they get into
7 regular DVD releases, they're not pirated in perfect
8 copies.
9 When my last film debuted, it was VOD, video
10 on demand. And on the very day that it debuted in an
11 HD copy on all the pay-per-view systems and Amazon and
12 Vudu and whoever sells that, by the end of the day, I
13 think there were at least 20,000 links to go and
14 illegally download that film.
15 There is a culture that is pervasive now
16 among teenagers, students, that does not value the
17 work of artists. They do not feel they need to pay
18 for it. Taking something off the Internet is the way
19 they do it. I talked to my son's friends who -- 15
20 years old. They're fascinated with movies. They want
21 to be filmmakers. I -- and they can't wait to discuss
22 a movie with me. In the middle of the conversation, I

1 say, by the way, how did you see this particular film.
2 They streamed it. They illegally downloaded it. Any
3 one of my films, if you enter it into Google as the
4 title and download, which is just code for illegally
5 download, you will see thousands of the links turn up.
6 I personally don't think the DMCA takedowns
7 work. I think you need some kind of punitive measures
8 taken with everybody who downloads something, the
9 equivalent of a traffic fine. It's -- I don't think
10 it should be thousands and thousands of dollars.
11 But I think if -- I mean, here's the thing.
12 There are only about 10 legitimate sites where you can
13 legally rent your movies from. It's Vudu, Amazon,
14 iTunes. And to see the full content of your films put
15 up on the Internet, thousands and thousands of sites
16 that to anybody would -- you would know they were not
17 legitimate. It's not hard to determine. And I'm not
18 talking about little clips for fair use. It's not
19 hard to determine when somebody has stolen the
20 entirety of your work and put it out there.
21 Well, it's -- I -- there needs to be a
22 deterrent when somebody says should I pay $6 or $12

1 for a rental, or should I take my chance that I'll get
2 hit with a $150 equivalent of a traffic fine. I mean,
3 if we took all speeding laws away off the freeway,
4 people would speed at whatever lengths they would want
5 to go at. But if they knew -- but we know there's a
6 traffic cop at some point who's going to -- you know,
7 you speed enough times, you're going to get caught.
8 MS. TEMPLE CLAGGETT: Thank you.
9 Mr. Freest -- Feerst? Sorry.
10 MR. FEERST: No problem. Thank you.
11 So Medium is about long-form writing. So
12 while some of these questions are in the form of music
13 I think -- it's an instructive example of getting back
14 to maybe the basics. So we have, you know, maybe
15 75,000 or more folks are posting pieces of long-form
16 writing on Medium every week. There's about 2 million
17 hours a month that people spend reading. There's
18 amateur-serious, amateurs-not-so-serious, and amateurs
19 who are really professionals. Like, John Krakauer
20 will post regularly. There's -- Vice President Joe
21 Biden posted something yesterday -- his new crowd
22 source project to get people's stories up about

1 cancer.

2 I mention this, in part, because Medium, I

3 think, shows some of the limits of discussing the

4 binaries between the creators and the OSPs. Our users

5 and our folks are reading, and they are writing. They

6 are rewriting. They are parodying, and they are

7 creating independently. And all of those things get

8 posted on Medium. And sometimes you get takedowns.

9 We are a “DMCA Classic.” Among those two-

10 thirds of groups who identify as DMCA Classic. We

11 review all those notices by hand. A human being looks

12 at them, or I do. And there is no particular

13 requirement other than the statutory category.

14 And the thing that I want to sort of

15 emphasize, to echo some of what Corynne said, is that

16 we see a fair number of takedowns that are deeply

17 disappointing. They are from folks who see a nasty

18 parody of their work and send a takedown. They're

19 from somebody who sees an investigative story written

20 by a journalist on Medium and doesn't like it and buys

21 the rights to the photograph, sends a takedown. We

22 see a lot of takedowns with errors in them that show,

1 I think, a lack of seriousness of the extraordinary
2 extrajudicial power that you're getting to have
3 something disappear from the Internet.
4 And finally, I've seen -- had the experience
5 of having a large-scale rightsholder license a
6 photograph to somebody launching a Web magazine on
7 Medium. We got a takedown for it and scuttled the
8 launch of that magazine. And it turns out it had been
9 licensed. The statute as it exists now just doesn't
10 seem to provide anything for folks like that who are
11 publishers and creators and who the deficiencies in
12 the takedown are also affecting deeply.
13 And I guess I conclude by saying that we are
14 talking a lot about the efficiency and the scalability
15 of this thing. But the accuracy and its effect on
16 speech, including creative speech, are deeply, deeply
17 important and not to be treated cavalierly.
18 MS. CHARLESWORTH: I'm just going to ask,
19 do you notify the posters and inform them of the
20 counter-notification process when you see a takedown
21 notice that you think -- well, any takedown notice,
22 really?

1 MR. FEERST: Yeah, so we -- and so we have a
2 policy page that sets things out as clearly as we can
3 with as nice a font as we can provide. And we email,
4 as you're saying, a link to that and information about
5 the counter-notice procedure. I think, like many, we
6 find that it's deeply under-utilized. People are
7 intimidated. Most of the folks who are rewriting or
8 who are parodying or who have simply written something
9 that's critical, are afraid of the consequences of it
10 if they're getting smoked out. And they -- we don't
11 have the resources to underwrite them.
12 And so my view is that I know there's been
13 discussion of whether the relative paucity of counter-
14 notices speaks to success, failure or some other
15 thing. But it seems to me that the relatively few
16 number of them speaks to, among other things, an
17 intimidation by the legal process surrounding it and
18 the consequence to come from it.
19 We've gotten that exclusively from folks who
20 say this is a newsworthy speech. This is a photograph
21 of a politician doing something bad that's been taken
22 down. We don't have the resources to fight back and

1 to force the issue.
2 MS. CHARLESWORTH: Do you think if there
3 were an alternative dispute resolution process that
4 outside of federal court or small claims process that
5 might benefit both sides or the people who might not
6 be filing counter-notices?
7 MR. FEERST: So I mean, it's hard to say.
8 There are times when putting the parties in touch is
9 helpful. I think someone here has spoken to when
10 people have the connections or people are lucky enough
11 to be put in touch, then something can be resolved.
12 I don't think that will fix it for the folks
13 who send out a large number of notices or do other
14 things in the hope of getting, you know, speech they
15 don't like taken down because it doesn't seem to me
16 that -- I guess it depends on what alternative process
17 you have in mind. If it's simply a way to communicate
18 or to otherwise escalate, I'm not sure it's going to
19 do something.
20 MS. CHARLESWORTH: Well, the idea is of a
21 small claims process where the stakes were lower but
22 you get a decision about the propriety of a takedown

1 or a lack of propriety.

2 MR. FEERST: Yeah, I think -- I mean, I

3 think -- potentially, I think there's still an issue

4 of the resources that goes into it. And the inability

5 for some of these folks to -- just as many creators

6 are talking about the lack of resource allocation to

7 this process, many of the folks who are criticizing,

8 parodying and doing other things symmetrically lack

9 those resources. And so this process maybe is

10 unsatisfactory to them both.

11 MS. CHARLESWORTH: Thank you.

12 MS. TEMPLE CLAGGETT: Thank you.

13 Mr. Green?

14 MR. GREEN: Well, thank you for the

15 opportunity to present our perspective. There are

16 really two perspectives because we see the world both

17 through the eyes of a rightsholder, which I'll talk

18 about, as well as an emerging cloud platform provider.

19 But I still have only two minutes to cover both those

20 perspectives. So I really invite some questions or

21 follow-ups if you have any.

22 Let's start with the rightsholder

1 perspective. I agree with all of the rightsholders at
2 the table here about the importance and relevance of
3 intellectual property. Microsoft has been -- you
4 know, has experienced piracy on a scale that's
5 probably unprecedented in the software industry. We
6 have some of the most infringed software products in
7 the history of software. We have some of the most
8 infringed video games in the history of the video game
9 industry. Over the last several years, as an example,
10 you know, we filed over 82 million notices to various
11 types of ISPs.
12 So the notion that IP is important to us,
13 that it's the lifeblood of our system, absolutely it
14 is. We've had this piracy perspective well before the
15 DMCA ever existed. It's possible that the zenith of
16 software piracy probably occurred right about the time
17 of the passage of the DMCA. And so we never viewed
18 the DMCA as the solution to piracy. We simply view
19 the DMCA as a tool for us to take the resource that we
20 had and focus those resources most effectively.
21 Without the DMCA, there's no possibility
22 that Microsoft could have achieved the success that it

1 has in terms of reducing the availability of pirated
2 software in the way that folks access software. I say
3 that precisely because our goal has never been to play
4 whack-a-mole. Our goal has never been to reduce, you
5 know, all available piracy. It's simply been to look
6 from an engineering perspective and from a data
7 perspective and a metrics perspective about how people
8 access, how the bulk of people access pirated material
9 and use strategies designed to solve that problem, not
10 to cleanse the Earth of pirated copies of Microsoft
11 software.
12 From our perspective, the DMCA is vital to
13 that. Without it, we wouldn't have the cooperation of
14 a myriad of small and large ISPs and be able to
15 achieve those results on scale. Our metric has been
16 how difficult is it for the average person using
17 available tools to access and obtain pirated copies of
18 Microsoft software. And I think from that perspective
19 and with that strategy, we've been radically
20 successful. And we attribute that, in large part, to
21 the tools that DMCA has provided.
22 My time is up, and I haven't been able to

1 give our unique perspective as an ISP. And so I would
2 welcome questions on that if the panel saw fit.
3 MS. TEMPLE CLAGGETT: Thank you.
4 And we'll -- if we have time, we'll come
5 back to you.
6 Ms. Cuss?
7 MS. CUSEY: It's Cusey.
8 MS. TEMPLE CLAGGETT: Cusey. Sorry.
9 MS. CUSEY: Thank you.
10 So for our comment, we talked to middle-
11 class artists who are -- have invested time and
12 learned their trade and depend on their trade and are
13 professionals. And they, of course, echoed a lot of
14 what's been said here today. But there's a couple of
15 thing that they said that surprised us.
16 You know, beyond being overwhelmed by the
17 sheer volume, beyond being frustrated feeling they
18 were spinning their wheels and they weren't getting
19 any results, a third thing that we heard was that they
20 are frightened off often to file a comment -- I mean a
21 notice because --
22 MS. TEMPLE CLAGGETT: And these are from the

1 senders, not from the counter-notice. These are --
2 MS. CUSEY: Right.
3 MS. TEMPLE CLAGGETT: Okay.
4 MS. CUSEY: From the senders because when
5 they file, they're required to give their full name,
6 their identity, their address. And as individual
7 artists, they don't have a lawyer that is putting
8 their address down. They don't have a business that
9 they can put down. They have to put down their own
10 address. And that is sent to the infringers, and they
11 don't have the information, the same information, that
12 the infringers have.
13 One photographer that we talked to, she
14 found one of her news photographs on the site of an
15 organization that was very violent. And she felt like
16 -- Do I want to expose myself to this organization
17 that, you know -- do I want to become an adversary of
18 this organization? She actually decided not to file
19 because of that.
20 We have another person that we talked to
21 who, after aggressively sending takedown notices,
22 their computer was hacked and destroyed by a hacking

1 attack. And they felt very much like that those
2 things were related.
3 And the final thing that our artists talked
4 about was that these costs go way beyond just
5 financial, that they're very -- especially for a news
6 photographer, she felt like the actual historical
7 record was hurt when her photographs were infringed
8 and went misrepresented as something that it wasn't
9 actually historically true.
10 So those are the things that we heard from
11 artists. Thank you.
12 MS. TEMPLE CLAGGETT: And I do have a quick
13 follow-up because this is an interesting perspective
14 that we haven't heard a lot in terms of concern from
15 the sender --
16 MS. CUSEY: Right.
17 MS. TEMPLE CLAGGETT: -- in terms of
18 potential, I guess, abuse from the fact that they've
19 actually sent out a notice. And I know that there has
20 been some minor discussion, although we haven't
21 focused on it exclusively, about the need for more
22 transparency in the notice-and-takedown process to see

1 the amount of notice and the senders. But I guess
2 this goes to a balancing of that as well, balancing
3 transparency versus the individual private -- privacy
4 rights of the actual sender.
5 MS. CUSEY: Yeah.
6 MS. TEMPLE CLAGGETT: And in your
7 experience, or when you talk to some of those who had
8 those concerns, is there a kind of standard? Are
9 their names being publicized when they are sending
10 notices?
11 MS. CUSEY: It depends on the site. On some
12 sites, when you send a takedown notice, the message
13 goes up that says this content removed at the request
14 of -- and it has the person's name.
15 MS. TEMPLE CLAGGETT: And for the
16 individual, it would actually be their individual
17 name.
18 MS. CUSEY: Their individual --
19 MS. TEMPLE CLAGGETT: Karyn Temple Claggett
20 --
21 MS. CUSEY: Yes.
22 MS. TEMPLE CLAGGETT: -- takedown your photo

1 and then even if you had posted it illegally, I guess.
2 MS. CUSEY: Right. And then a simple search
3 would find that person. On many sites, as well, it's
4 not publically posted. But the infringer, the person
5 who posted the content, receives the information of --
6 including the address of who sent the takedown notice.
7 So -- and of course the person who sent the takedown
8 notice, the owner of the content, does not have that
9 information about the user who posted it.
10 So even if they're attacked or harassed or
11 anything, they don't know where that is coming from
12 because it's just the username and they don't have
13 access to who's behind that username.
14 MS. TEMPLE CLAGGETT: Do you know if there
15 have been any conversations or discussions with those,
16 I guess, either websites who post the personal
17 information or the name of the sender about these
18 types of concerns to see if there's a way to, you
19 know, resolve these issues voluntarily to, on the one
20 hand, provide enough information so that there is some
21 transparency to the public, but on the other hand,
22 take into account the concerns of the individual

1 artists who might be concerned that their names are
2 kind of posted for all to see in terms of them just
3 trying to, essentially, utilize their rights.
4 MS. CUSEY: Right. I know the issue has
5 been raised by artists. I don't believe that they've
6 received any response from those sites.
7 MS. TEMPLE CLAGGETT: Thank you.
8 Mr. Borkowski?
9 MR. BORKOWSKI: Thank you.
10 I'm just going to start by commenting on the
11 first comment that you made earlier today about people
12 talking past each other, or talking at each other
13 rather than with each other. We are very committed to
14 talking with other people to solve the problems that
15 we have been hearing about here. And so that's what
16 happened initially. That happened in 1997 and 1998,
17 and it needs to happen again.
18 I feel badly for all the small artists in
19 this room and otherwise who have told us their stories
20 about how they've given up on the DMCA or how they
21 can't stop their content from being infringed. But
22 I've got to tell you it's not just the small artists.

1 The RIAA represents the largest record companies in
2 the world. But I will tell you it is an enormous
3 burden to take down infringing content both by the
4 RIAA and by its member companies.
5 I know that Universal Music has filed some
6 comments showing how difficult it was and how
7 enormously expensive it was to get rid of -- to try to
8 purge the Internet from Taylor Swift recordings.
9 Warner also has filed submissions saying how difficult
10 it was to remove content from YouTube. So it's a
11 problem that exists for large stakeholders as well.
12 And the primary reason, I will submit, is
13 because the DMCA has been turned into a notice-and-
14 takedown statute, period. And it's a URL-specific
15 takedown statute, and you have to give thousands and
16 thousands of URLs that are then eliminated. But the
17 content is not taken down. The content remains, and
18 another URL pops up and points to the same content.
19 In our filing, we show that we did a study
20 on one cyberlocker. And 97 percent of the notices we
21 sent to it are of content we have previously noticed
22 that was taken down and that is back up. So that is,

1 I will submit, the biggest problem with the DMCA right
2 now, as it's being interpreted. Content needs to stay
3 down once it has been noticed.
4 And what's happened now is, because of this
5 process, business models are out there that just --
6 either feel that they're going to start by infringing.
7 And eventually you'll deal with the problem, and
8 they'll just deal with the takedown notices. Or they
9 just won't care. And that also leads to downward
10 pressure on licensing rates we've talked about in some
11 other panels.
12 The last thing I will say is that it is just
13 wrong to think that the DMCA was created solely for
14 the purpose of helping technology grow and helping
15 technology companies grow. That certainly was one of
16 its two goals. But Congress realized in 1998 that
17 this technology could lead to the type of
18 infringements we are having now. And they wanted to
19 give content owners some tools.
20 But what's happened now is that, through
21 court opinions and otherwise, the entire burden, the
22 entire balance has been shifted to content owners.

1 And very little resides on the side of the technology
2 companies.
3 And to answer the question you had before,
4 if half the stakeholders say it's not working, it's
5 not working.
6 MS. TEMPLE CLAGGETT: Thank you.
7 Before I go to -- is it Bailey --
8 MR. BERLIANT: Berliant.
9 MS. TEMPLE CLAGGETT: -- Berliant, I just
10 want to say that we are actually coming up against the
11 end of the time for the session. We'll go a little
12 bit over. But what I'm going to do is call on those
13 who haven't had an opportunity to speak first. And
14 we'll probably go at least maybe five or seven minutes
15 over the time because it's 10:30 and we need to have a
16 break right now. I'll call on those on the side who
17 haven't had a chance to speak.
18 If you have and we still have a few minutes,
19 I will -- if you have already spoken once and we still
20 have a few minutes, I will then call on you. But I
21 want to make sure that we have everyone who hasn't had
22 a chance to speak we give them the opportunity to

1 speak as well.

2 MS. CHARLESWORTH: I just had one question

3 for Mr. Borkowski. I'm sorry. I know we have to move

4 quickly. But --

5 MR. BORKOWSKI: I talk --

6 MS. CHARLESWORTH: -- has the effort in

7 investment required to deal with the takedowns -- and,

8 as you referenced, Warner Universal, I think, had

9 filed comments, and you guys did, too. Has that

10 impacted the ability to invest in new artists? And if

11 so, can you explain how you evaluate that?

12 MR. BORKOWSKI: Well, it certainly has. And

13 the reason for that is because of all the piracy

14 that's happening that started pretty much with

15 Napster. The industry has limited resources, and it's

16 ever shrinking. We are half the size we were than

17 when Napster came out, and that's because of piracy --

18 so to the extent that there's just not enough money

19 available to continue to hunt for new artists and try

20 to put in all the money that's necessary to put out a

21 record album because that's a lot of money.

22 And the fact is we are breaking fewer new

1 artists for this very reason because the resources are
2 also being spent on trying to go after infringing
3 content with a tool that doesn't work.
4 MS. CHARLESWORTH: Thank you.
5 Mr. Berliant?
6 MR. BERLIANT: Thank you.
7 I want to begin by associating myself with
8 the comments of Mr. Stiles and Mr. Rosenthal and Mr.
9 McNelis. This problem is so bad that it's managed to
10 align labels and artists. Thank you, Google.
11 Now, I'm not a technologist, but it seems to
12 me that the real issue here is that we're using 20th
13 century means to correct the 21st century problem. I
14 have one motto that everyone who works for me is
15 probably sick of hearing. And that is that no matter
16 what it takes to prevent a problem, it's always easier
17 than what it takes to fix a problem. And here's the
18 good news for us. The technology exists now to
19 prevent the problem with little to no financial burden
20 to digital platforms that -- whose business is to
21 promote content. Now, I'm not talking about automatic
22 takedown notices. I'm talking about preventing

1 unauthorized content from going up in the first place.
2 We heard a lot about free speech here this
3 morning. I want to give you guys something to think
4 about. If you value free speech, then you also have
5 to value an artist's ability to practice free speech.
6 And I'm here today because I'm very concerned about
7 even our biggest client's ability to earn a living
8 under the current copyright protection system, which,
9 in effect, sanctions the infringement of their rights
10 and is devastating to the revenue that they can earn
11 from recording music.
12 Imagine a world where we apply Citizens
13 United to the creation of art because that's where
14 we're headed. We are absolutely headed -- if we can't
15 prevent unauthorized content from going up. You heard
16 from Mr. Borkowski talking about how decimated the
17 record industry is. Artist revenue is equally
18 decimated as a result of that. And I don't want to
19 live in a world where only billionaires and large
20 corporations control art and the creation of content.
21 That's not a world I want to live in. I don't think
22 that's a world any of us want to live in.

1 MS. TEMPLE CLAGGETT: Thank you.
2 I'm going to go over to the side and start
3 with Mr. Worth.
4 MR. WORTH: Thank you.
5 So first of all, I wanted to start by saying
6 that I actually agree with a lot that's been said on
7 sort of both sides of the aisle, if you will. And
8 part of the reason for that is because Amazon, I
9 think, like Microsoft, uniquely sits on both sides.
10 So we have, obviously, won Golden Globes and other
11 awards for our studio's work. We have a publishing
12 arm. And then on the other side, we obviously have a
13 content distribution business that's very important to
14 us.
15 So you know, I think the first thing that
16 everybody can agree on in this room is that content
17 creation is incredibly important. We don't want
18 piracy. We want to stop piracy. Without content
19 creation, without artists who can make a livelihood
20 doing what they do, we simply don't have a business,
21 really, on either side, so both on our studios side or
22 on our distribution business.

1 I also agree that there are problems with
2 the DMCA as it currently works and currently -- and
3 problems in the market as well. But I think most of
4 those problems are probably focused more on bit
5 torrent sites and offshore piracy rather than
6 companies like Amazon that respond to notices quickly
7 and have systems in place to prevent piracy to begin
8 with.
9 So to answer the initial question that I
10 think was posed, you know, notwithstanding the
11 problems of the DMCA, I think it has generally worked.
12 It does provide for a simplified legal process. I
13 don't want a system where rightsholders only have the
14 option of running to court and suing because that
15 takes time. It's expensive.
16 I also agree that it has allowed for
17 incredible innovation on our side. The best example
18 in my mind with Amazon is Kindle Direct Publishing,
19 allow publishers and authors to publish their work in
20 as little as five minutes and earn a 70 percent
21 royalty. Good luck getting that with a major
22 publisher. And without the DMCA, we have strict

1 liability.

2 So you know, I'll close by saying this,

3 which is that we want the DMCA to allow for

4 innovation. We want it to allow for free expression.

5 We want it to allow for a lawful distribution where

6 rightsholders are properly compensation. But we don't

7 want to adjust the DMCA so that it allows for

8 plaintiffs' lawyers to litigate against companies that

9 are acting lawfully.

10 MS. TEMPLE CLAGGETT: And I do have a kind

11 of a quick follow-up to you since you do sit in this

12 unique space of both being on the content side and

13 then the technology side. I -- when you hear the

14 differences, the different views in terms of people's

15 perspectives on whether the DMCA is working both from

16 the ISPs and from especially individual creators, are

17 you in the middle? You recognize that it's working,

18 but you do acknowledge that there are problems? I

19 mean, do you see the burden as having been shifted at

20 all from your perspective? Or do you think it's just

21 about -- it's still just about right? From your

22 unique perspective, where do you think the balance has

1 kind of come out right now?

2 MR. WORTH: Yeah, I guess I would say I

3 think it's more right than wrong. But you know, I'm -

4 - my -- you know, I'm personally sympathetic to the

5 creator side. My father-in-law is a songwriter in

6 Nashville. So I hear about that side of things all

7 the time and am sympathetic to it. But you know,

8 generally speaking and speaking on behalf of Amazon,

9 you know, we think that it's more right than wrong.

10 MS. TEMPLE CLAGGETT: Thank you.

11 Ms. Vitale?

12 MS. VITALE: Thank you.

13 I run CreativeFuture, -- and it's an

14 advocacy organization. But I am not a lawyer. I am a

15 filmmaker. I have released over 100 movies. I have

16 had Academy awards and Golden Globes. And I came to

17 CreativeFuture because I realized there was an issue

18 with piracy for the next generation of voices. I

19 believe that creativity is the cultural fabric of the

20 planet and through whatever has happened through

21 technology, it has been devalued to a point that

22 bothers me.

1 And I hear in this room a lot that they're
2 worried about the next platform and they're worried
3 about the public. I'm more worried about that next
4 generation of voices. You've heard from Wayne Kramer.
5 You have heard from songwriters and music people.
6 They're having a very difficult time with section 512
7 and getting things taken down and being able to make a
8 living because of it.
9 We started a series of blogs from individual
10 creatives -- you heard from one of them -- in New
11 York, Lisa Hammer. You heard from Wayne Kramer. It is
12 called the Stand Creative Series talking about how
13 difficult the process is for them and how difficult it
14 is for them to make a living because of what has
15 happened.
16 And I'm simply here to say that without -- I
17 agree with you, Mr. Worth -- without content, there is
18 nothing. Without our creatives, your platforms have
19 24-7 cat videos. And I've said that before. It's
20 important that we protect the rights of the people
21 that are creating our culture. Thank you.
22 MS. CHARLESWORTH: I'm sorry. Can you

1 comment just a little bit on investments in indie
2 films and how that may or may not have been impacted
3 by the DMCA? I did see some references to that in the
4 comments. So …
5 MS. VITALE: Yeah, it's -- it is very
6 difficult. I mean, I ran Paramount Classics in the
7 arthouse division. You know, when you start buying
8 movies, you have to run financial models, all right?
9 And you have to make money. As one of my bosses said
10 a long time ago, I'm -- we're not in the art business
11 of just not making money. We're not a charity. We
12 need to make money.
13 Piracy does affect our bottom line. So it
14 affects our ability to greenlight new movies or what
15 we pay for Indie movies when we buy them on the open
16 market finished. So -- and Wayne was saying, you
17 know, ordinarily, you used to be able to get $15
18 million for a movie to make it. Now, a financer will
19 say you've got to make that same movie for five
20 because of the returns to us. It is for sure.
21 MS. CHARLESWORTH: And do you see a
22 relationship between the returns and the notice-and-

1 takedown process?
2 MS. VITALE: That I can't speak to because I
3 don't file notice and takedowns, you know. So I think
4 someone else would have to answer that. But I
5 certainly think that the notice and takedown process
6 isn't working completely for sure for independents.
7 We've heard that around the room. And that because of
8 that, they -- and you will hear from one of our other
9 people in, I think, session 7 that they can't make
10 another movie because the notice and takedown didn't
11 work enough and it offset all of the -- you know --
12 all the revenue that they got in when trying to do
13 notice and takedowns and trying to keep stuff off the
14 Internet illegally.
15 MS. CHARLESWORTH: Thank you.
16 MS. TEMPLE CLAGGETT: Thank you.
17 And I'm going to apologize in advance to
18 everyone who's had an opportunity to speak because
19 we're not going to be able, I think, to go back to
20 those who already spoke once. And so I'm just going
21 to -- since we're already at 10:42, I'm just going to
22 -- anyone, please leave your placard up if you haven't

1 spoken before. And I'll just call on those -- so that
2 I think is just two more speakers.
3 Mr. Roslof?
4 MR. ROSLOF: Hi. Thank you.
5 We've heard a lot about the particular
6 burdens on small rightsholders under the current
7 system. And I want to speak more to the particular
8 burdens on small OSPs as well.
9 We at the Wikimedia Foundation are a small
10 non-profit. We operate Wikipedia and other sites that
11 contain tens of millions of encyclopedia articles and
12 images and sound recordings and videos. And we would
13 fall under the DMCA Classic category. We -- despite
14 the large amount of content we host, we receive very
15 few takedown notices. That is, in part, because we
16 benefit from having a community of volunteers who
17 proactively monitor uploads to our sites and
18 preemptively take down anything that might infringe
19 copyright before we have to receive a notice about it.
20 Even so, despite receiving a small number of
21 notices, we still reject three-quarter of them. You
22 know, we can -- even with all the bad notices that

1 we're rejecting -- we can handle our current burden
2 under section 512. But I want to make the point that
3 the only reason we have to deal with section 512 at
4 all -- the point is you can't look at section 512 in a
5 vacuum. You have to look at it in the context of all
6 copyright law. And the only reason we have to rely on
7 it to protect ourselves from liability in the first
8 place is because of massive statutory damages in the
9 copyright system.
10 If we -- if it -- if we only had to worry
11 about actual damages from potentially infringing
12 material on our sites, we wouldn't have to rely on the
13 safe harbors at all because the -- because
14 infringement is vanishingly small on our sites and
15 there -- and is not generally causing enough damage to
16 warrant lawsuits to rightsholders.
17 So in -- similarly, I want to point out that
18 we receive a small number of notices now if we -- and
19 we rely on the volunteer help. If we suddenly had to
20 proactively filter all uploads ourselves, it would be
21 an enormous burden on us.
22 MS. TEMPLE CLAGGETT: Thank you.

1 And I'm sorry. I can't see your placard for
2 the last person.
3 Mr. Perkins. Thank you.
4 I don't think so, actually.
5 MR. PERKINS: How about now?
6 MS. TEMPLE CLAGGETT: Yes.
7 MR. PERKINS: So I'm Braxton Perkins. I'm
8 part of the Creative Content Protection Team at NBC
9 Universal. So I want to share my perspective about
10 sending notices.
11 I have a business background, and I've
12 worked with our legal teams at NBCU to put together
13 operations that both use external vendors as well as
14 internal operations. So I wanted to really talk about
15 our internal operations where we send over 5 million
16 notices on an annual basis to sites that host for
17 download or streaming of movies and television.
18 We take great care in putting together an
19 operation that is scalable but yet also accurate. We
20 use a variety of technologies and automation systems
21 combined with human review. In all cases, the
22 technology is designed by humans, controlled by

1 humans, aimed by humans. And so therefore, there's
2 really not a dichotomy of automation versus humans.
3 You have to use them together.
4 We do find a massive amount of
5 infringements. And on the streaming side, we review
6 every stream before sending them on. And on the
7 download side, we do sampling to ensure that our
8 process is accurate. And we have over a 99.9 percent
9 accuracy in that process.
10 So we certainly see, unfortunately, a
11 continued reposting of URLs. Although we have some
12 efficiency and some scale at delivering notices, it
13 doesn't solve the problem. Piracy of the same works
14 continue again and again and again. There are legal
15 alternatives for people to go find them. They are
16 easily found for our titles, yet piracy still
17 continues.
18 MS. TEMPLE CLAGGETT: I just had a quick
19 follow-up question in terms of the amount of
20 resources, both I guess in terms of manpower, of time
21 and money that is devoted by NBC Universal to the
22 notice-and-takedown process and then trying to address

1 online infringement. Do you have a dedicated team?
2 How many do you have on your staff? If you can share,
3 roughly, how much resources are devoted just to the
4 notice-and-takedown process itself and policing online
5 infringement?
6 MR. PERKINS: Well, we have a -- within what
7 I call my operations team that really does a lot of
8 the work across a variety of notices, we have about 15
9 people at any given time working on that area.
10 MS. TEMPLE CLAGGETT: Thank you.
11 All right. Well, I want to thank everyone
12 who participated in Session 1. We are running a
13 little bit late.
14 Two logistical things -- one, we are going
15 to still take our 15-minute break, or now I think
16 about 12-minute break. We will be back here at 11
17 o'clock. And so we will take a quick break. We'll
18 come back at 11 o'clock because we're going a little
19 bit into the lunch. But we want to make sure that we
20 have an opportunity for everyone to speak.
21 Those of you who put your placard up and
22 weren't able to speak again, just so you know, at the

1 end of all the sessions, we do have an opportunity for
2 people to sign up to make kind of final thoughts. So
3 you will have the opportunity to speak again, even if
4 you are not on a separate session. And we are asking
5 -- well, we will be issuing a notice for further
6 written comments as well for people who haven't been
7 able to fully provide all the comments that they would
8 like.
9 So thank you. And we'll see you back at 11
10 o'clock. Thanks.
11
12 SESSION 2: Notice-and-Takedown Process—Service
13 Provider Response and Counter-Notifications
14
15 MS. TEMPLE CLAGGETT: We're going to get
16 started in a few minutes. We do have some people in
17 the overflow room. So we want to see if there's any
18 additional spots up here.
19 (Crosstalk)
20 MS. TEMPLE CLAGGETT: So if you could take
21 your seats, we'll be able to see if there's any
22 additional spaces to bring up people from the overflow

1 room. Thanks.

2 (Crosstalk)

3 MS. CHARLESWORTH: Okay, everyone. Welcome

4 back to Session 2. As we did before, we're going to

5 go around the table and then have a quick

6 introduction. And if you'll state your name and who

7 you represent for the record, then we'll proceed to

8 discuss. –

9 I'm actually violating the court reporter's

10 rule. I've been told that -- can you hear me?

11 You out there? Okay.

12 So before I go further, we're speaking --

13 we're all, including me, are speaking too closely into

14 the mic. So it's -- they're very sensitive, I'm told.

15 So for those of you who are leaning in too much, which

16 is a habit of mine, lean back a little bit.

17 Anyway, we'll go around the room and

18 introduce ourselves. And then this panel focuses on

19 the service provider response or counter-notification

20 in the notice-and-takedown system. And I'll pose a

21 general question. Last time, we really only got

22 around the room once. So I'm going to ask a multi-

1 part question. And then, as we go around, people can
2 comment on those parts that they find compelling.
3 So I'll start over here with Ms. Bailey, if
4 you want to say who you are for the record. And then
5 we'll go around the room.
6 MS. BAILEY: My name is Lila Bailey. I am
7 counsel for the Internet Archive.
8 MR. CADY: My name is Eric Cady. I am
9 senior counsel with the Independent Film & Television
10 Alliance.
11 MR. COLEMAN: Dan Coleman. (inaudible - off
12 mic.)
13 MR. CROWELL: (inaudible - off mic.)
14 MR. DELGADO: Hi. My name is Deron Delgado
15 representing the American Association of Independent
16 Music.
17 MR. RAY: My name is East Bay Ray. I'm a
18 member of the Dead Kennedys, and I run the small
19 business of publishing and the masters division (sic).
20 MR. ELLERD: My name is Steven Ellerd. I'm
21 a graduate student and sometimes (inaudible).
22 MR. ENGSTROM: I'm Evan Engstrom. I'm the

1 executive director of Engine.

2 MS. GELLIS: I'm Cathy Gellis. I'm a lawyer

3 in private practice, and I represent service provider

4 interest and other public online speech issues.

5 MR. GRATZ: I'm Joe Gratz. I'm a partner at

6 Durie Tangri LLP here in San Francisco. And I am also

7 outside counsel for Automattic in relation to section

8 512 issues and litigation.

9 MS. VALENTINA: Oh, sorry. I'm Elizabeth

10 Valentina. I'm Vice President, Content Protection

11 Litigation at Fox Entertainment Group.

12 MS. KELLER: I'm Daphne Keller. I direct

13 intermediary liability work at the Stanford Law School

14 Center for Internet and Society.

15 MR. MIDGLEY: I'm Peter Midgley. I'm the

16 director of the Copyright Licensing Office at Brigham

17 Young University.

18 MR. MILLER: Gabe Miller. I am the vice

19 president of Content Protection at Paramount Pictures.

20 MR. RILEY: Chris Riley for the public

21 policy at Mozilla, a non-profit organization, maker of

22 Firefox, a global community of creators and makers.

1 M. SEIDLER: I'm Ellen Seidler. I'm an
2 independent filmmaker.
3 MR. SIEGEL: I'm Ira Siegel, counsel for
4 Copyright Enforcement Group, also known as CEG TEK,
5 which represents independent filmmakers, small and
6 large.
7 MR. TAPLIN: I'm Jonathan Taplin. I'm the
8 director of the USC Annenberg Innovation Lab.
9 MR. VON LOHMANN: I'm Fred von Lohmann. I'm
10 legal director for Copyright at Google.
11 MS. WESTON: I'm Devon Weston. I manage
12 Client Relations and Operations for Digimarc.
13 MS. CHARLESWORTH: Okay. Thank you,
14 everyone, for being here.
15 So here are the issues that we're interested
16 in having you address in this panel. Mainly, we're
17 looking at the response to takedown notices. And one
18 question I have is, given the volume -- I mean, we've
19 heard that Google is on track to receive 1 billion
20 notices this year -- is this a scalable and
21 sustainable system for those who are in this
22 ecosystem? And what challenges are we looking at

1 today?

2 In particular, I think we've heard from

3 Professor Urban and others that there's really a

4 diversity. It's important to focus on the diversity

5 of players in this system. So I'm also interested in

6 hearing, in terms of challenges and frustrations or,

7 perhaps, good things -- I don't know about the process

8 -- how do those play out for larger versus smaller

9 participants in the system?

10 An issue that came up very frequently in a

11 lot of comments was the idea of implementing filtering

12 technology in a stay-down system to help with the

13 problem, the so-called whack-a-mole problem. So we're

14 interested in that and whether technologies exist to

15 implement that. And if -- for those of you who are

16 proponents of that point of view, what would be the

17 parameters? How would you know what works with stay-

18 down? And for those of you who don't favor that

19 direction, what do you see as the issue?

20 So I think that's probably enough grist for

21 the mill. I'm going to start on this side, since we

22 went around, I think, in the other direction last

1 time.

2 So Ms. Bailey, or anyone who wants to speak,

3 if you want to raise your cards, we will try to get to

4 everyone at least once. So what do you know? You

5 want to speak. Good. Go for it.

6 MS. BAILEY: I'm outside counsel for the

7 Internet Archive. They are a non-profit digital

8 library that has managed to achieve a relative global

9 success on the Internet. They are generally ranked

10 about the 250th most popular site, and they receive

11 about 2 to 3 million visitors a day.

12 They host all kinds of materials -- many

13 different types of software, books, the Web,

14 everything. Many of those collections were actually

15 created by other libraries -- universities, government

16 agencies and also, of course, the general public.

17 The Internet Archive definitely falls into

18 the DMCA Classic. They have a tiny staff and no in-

19 house lawyers. Nevertheless, they take the DMCA very

20 seriously, and they review every notice they get by a

21 human being. They will process any sort of notice

22 they get, whether it has technical problems within

1 DMCA or not. But I do see a fair amount of what we
2 would call a case of mistaken identities, which I can
3 give specific examples about that (sic).
4 But I did want to talk about the fact that
5 this is burdensome on a small non-profit. They used
6 to review this with only one person for about 10 or 15
7 years, and now the staffing is up to about 5 people
8 are wanting to look at the DMCA notices. And of
9 course, there has been trade-offs about what other
10 sorts of programs and things that the Archive can do.
11 But even so, at this point, they still think
12 that human review is preferable to a filtering system.
13 Contrary to popular sentiment in this room, I think
14 developing a system that is for a unique platform like
15 Internet Archive is actually -- would be very
16 challenging, very burdensome, very costly. And we
17 would also be very concerned about privacy issues that
18 would be raised by traffic users and, also, the user
19 protections that might go away if you have a stay-down
20 system where a different user is trying to use the
21 same material in a different manner that may be
22 lawful.

1 MS. TEMPLE CLAGGETT: Thank you.
2 Just a quick follow-up -- in terms of you
3 mentioned mistaken identities, could you just expound
4 a little bit about that?
5 Oh, sorry. I did it again. It's a habit.
6 Could you expound a little bit about that?
7 And if there are key characteristics in terms of where
8 they're coming from that would help, I guess, assess
9 whether there's a broader solution to addressing
10 those, that would be helpful as well.
11 MS. BAILEY: Yeah, so we certainly see
12 mistakes on both -- from human senders and from
13 automated. The mistakes look different. Human
14 senders often are trying to combat something that is
15 not copyright-related, and there's just a
16 misunderstanding. On the, for example, trademark or
17 privacy rights might be treated similarly under the
18 DMCA. The Archive is very sympathetic to those
19 claims, and we often will just take the stuff down
20 anyway.
21 But the mistakes that they see from what
22 they assume are automated systems being sent out on

1 behalf of major rightsholders are often something that
2 looks like just a mistaken keyword matching that
3 hasn't been reviewed. So for example, there's a
4 television show called Salem, and we might get a
5 takedown notice for a commercial for Salem cigarettes
6 or it's -- a recording that happened in a place called
7 Salem.
8 Other things that have happened are claiming
9 of public domain works. For example, members of our
10 community often will actually just voice record, you
11 know, Frankenstein or Moby Dick to make accessible
12 copies. And we have received takedown notices for
13 public domain works that were not created by major
14 publishers. The other things like lesson plans,
15 (inaudible) book or podcasts about a television show,
16 those things also come in. So those are clearly
17 people just talking about the works as opposed to the
18 works themselves.
19 MS. TEMPLE CLAGGETT: And do you think that
20 there is a need to, I guess, provide solutions that
21 are tailored to the type of senders, kind of along the
22 lines of what we discussed a little bit in the last

1 panel in terms of some -- you know, if it's a human
2 sender who might just not understand the copyright
3 law, it's more of an educational problem? If it's an
4 automated sender, it could be that there just needs to
5 be tweaking in terms of the automated system to make
6 sure that it's working as effectively as it can.
7 Is that something that you would support in
8 terms of just having to consider the senders
9 differently?
10 MS. BAILEY: I think that would probably be
11 helpful. Anything that could make the notices more
12 uniform in how they come in to us would certainly be
13 helpful. And things that would not require such an
14 additional level of review by our staff will certainly
15 be helpful. So …
16 MS. CHARLESWORTH: Okay. Mr. Cady?
17 MR. CADY: IFTA members are primarily small-
18 to medium-size companies that produce and sell motion
19 pictures and television programs around the world. The
20 biggest threat to our industry is the lack of an
21 effective means under section 512 to enforce our
22 rights online. IFTA members report that section 512,

1 in practice, is an absolute losing battle from the
2 moment that piracy is discovered online. Their message
3 is clear, the futility of section 512 is certain.
4 We advocate for a notice and stay-down
5 provision. Technology does exist today that can
6 accomplish that. Under 512 currently, for IFTA
7 members, it's not scalable nor sustainable going
8 forward in the future.
9 In terms of the services, IFTA has
10 identified over 70 independent vendors, some of which
11 are participating in today's discussion, that can
12 easily identify full-length content on the Internet.
13 And IFTA's position is that we advocate for stay-down
14 after the ISP is notified of that content,
15 particularly in the pre-release stage when a pirated
16 film is made available online without authorization in
17 that pre-release period, which can devastate the
18 member company's business.
19 So if you have any follow-up questions, I'm
20 happy to --
21 MS. CHARLESWORTH: So are -- when you say
22 you advocate for a stay-down system, I mean, what

1 would be -- is it for a full-length work or certain --
2 MR. CADY: Full length --
3 MS. CHARLESWORTH: -- amount of work?
4 MR. CADY: We're focusing on full-length
5 content. These services can routinely identify that.
6 And I think it really limits the instances where an
7 infringement would be triggered on a snippet that
8 could be considered fair use.
9 MS. CHARLESWORTH: Mr. Coleman?
10 MR. COLEMAN: Can you hear me if I speak up?
11 I wanted to give a specific example of the
12 problem with the counter-notice procedure and the way
13 that the DMCA has, I believe, amplified problems of
14 scale and incentives for copyright holders and
15 licensees. There is -- even though the DMCA would
16 have actors come together to negotiate rather than
17 have the sort of down-release (sic) of a takedown
18 notice take place, there are situations where online
19 service providers are actually adjudicating and acting
20 as intermediaries.
21 A specific example is a large service
22 provider who had posted a use by one of my clients, we

1 -- considered the fair use aspect. But [we] decided
2 that it was not fair use, that it was actually a
3 commercial use. It was, in fact, a kind of product
4 review. It could have -- the music could have been
5 edited out. And we initiated a takedown notice to the
6 service provider.
7 The service provider said that they were
8 concerned that this was fair use and did not give us
9 the alternative of monetizing the user-generated
10 content under their agreement either. So rather than
11 having a bargain between the two parties with the
12 ability to negotiate between two parties, we had a
13 counter-notice that fell flat because of the unequal
14 bargaining power between the two on both sides -- the
15 individual artist who we were representing and a large
16 service provider that felt that their work was done by
17 mediating this issue.
18 MS. CHARLESWORTH: -- so the person who
19 posted the content, I mean -- that was the person who
20 filed the counter-notice, right, the poster of the
21 content or --
22 MR. COLEMAN: Actually, the service provider

1 served as an intermediary and sent a letter to the
2 lawyer for the poster. We received a counter-notice
3 from them. But the service provider also said "we
4 believe this is fair use, and we are concerned that,
5 because of our belief, we are not going to take this
6 down."
7 MS. CHARLESWORTH: Interesting. I wonder if
8 -- do you have an opinion -- maybe you don't -- about
9 whether that complies with DMCA provisions?
10 MR. COLEMAN: Well, a proposed solution to a
11 situation like that, rather than give an opinion,
12 would be to take away the adjudication and potential
13 for adjudication on the part of the service itself.
14 They should not be in that position of coming up with
15 an opinion. It should be left to maybe a third party,
16 a society, for instance, a copyright society.
17 MS. CHARLESWORTH: Mr. Delgado?
18 MR. DELGADO: Sure. So I run a record
19 label, a medium-sized independent label, and then also
20 a distributor for about 8 or 900 small- to medium
21 labels. And I wanted to kind of first touch on the
22 label challenge.

1 A specific example just this past couple
2 weeks, we -- our label released an album that came out
3 on April 20th. Within 10 days, we -- and we use a
4 copyright protection company. Within 10 days, we had
5 72,000 infringing links, 0 counter-notices. About 60
6 to 70 percent of that was the same service provider,
7 just another user using that post, or that server, to
8 put it up. And then it -- not including the 20,000
9 plus Google or search engine links, which just had --
10 said it was a download but just was an enabler for
11 ads. So there seems to be almost like a conflict of
12 interest because you have these service providers that
13 are making money on the ads that these people put up,
14 but then they say they can't take it down.
15 And so we're still playing this whack-a-mole
16 today, every day, which is costing money personally,
17 about 10 to 12 hours of my time that has been spent on
18 just managing those takedowns. And if you calculate a
19 $0.99 iTunes download, that's $72,000 that our artist
20 could have had, which is the difference between him
21 surviving on his art or waiting tables.
22 So it's this stay-down and at least the red-

1 flagging or some kind of measure to account for the
2 repeat offenders -- because they're definitely out
3 there -- is kind of what we're advocating because it's
4 just unsustainable to spend this amount of time for
5 the same people and the same infringers. So it
6 definitely eats into what we can do and how we should
7 spend our time.
8 And also talking about another challenge
9 just in general, for the smaller labels, you know, I
10 even -- just before I came here, I searched DMCA
11 takedown notice. I got a lot of PDFs, a lot of
12 legalese, a lot of everything else. But there wasn't
13 a simple here, go here, click it, click this button
14 and send a takedown. I got one. Most of the process
15 -- it was a nine-step process finding out ISPs,
16 finding out who the host is, finding out all this
17 stuff. I mean, if you're just a bedroom producer that
18 puts his music out on -- you know, via some of these
19 distributors, then it's so beyond what they're capable
20 of as opposed to just, hey, here you go, type in my
21 information, upload my content and find it. So …
22 MS. CHARLESWORTH: Just to clarify, the 10

1 to 12 hours, was that on that single release? Was
2 that --
3 MR. DELGADO: Just that single release,
4 yeah.
5 MS. CHARLESWORTH: And do you think it would
6 help to have a standardized takedown form?
7 MR. DELGADO: I definitely think it would
8 help for sure. I mean, and this is through -- we
9 already use a copyright protection that we pay per
10 every single release a month. So you know, they're
11 the ones that find it, and they did some automatic
12 submissions. But there's also ones that we have to
13 whitelist and flag and go through. So you know, in
14 complying and making sure that all of them are, in
15 fact, infringements, that's where the man hours come
16 in where, yes, this is it, yes, this is it. And 100
17 percent of them are checking yes. So -- and like I
18 said, 60 to 70 of those are the exact same websites,
19 just a different user. So …
20 MS. CHARLESWORTH: So do you find that when
21 something's taken down and then something just pops
22 right back up on the same website? Is that what

1 you're saying?

2 MR. DELGADO: Correct.

3 MS. CHARLESWORTH: Okay. Mr. Ellerd?

4 MR. ELLERD: Oh, sorry.

5 MS. CHARLESWORTH: I thought you were

6 dropping out on us here.

7 Mr. Ray?

8 MR. RAY: Sure. Well, East Bay Ray. I'm

9 just going to -- I'm an independent musician. And

10 basically --

11 MS. CHARLESWORTH: Oh, sorry. Go ahead.

12 MR. RAY: Oh, I'm sorry. And the takedown

13 system is so burdensome that I've given up. I'm not

14 the first person given up. I mean, everyone I know

15 that's in the independent music scene. And it's just

16 so burdensome. And some people challenge that, and I

17 fear, you know, it's burdensome for small companies --

18 ISPs and such. But you know, stepping back, the

19 Constitution, you know, told us to encourage

20 creativity. And that's what all this is about. And

21 you know, from my experience, I think this DMCA is

22 actually discouraging creativity.

1 And one of the interesting things that just
2 happened is -- this is for music, but I'm sure books
3 and movies -- for the first time ever since there's
4 been electronic records and piano rolls -- that
5 catalog is outselling new music. But this system is
6 killing -- not killing -- it's squeezing creativity of
7 new music. That catalog is outselling. And I have a
8 chart here that I can submit it for the record.
9 The other thing is for small independent
10 music like jazz, classical and Latin music, that has
11 also been killed. I read an article where maybe
12 approximately 10 years ago Latin music scene $600
13 million. And now it's 60. This DMCA thing is killing
14 diversity. And that's, you know, kind of un-American
15 from my point of view.
16 And I have a chart here from the RIAA that I
17 did find some evidence. In the last year from 2014 to
18 2015, it's gone down 19 percent. So it's obviously
19 not working the way it is, and it's actually killing
20 creativity.
21 MS. TEMPLE CLAGGETT: I have a quick follow-
22 up on -- I think we discussed this during the New York

1 roundtables -- that creativity overall is up. But you
2 know, people point to Beyonce and some of the bigger
3 artists to say that the music industry or the film
4 industry is doing well. So it sounds like you're
5 coming at it -- from a different perspective to say
6 that popular artists, so to speak, may be doing well.
7 But that -- the diversity of art and music --
8 MR. RAY: Well, this --
9 MS. TEMPLE CLAGGETT: -- is being affected.
10 MR. RAY: But this is actually -- this old
11 catalog is outselling Beyonce and Adele, by the way.
12 MS. CHARLESWORTH: Where's the statistic
13 from -- you said you had a --
14 MR. RAY: This is from Nielsen. This is
15 music. That is true. There's bigger things. Like, I
16 did a -- I was talking to some -- you know, I advise
17 small musicians. And some guy asked me, you know,
18 what about Spotify. And I said, well, you know, I
19 went to University of California, and I have a math
20 degree. So I understand numbers. And I said, well,
21 the problem with Spotify is you have to have an
22 audience 10 to 20 times bigger than what my band ever

1 had.

2 In other words, you've got to be more like

3 Justin Bieber. And the thing is, is Justin Bieber's

4 all well and good, but the alternatives and the

5 diversity is being -- yes, we could have -- you know,

6 it could be like 1984 or Russia where we have 20

7 superstars and that's what you're allowed to listen

8 to. But all the other -- you know, all the more

9 interesting -- and the other thing is, is from

10 independents -- this is where new music comes from.

11 Like, one of the bands that my band influenced was

12 Nirvana and the Foo Fighters. And I know Dave Grohl.

13 You know, the first show he ever saw was my band. So

14 they take, you know, our little small mom-and-pop

15 operation, and they go wow. And we inspire, and they

16 take it up and they add to it.

17 But you know -- but if we have -- the other,

18 if I can find it, the document, is if I -- music

19 listeners, they asked them, like, what decade was this

20 music from. And they could name, you know, 40s, 50s,

21 60s, 70s, 80s. The last two decades, they can't tell

22 which decade it's from. So creativity is not being

1 encouraged, which is what the Constitution says.

2 MS. CHARLESWORTH: Thank you.

3 Mr. Ellerd?

4 MR. ELLERD: Speaking of the Constitution,

5 it's always been a deal, right, in the copyright laws.

6 That's --

7 (Crosstalk)

8 MR. ELLERD: Sorry. Can you hear me now?

9 Okay. Sorry about that. You know, temporarily a

10 little closer (sic).

11 It's always been a compromise that we have

12 to protect the artists and give them the ability to

13 profit off the work to stimulate creativity. But

14 there also is the publicity at issue --

15 MR. RAY: (Inaudible - off mic.)

16 MR. ELLERD: -- in the public interest

17 because we then have to be able to take those words

18 created that we've incentivized and feed them back

19 into the rest of the culture.

20 Now, part of that lack of diversity and

21 culture happening, you can create alternatives and

22 narratives for that. I can say that part of the

1 extensions of copyrights, that part of our overuse of
2 going against fair use, has created a very homogenous
3 musical landscape.
4 UNIDENTIFIED MALE SPEAKER: (Inaudible - off
5 mic.)
6 MS. CHARLESWORTH: I think we have to have
7 one speaker at a time.
8 UNIDENTIFIED MALE SPEAKER: That's --
9 MS. CHARLESWORTH: No, that's okay.
10 UNIDENTIFIED MALE SPEAKER: Just --
11 MS. CHARLESWORTH: But I --
12 UNIDENTIFIED MALE SPEAKER: Just regarding
13 (inaudible).
14 MS. CHARLESWORTH: Normally, we like a lot
15 of dialogue. But because we want to make sure we get
16 everyone in the room, we're going to try to go one at
17 a time for now --
18 MR. ELLERD: I'll try because my graduate
19 students have a tendency to respond to everything.
20 But part of what we also see happening is a
21 vast misunderstanding of fair use at (inaudible) not
22 just from the larger publishers and also from the

1 smaller groups using it who think that some things
2 they do are fair use. They're not. The playing of a
3 full trailer and you just going (imitates gasp) -- not
4 fair use. No, I'm not going to be on a big train of
5 protecting reaction videos unless they give, like, an
6 hour of commentary afterwards. Then we venture fair
7 use territory.
8 Can fair use be used commercially? Yes,
9 absolutely it can. Case law has supported that time
10 and time again. A review of a song that's going to
11 have to use portions of that song to be able to
12 critique it is fair use. And a service provider does
13 have to be able to adjudicate if that's fair use and
14 resist these automatic takedowns and automatic Content
15 IDs that are supposed to be part of the deal.
16 MS. CHARLESWORTH: Can I just interrupt you
17 there? I mean, under the DMCA, I assume -- it sounds
18 like you're familiar with it. The statute doesn't
19 have the service provider adjudicating things. I
20 mean, how does --
21 MR. ELLERD: It absolutely -- it -- there
22 are effects of the DMCA that happened, that makes

1 things incumbent upon the service provider to do that
2 are how the law works out in reality. First is what
3 it actually said on the page.
4 MS. CHARLESWORTH: Can you illustrate that?
5 I mean, are a lot -- we heard a story I think up the
6 line here about how a service provider was making
7 judgments about fair use. Are there -- are you saying
8 that's a prevalent practice?
9 MR. ELLERD: I'm saying it's not a prevalent
10 enough practice, first of all. You've heard from
11 Stanford teacher earlier, and you'll be hearing from
12 Channel Awesome, particularly later on as well. And
13 this is -- they represent a whole genre of critique
14 and commentary and, essentially, a kind of subgenre
15 somewhere between a traditional documentary and, say,
16 Orson Welles F for Fake that has exploded thanks to
17 the technology of the "Internet and Things" like
18 YouTube. I've made some videos like that myself --
19 video essays over films. And to do them properly, I
20 would have to use some music or some clips and as much
21 as I thought necessary.
22 I never commercialized them. I didn't

1 bother. But as soon as you put it up, Content ID goes
2 through and can flag any number of instances that
3 we'll call a copyright indictment. This isn't a case
4 of I put up 100 percent of a movie or 90 or 80 or 60
5 or 70 or 50 -- far less than that. And yet then I
6 have to deal with the frustration of automatically
7 being accused of being a criminal. And that's before
8 we've ever gotten to a DMCA actual takedown notice.
9 That's how the system actually works in life.
10 I then get hit with the Content ID that's
11 been picked up, usually automatically by third party
12 groups -- AdRev, Lasso Group -- what's that -- Pafe
13 (ph), which is -- Paramount uses. I know I currently
14 have a claim from them, but I decided to go back and
15 fight them this week in preparation for this because I
16 gave up a year ago making those videos. It was too
17 hard. What's the point of making a video if I -- my
18 friend and I made a video, and I can't show it to my
19 best friend any more. It's immediately say blocked.
20 There are more reasonable methods for
21 catching this now. If you do things like I am and
22 make videos using music, now you come up with (sic)

1 the Content ID. But more often than not, they will
2 monetize that for the person who owns the song, and
3 that's perfectly fair and fine, probably the best
4 answer to that outside of actual fair use.
5 MS. CHARLESWORTH: Mr. Engstrom?
6 MR. ENGSTROM: Hi. I'm the executive
7 director of Engine. We're a non-profit that
8 represents startups, a lot of these small OSPs that we
9 believe are responsible for proliferation of content
10 we're seeing out there today.
11 Citing -- I just want to kind of come back
12 to a story we hear a lot, which is there's somehow
13 this lack of content available, creators declining.
14 You know, I would take -- I would point everyone to
15 Mike Masnick's report, the Sky is Rising, which shows
16 there's been a great increase in the amount of content
17 available out there, the amount of output that
18 creators are making, in large part, I think, because
19 of the small companies that we work with that provide
20 new channels for artists to reach their audiences.
21 But turning back to the issue that we see
22 that what -- that this panel is about, looking at

1 counter-notification procedure, takedown notices and
2 the impact that has, I want to highlight a problem
3 that we're seeing with small OSPs that I think is
4 really detrimental to the broader creative landscape,
5 which is the false notice are a problem. And part of
6 that problem is amplified when we're talking about the
7 damages regime that we see baked into both the DMCA
8 and the broader copyright regime.
9 So basically what I'm saying here is if you
10 are an OSP and you receive a takedown notice, in the
11 absence of the strong limitations of liability that
12 DMCA creates, you can be liable for gratuitous
13 damages. I mean, startups do not have a ton of money
14 to spend defending lawsuits, paying out statutory
15 damages settlements for specious claims.
16 But you know, the lack of a commensurate
17 remedy for false notices, which are common -- I mean,
18 studies that we've looked at and reports we got from
19 the companies we work with suggest that 30 percent, 40
20 percent, 50 percent of the notices they receive are
21 false or deficient in some way.
22 MS. CHARLESWORTH: When you say false or

1 deficient, I know -- I think my colleague explored
2 this a little earlier. I mean, are they deficient
3 because they're misidentify? Are they deficient
4 because there could be a claim of fair use because
5 maybe the two sides see the fair use issue
6 differently? I mean, how are you -- where does that
7 statistic come from?
8 MR. ENGSTROM: It's a variety of things. So
9 I can give you a small -- an example that kind of
10 highlights this issue. And it also kind of deviates
11 from one of the ways that things are set up, which is
12 it's proliferation of notices is the problem, right?
13 If there are 30 percent false, deficient, whatever,
14 notices out there and it's, you know, a million
15 notices, that's a huge proportion. It's a problem
16 even when it is a small number of notices and even
17 when it is sort of a deficiency, right?
18 So Kickstarter, for example, a company that
19 has published the number of notices they receive and
20 the number of notices they process, it's a small
21 amount. It's 300 notices in a given year, but more
22 than half in 2014 were false or deficient in some way.

1 It's unclear whether they were targeting a competitor,
2 whether there was some deficiency as to copyright
3 ability of the underlying material, whether there was
4 a problem with the way the notice was handled and they
5 couldn't identify the work at issue.
6 All of those are problematic because you're
7 devoting resources from a startup that would otherwise
8 be providing a channel for creators to reach an
9 audience. You're increasing the cost of operating
10 such a system, and you're basically diminishing a
11 number of those channels for creators to reach their
12 audience by increasing the cost.
13 This plays out not just in terms of the
14 manpower you have to devote to deal with these issues.
15 A classic example here -- YouTube has a Content ID
16 system that they spent, you know, tens of millions of
17 dollars on and still had to create a team to weed
18 through false notices because users were complaining.
19 So small OSPs don't have the funds to weed
20 through these problems, to create upfront prophylactic
21 (ph) measures that separate bad notices from the good
22 because they're chronically underfunded. And on top

1 of that, it's not just a question of, once you have
2 started, you have to devote these resources to dealing
3 with these problems. It's getting investors in the
4 first place.
5 We did a study, an international study, of
6 investors that found that some 80, 90 percent of
7 investors said large statutory damages deter
8 investment in digital content intermediaries,
9 increased limit -- you know, weakening of the
10 liability limitations decrease investment in that
11 sector. And I think that's a real problem not just
12 from the value of the tech sector, but also for
13 creative communities.
14 Another Mike Masnick report recently showed
15 that of the availability of new OSP channels for users
16 to access a variety of content is a better way to
17 decrease piracy than increased anti-piracy enforcement
18 efforts. So the more content you have available, the
19 less piracy you have. So the more you are boxing out
20 OSPs by having high upfront costs for weeding bad,
21 false, deficient notices, it doesn't matter for this
22 purpose whether they are deficient in a way that you

1 can't identify them or whether they are malicious. It
2 still increases the cost on OSPs that decreases the
3 number of channels that creators will be able to use
4 to reach audiences.
5 MS. TEMPLE CLAGGETT: Okay. Just a quick
6 follow-up on that -- are there any key characteristics
7 from your perspective in terms of who's sending the
8 deficient notices we talked about in an earlier panel?
9 Again, in terms of trying to develop a solution, is it
10 more education, better automated systems? From the
11 types of deficient notices that you see, are there any
12 key characteristics that you could share with us?
13 MR. ENGSTROM: I mean, I think it comes from
14 a range. I mean, there are obviously bad actors out
15 there. We've talked about rights forfeit and some of
16 their practices they've engaged in. But it -- you
17 know, it can be difficult for people to navigate the
18 process.
19 I think what we think would be the best way
20 to deal with this would just sort of be to deescalate
21 the problem by minimizing the pool of damages that you
22 are putting out there through the system of statutory

1 damages. It just increases the risk on OSPs. It
2 increases the severity of the problem.
3 The 512(g)counter-notification provision is
4 basically a user saying I am consenting to a lawsuit
5 which could incur enormous penalties where, of course,
6 they can only perceive actual damages if they prevail
7 against someone who has issued a false notification.
8 So I think it's a range of people that are
9 sending bad notices. And I'll use bad here to mean
10 deficient, false. I mean, for -- again, from the
11 perspective of both --
12 MS. TEMPLE CLAGGETT: Not just those that
13 are targeting lawful content, but just
14 misidentifications, procedural defects that you're --
15 MR. ENGSTROM: Yeah. I mean, it's a range.
16 I mean, I think it depends on the type of site. So a
17 site like GitHub, for example, a GitHub is a
18 repository of online code. It's used by open source
19 projects, companies throughout the world. It's pretty
20 hard oftentimes to determine whether or not a project
21 that is a fourth of an existing project is copyright
22 infringement. That's difficult. It's difficult for

1 the OSP. It's difficult oftentimes for the developer
2 themself (sic) because it's a nuanced theory of law.
3 It doesn't lend itself to upfront measures for
4 screening.
5 And consequently, you know, you have to have
6 a process that fairly adjudicates those disputes. But
7 when you have incredibly high penalties potentially
8 for OSPs and for users, you make that sort of
9 cooperative process much less likely to happen.
10 MS. CHARLESWORTH: Okay. Can I -- can you
11 walk me through this a little bit in terms of the OSP
12 -- the user? You're saying maybe he doesn't file a
13 counter-notice because they're afraid of their
14 individual liability. But the OSP is basically just
15 charged with the responsibility of reviewing the
16 propriety of the notice, seeing that it complies with
17 the DMCA. If it does, they're supposed to take the
18 content down.
19 MR. ENGSTROM: Right.
20 MS. CHARLESWORTH: How -- are you saying
21 that reducing statutory damages -- how would that
22 impact that process specifically? Is it -- I mean,

1 would there just be -- would they be less diligent
2 about that? Or I mean --
3 MR. ENGSTROM: No, I think the issue is --
4 the issue is more that if you are an OSP, you kind of
5 have a choice, right? You receive a notice. You
6 either just process it because the penalties for
7 failing to take down content that is infringing are
8 enormous, right? So if you're dealing -- let's say
9 you're GitHub and you have something come in. And it
10 would require a great deal of effort to determine
11 whether or not this claim is legitimate. If you --
12 MS. CHARLESWORTH: You -- when you -- I'm
13 sorry. But when you say legitimate, do you mean that
14 the notice is compliant with the --
15 MR. ENGSTROM: No. It's --
16 (Crosstalk)
17 MR. ENGSTROM: I'm -- yeah, so I understand
18 what you're saying about --
19 MS. CHARLESWORTH: No, I mean because, in
20 theory, the DMCA doesn't require the OSP --
21 MR. ENGSTROM: It doesn't --
22 MS. CHARLESWORTH: -- to make -- adjudicate

1 the claim if there's a debate about --
2 MR. ENGSTROM: You're right.
3 MS. CHARLESWORTH: -- whether it's fair use.
4 They're just supposed to see whether it complies with
5 the requirements of the statute.
6 MR. ENGSTROM: That's correct. But what --
7 I mean, and the point of YouTube, I think, is a great
8 example. Users do not like it when they find their
9 content that -- and delete it. So by creating a high
10 upfront barrier, okay, in the form of statutory
11 damages, liability, you are basically telling small
12 OSPs don't deal with this. Wash your hands of it.
13 Leave it up to, you know, the -- a notice sender and a
14 user to deal with potentially complex issues of
15 infringement. And that's fine. But when you have no
16 penalties for sending false notices --
17 MS. CHARLESWORTH: But I want to go back.
18 If you had actual damages, how would that change the
19 duty of the OSP to comply with the notices? I mean --
20 MR. ENGSTROM: It would put them --
21 MS. CHARLESWORTH: Are you just saying they
22 would not comply because the damages wouldn't be --

1 MR. ENGSTROM: No, no, no.
2 MS. CHARLESWORTH: -- high enough?
3 MR. ENGSTROM: It would put them in the
4 position to potentially sort through these problems
5 manually like somebody like Kickstarter does. They
6 review the notices they receive for -- whether it's
7 compliance with the statutory provisions of what is
8 contained within a notice; whether it's seeking the
9 removal of non-copyrighted material, which does
10 happen; whether it's targeting something that is not
11 there. So there are a variety of ways that notices
12 can be deficient.
13 And my point is, by not having any
14 penalties, any real penalties, associated with sending
15 false notices, you're encouraging these notices to go
16 through --
17 MS. CHARLESWORTH: That's a separate issue.
18 I mean --
19 MR. ENGSTROM: I think they're --
20 MS. CHARLESWORTH: -- you've made two
21 points. You've been talking about the statutory
22 damages regime, and I'm not quite seeing exactly the

1 connection. I understand the point on the penalties
2 side. You're just basically saying if there were
3 greater penalties for sending a deficient notice, that
4 might discourage deficient notices.
5 MR. ENGSTROM: Right. You would discourage
6 deficient notices on one hand. Currently, we don't
7 have that. So we do have a side --
8 MS. CHARLESWORTH: But we have a -- you can
9 bring a claim. But --
10 MR. ENGSTROM: You can bring a claim, but
11 the case law has made it virtually impossible to
12 prevail on it in terms of liability, and you are
13 limited to actual damages. I think the only 512(f)
14 award in the past decade was for $22,000, most of
15 which was attorney fees.
16 My point is more the lack of meaningful
17 penalties under 512(f) encourages people to send
18 specious notices. And the high upfront -- the high
19 cost of failing to process every notice puts an OSP in
20 a difficult position where they can't do anything --
21 or they probably would be foolish to do something --
22 to deal with those notices and make an effort to

1 prevent bad notices from coming through and, instead,
2 leave the burden of dealing with false notices to
3 users who are rightfully scared of the process.
4 So by increasing this -- by having such a
5 high penalty of statutory damages for OSPs failing to
6 process a notice that might be on the borderline, you
7 know, in terms of the fair use question, you are
8 basically -- it puts them in a position of saying, you
9 know, we can't do -- we don't -- we shouldn't do
10 anything about this. We shouldn't interject ourselves
11 in the process to try to make this a better,
12 cooperative process for both takedown senders and the
13 users. And consequently, you see things like users
14 being upset by the fact that they are processing
15 everything that comes through. It hurts their
16 business from that end. I --
17 MS. CHARLESWORTH: Well, I don't want to
18 belabor it, but they're not supposed to be
19 adjudicating fair use. That's not the system that we
20 have --
21 MS. TEMPLE CLAGGETT: I actually have a
22 follow-up question on that point because -- are you

1 concerned that would actually put more of a burden on
2 the ISPs? Because it sounds like you're saying that
3 if you reduce statutory damages, OSPs would then be
4 more likely to decide that they don't need the
5 limitation and liability under the DMCA at all because
6 they would risk the fact that they would be sued --
7 because they would say, okay, maybe I won't actually
8 take it down. I don't need -- because I'm not going
9 to be exposed to excessive damages, I'm not going to
10 take it down because I think in my mind it's a fair
11 use. And so therefore, I'm not going to need the
12 protection of the DMCA.
13 But does that, in your view, pose an undue
14 burden on the ISP because then they would be in the
15 position of having to subjectively themselves
16 determine whether they personally think that it's fair
17 use before they take it down as opposed to, right now,
18 they just take it down automatically and then wait for
19 the counter-notification process to kick in if there
20 is -- you know, if the user, for example, thinks that
21 it was improperly taken down?
22 MR. ENGSTROM: I'm not suggesting that you

1 should impose a burden on OSPs to do --. What I'm
2 saying is at the heart of the DMCA was the central
3 notion of we want to encourage cooperation in
4 addressing online infringement. And my point is more
5 that, by having such a lopsided damages regime that
6 imposes incredibly high costs on OSPs for failing to
7 process every notice they receive and virtually no
8 penalty for people sending false notices, it disrupts
9 that potential compromise that could go a long way
10 towards obviating some of these problems. And it puts
11 small OSPs in a position where they really can't do
12 anything because of the risk either in terms of
13 weeding out, you know, bad notices that are impacting
14 their business from the user end who are unhappy about
15 this.
16 Again, you see companies creating teams to
17 respond to just this problem. That's an incredible
18 burden, and it's one that I don't think is beneficial
19 for the entire ecosystem.
20 MS. TEMPLE CLAGGETT: Yeah, I know. It's
21 complicated because it's an interesting perspective.
22 But it does, in some sense put more power on the OSP

1 to decide whether the use is fair or not. You know,
2 so it's --
3 MR. ENGSTROM: Yeah, I'm not saying it's a
4 question of trying to put a -- like, a greater legal
5 burden on OSPs. That's not what we want. What we
6 want to have is a system that discourages false
7 takedown notices and encourages cooperation and
8 doesn't create such a great financial burden on OSPs
9 that it limits the number of new pathways for creators
10 to reach their audiences.
11 MS. CHARLESWORTH: What about discouraging
12 infringement? What would you recommend for that?
13 MR. ENGSTROM: Discouraging infringement is
14 a problem. I mean, I think there's -- the way I would
15 do it -- I think there are a number of ways you could
16 do it. I like to point to the evidence that suggests
17 that the more pathways you have for people to reach
18 legal content, the less incentive there is to
19 infringe.
20 Someone from the earlier panel said there
21 are, like, 10 sites that you can you receive
22 legitimate movies through. I think that's probably a

1 low number, but the point is that's not enough. The
2 more pathways we have for people to access legitimate
3 content, the less incentive there is going to be
4 infringe.
5 There will always be people that are
6 infringing copyrights. That -- there's no doubt about
7 that. But what we want to do is increase the ways
8 that people can access content legitimately. And I
9 think that's different.
10 MS. CHARLESWORTH: Okay. Ms. Gellis?
11 MS. GELLIS: Thank you.
12 I want to amplify what Mr. Engstrom was
13 saying and what Ms. McSherry and some others were
14 saying earlier, which is to look at the same question,
15 the structure of how the DMCA ends up functioning,
16 and use the term that somebody else used before, which
17 is that it is a system of extra judicial censorship.
18 We have a situation where people express themselves
19 online and then, with no other right that could be
20 claimed, somebody can simply point to that content,
21 allege that it violates their copyright and cause that
22 content to be deleted with no judicial scrutiny or any

1 checks and balances on that whatsoever. And we've
2 been talking about the amount of abuse.
3 MS. CHARLESWORTH: Can I interrupt you for a
4 second? I mean, if someone files a counter-notice, in
5 theory, there could be judicial scrutiny.
6 MS. GELLIS: So yes, there could be. But it
7 -- that --
8 MS. TEMPLE CLAGGETT: That -- they know
9 that, in fact, they don't have to -- right now, as the
10 law stands, I don't think there are any particular
11 requirements. You just have to meet the requirements
12 in the statute to have the content reposted.
13 MS. GELLIS: But normally, if you want --
14 we're talking about what the censor can cause.
15 Normally, a censor can complain about content, but it
16 has to complain to a judge before the content gets
17 deleted. The 512(g) doesn't change that. They've
18 already complained about the content, and the content
19 disappeared. Now, it may get restored potentially
20 through the put-back, although we will talk -- we've
21 talked and will probably talk more about the
22 limitations on whether that -- whether enough content

1 is coming back that is entitled to come back.
2 But you still have the problem of somebody
3 points at content. It may be the putative
4 rightsholder, but it may not be a putative
5 rightsholder. There's what Mr. Engstrom was talking
6 about. Because 512(f)is essentially toothless and
7 there's no other remedy built in to the statute, there
8 is nothing to deter that level of abuse. And it
9 prompts a lot of gamesmanship.
10 We've seen evidence in political situations
11 of people who don't like content and just sent a
12 takedown notice to have the political content they
13 don't like deleted. And even if it is restored, it's
14 restored after a delay, and that delay might be
15 significant if there's something newsworthy or timely
16 about that particular content.
17 This is a problem, and it's not something we
18 bear under First Amendment doctrine for any other type
19 of complaint. We're sort of describing that there's
20 something so special about copyright that it shouldn't
21 be subject to the same sort of due process protections
22 that any other speech for any other potentially

1 infringed right would get.
2 And then just to shift that over, so the
3 only thing we have to keep that censorship from
4 happening is the rights hold -- it is the service
5 provider -- excuse me -- independently taking it on
6 themselves to try to be a stop gap and try to not let
7 all the legitimate content be censored. As Mr.
8 Engstrom was talking about, we have issues of where
9 they don't have enough information available to them
10 to know is it licensed, is it fair -- and will they
11 have all the factors to know if it's fair use.
12 There's the volume that's burdensome. So even if
13 there might be something that they could catch, they
14 might not see it -- and then the fact that it's a
15 (inaudible) company decision.
16 And I just wanted to point out in footnote
17 25 of the comment I submitted on behalf of Floor64, we
18 have the founder of Veoh Networks, which was found to
19 be a legitimately complying safe harbor, talking about
20 what it was like to have his company picked apart to
21 the point of bankruptcy by rightsholders because they
22 just didn't like the business that he was in.

1 This is -- if that's the barrier we have
2 between speech being able to be expressed freely
3 online and not, we have a problem.
4 MS. TEMPLE CLAGGETT: I guess a quick
5 follow-up question, which I think we might have -- you
6 know, we kind of focused on this to death. But I
7 really am interested in the statistics on this or kind
8 of just the evidence on the -- you used terms such as
9 censorship and kind of the DMCA process being used to
10 suppress speech. And so that is why I'm kind of more
11 focused in terms of my question on evidence and
12 statistics about notice -- improper notices that
13 actually go to that as opposed to procedural defects
14 or misidentifications.
15 I think that, as I said before, there are
16 legitimate concerns about even having to deal with
17 those as well. But obviously improper notices that go
18 more to lawful content have a different level of
19 importance.
20 And so do you have specific statistics or
21 evidence about targeting of lawful content or
22 statistics on the use of the DMCA for censorship

1 purposes as opposed to somebody's procedural
2 misidentification defects that, presumably, could be
3 legitimately corrected through improved automated
4 systems or education? Do you have any specific
5 statistics on the targeting of lawful content?
6 MS. GELLIS: Yes. In our comment, I think
7 we footnoted to various studies. I believe there's
8 other people who -- here today who will give you some
9 other evidence of it. There's also some of amicus
10 briefs and the petition for rehearing. And that was
11 on -- in the Lenz case.
12 But particularly, instances of political
13 content of -- I don't want to actually speak out of
14 turn because I may mush this. But there was a
15 politically motivated speech that got taken down and
16 then also got caught in the window before it could be
17 put back. And it was particularly timely because it
18 was involving candidates. We're in a heated political
19 election now, and you can see how online communication
20 could be gamed by people who want to game the messages
21 that are available for people.
22 Right now, that -- even if it -- and I'd

1 also suggest that, even if it happens once, once is
2 too many. But we can see how the DMCA, as structured,
3 enables, facilitates and even encourages these sorts
4 of thing to happen.
5 MS. TEMPLE CLAGGETT: Does this -- I guess,
6 focusing on the political content, does this, in your
7 view, suggest -- that the counter-notification process
8 should be changed for political content as opposed to
9 -- for example maybe the counter-notification process
10 works effectively if it's the situation of -- like,
11 the "dancing baby" because you would have 10 days,
12 potentially, where it would be kept down. But it
13 could go back up after 10 days. That wouldn't be,
14 presumably, that harmful if the dancing baby video is
15 down for 10 days. But in the political context, 10
16 days might be too long.
17 So do you think that there should be some, I
18 guess, different solution for political content where
19 you're able to do an emergency counter-notification
20 that allows you to get it put back sooner than 10
21 days? Is that something that you're advocating? Or
22 is it just, overall, you think that the counter-

1 notification process isn't sufficient?

2 MS. GELLIS: It shouldn't have come down in

3 the first place. There's no other instance where

4 content can be censored just by somebody pointing to

5 it and saying it need to go down. It's unusual under

6 American law to allow that to happen.

7 512(g) doesn't appear to be working. There

8 is, particularly for political speech, large problems

9 with relying on that, particularly for the interest of

10 anonymous speech. But I don't think dwelling on

11 512(g) can possibly provide enough of a remedy because

12 the problem was that the speech went down in the first

13 place. And it was a legitimate speech that should not

14 have been -- it's enjoining speech without having done

15 any judicial test on whether it's entitled to that

16 sort of injunction against it.

17 MS. TEMPLE CLAGGETT: Well, then just one

18 final follow-up question that I -- it sounds, though,

19 as if you were suggesting that the DMCA as a whole --

20 I guess, what is your solution? Because you're -- it

21 seems as if you're concerned with the -- any system

22 that would allow without adjudication by a court even

1 potential speech to be taken down. Are you suggesting
2 that we scrap the DMCA as a whole? Or what is your
3 proposed solution, I guess, to affect that particular
4 issue?
5 MS. GELLIS: Within the structure that we
6 have, one of the problems is that there's a lack of
7 balance currently. You can see that the balance was
8 intended by Congress with the 512(f) to provide some
9 sort of remedy for when things went wrong. But we
10 don't see 512(f) executing itself the way that it
11 would need to provide an adequate balance and an
12 adequate deterrent to deter people from taking down
13 content that they have no right to takedown.
14 MS. TEMPLE CLAGGETT: Thank you.
15 MS. CHARLESWORTH: Mr. Gratz?
16 MR. GRATZ: Good morning.
17 I'm here to talk largely about the
18 experience of Automattic, the company that operates
19 WordPress. WordPress has more than 80 million
20 websites, many of them personal. And it gives, in
21 some ways, exactly in the -- what we've heard about is
22 the DMCA Classic mode.

1 One thing that I think it's important not to
2 forget in thinking about the future of section 512 is
3 that the Internet from 1998 is still all there, right?
4 There's still -- it's small OSPs, small content
5 creators, small copyright holders needing remedies for
6 small infringements. And the system that Congress put
7 in place to deal with that is largely functioning as
8 intended with respect to -- and especially with
9 respect to -- the world in which Congress saw itself
10 at the time the law was enacted. That's all still
11 there, and that is working.
12 The counter-notification process is not
13 working. It's not providing a meaningful solution to
14 DMCA abuse. It's heavier weight than the notice
15 process, especially -- and WordPress sees this a lot -
16 - in the case of anonymous speakers who may receive a
17 takedown notice and in order to have their criticism
18 put back online would need to unmask themselves as
19 anonymous speakers. And the counter-notification
20 process doesn't currently take into account any
21 procedure for that to happen, although DMCA notice
22 senders can be anonymous and can notice through an

1 agent.

2 This leaves service providers -- and we've

3 heard a little bit about this -- in the position,

4 because counter-notifications are so rare whether the

5 takedowns are legitimate or not, in having to make a

6 determination of whether to keep their safe harbor and

7 take material down or whether the notice, even though

8 properly formed, is abusive and is not directed to

9 material that's infringing and is instead directed to

10 important speech.

11 It's a question that's been asked a number

12 of times. Automattic divides out the notices that are

13 improperly formed from the notices that are properly

14 formed but abusive -- clear fair uses, clearly un-

15 copyrightable content or containing clear material

16 misrepresentations. And those are occurring about 10

17 percent of the time. That is, about 10 percent of the

18 valid takedown notices are directed at clear fair --

19 are clearly abusive in one of those ways.

20 And as to those, Automattic doesn't take

21 down the content. And as to those, Automattic, you

22 know, puts its safe harbor as to that content sort of

1 to the side and puts its users' speech interests in
2 respecting and defending its users' voice above sort
3 of avoiding any liability in every case. And that's
4 something that we need to encourage, right? That's
5 something -- that's a voluntary measure that the rules
6 can -- it can be changed to encourage more.
7 MS. CHARLESWORTH: Can I interrupt you
8 there? I mean, because I -- we've now heard this
9 theme a little bit. I mean, is it the OSPs, though,
10 who should be making the decision about what's, for
11 example, a fair use? I mean, they're not really a
12 neutral party necessarily in this process. I mean, if
13 you were looking at this from the other side, you
14 might want a third party to make a decision, which I
15 think is what Congress had in mind at least.
16 I mean, why should an OSP be -- I think I
17 heard this -- judge, jury and executioner? But if
18 you're from the perspective where there's a disputed
19 use -- and I'm not saying that some aren't clearly
20 fair -- but there are disputed takedowns or uses. And
21 why would the OSP, or why should the OSP, be the
22 decision-maker in that case?

1 MR. GRATZ: There are no truly neutral
2 parties because this is not -- you know, this is not a
3 neutral arbiter making a decision. And I -- and this
4 may be a situation where the small claims process that
5 the Office has discussed and studied may aid in speedy
6 and inexpensive resolutions. But the OSP is in the
7 position of -- is in an unusual position. And that
8 position is that it has some resources, right? And it
9 has -- it is -- it may be the only entity in the
10 entire process with any legal expertise whatsoever.
11 And that means that OSPs can take on and should be
12 encouraged to take on the responsibility, if they so
13 choose, of protecting their users' lawful content,
14 even where it creates legal risk for the OSP.
15 MS. CHARLESWORTH: But that goes back to my
16 question. You're saying they should take the
17 responsibility, but that makes them the adjudicator --
18 in your equation. And the question is, is that a
19 balanced regime?
20 MR. GRATZ: It doesn't make them the
21 adjudicator. The federal court is always the
22 adjudicator and the only neutral adjudicator that the

1 system looks to. They, like a copyright holder
2 deciding whether to send a notice and like a poster
3 deciding whether to send a counter-notification,
4 they're one of the participants. And they can make
5 decisions about their risk and their values that, you
6 know -- that -- and they can make the trade-offs where
7 they want. That's not making them the judge, jury and
8 executioner. That's making them someone who can
9 contribute to the online sort of life of their
10 community by putting themselves at some risk and
11 undergoing some cost.
12 MS. TEMPLE CLAGGETT: But it does put -- I
13 guess, obviously, the ISP in an interesting position.
14 And you have a number of different balances. I mean,
15 you mentioned that the ISP, obviously, is not a
16 neutral party. Obviously, they have a reason to want
17 the content to be up for their own business purposes
18 because that's -- they're in the business of posting
19 content and hosting content.
20 So you know, it certainly -- they wouldn't
21 be a neutral decision-maker in terms of whether
22 something is fair use. And then you have -- I guess

1 you're balancing that against the initial sender of
2 the notice who probably legitimately, or presumably
3 legitimately, thinks that it is not a fair use. And
4 potentially, their entire livelihood could be affected
5 by having the content remain up if it's directly
6 affecting their ability to receive revenue from
7 legitimate use of their content.
8 So it's a weird dynamic, I guess, to kind of
9 put an ISP in, in terms of going outside of the DMCA
10 requirements to then say, okay, I'm just not going to
11 follow DMCA, but I'm just going to make my own
12 decision as to whether this is fair use or not.
13 MR. GRATZ: Absolutely. And from a dollars
14 and cents perspective, it never makes any sense for
15 any online service provider to do anything but just
16 take down in response to every piece of paper they
17 receive that says DMCA at the top and lots of ones
18 that don't. But we want to encourage OSPs to be more
19 discriminating than that. We want to encourage OSPs
20 to encourage good notices and discourage bad notices
21 by responding to good notices and not responding to
22 obviously clearly bad notices.

1 Now obviously, there are a lot of edge
2 cases. There are especially a lot of edge cases in
3 fair use. We -- I think we are talking about those,
4 and Automattic's sort of view of those is that edge
5 cases are edge cases, and there's a system for working
6 that out. We're talking about core fair uses, in many
7 cases, fair uses that have been already adjudicated
8 fair use by a court -- for example, using corporate
9 headshots to criticize executives, right? There are a
10 lot of claims about that, and those are claims that,
11 from a prima facie copyright perspective, are
12 perfectly valid but that are obviously clearly and
13 sort of pretty clearly adjudicated fair uses. And
14 those should be encouraged to be left out.
15 MS. CHARLESWORTH: Right, although Congress,
16 I think, the way -- and this is a very interesting
17 discussion because I think the way they envisioned it
18 was that the dispute would occur between the poster
19 and the user and that the OSP would be -- as long as
20 they followed the rules, would be immune from
21 liability. And so what I hear you saying is you see a
22 greater role for the OSPs in there, which is, I think,

1 not really -- it's certainly not evident from the face
2 of the statute, which really anticipated or expected
3 people to file counter-notices.
4 And so I'm wondering if your client or OSPs,
5 how they might facilitate the -- the counter-notice
6 process through education, or whatever means. Is that
7 another avenue? Because that actually was what
8 Congress intended, at least, in the statute.
9 MR. GRATZ: The way to facilitate greater
10 counter-notification is by statutory change to make
11 the counter-notification process work by taking away
12 the asymmetries between notice senders and counter-
13 notifiers, by eliminating the 10-day stay-down period
14 during which the entire value of the -- or audience
15 for or sort of viral buzz about material taken down
16 may have expired.
17 Certainly, it -- things can be done to
18 encourage greater counter-notification. But in the
19 case of small, independent fair users or posters of
20 material that is, in fact, not infringing, they aren't
21 going to counter-notice because it's not economically
22 rational to do so. They are putting themselves in the

1 crosshairs whether they're right or wrong, and that's
2 not something that is rational for them to do whether
3 they're -- even if they have the world's best defense.
4 MS. CHARLESWORTH: Okay. I think we have to
5 move on. So we're, as usual, running behind. We're
6 going to try and get through the end of the group
7 here.
8 Let's see. Who's --
9 MS. VALENTINA: I think it's --
10 MS. CHARLESWORTH: -- Ms. Valentina, yeah.
11 MS. VALENTINA: -- Valentina. So obviously,
12 Fox is a major creator and distributor of content.
13 And I'd like to focus on some of the major platforms.
14 Before I do that, I just want to quickly explain the
15 facts surrounding the Homeland incident that Karyn
16 raised.
17 Early 2013, our vendors were out looking for
18 torrent files for the Homeland TV show. Homeland is
19 not distributed by way of torrents. It is not
20 authorized to be distributed by way of torrents. We
21 are searching all the major sites. We're sending
22 links to search to remove links to torrents. Some of

1 those included the author's book, and these were all
2 on major pirate sites. Most of them were on the
3 notorious Pirate Bay and its mirrors. And we found
4 out about it through a TorrentFreak article and some
5 tweets from the author himself, but we never received
6 a counter-notice. And we immediately retracted those
7 sites.
8 So I just wanted to make sure that the facts
9 were out there on that one.
10 MS. TEMPLE CLAGGETT: Are you saying that
11 the book itself was being unlawfully put on the
12 website as well? Or --
13 MS. VALENTINA: No, just that the medium of
14 distribution was through major torrent sites, pirate
15 sites, just so that you have the facts.
16 So I wanted to turn to your questions and,
17 again, sort of focusing on being a major creator and
18 distributor and on the major platforms who would like
19 to claim eligibility for the safe harbor limitation on
20 damages and how notice and take -- I mean, there's a
21 lot more than just notice and takedown. There's a lot
22 more that we can and should be doing and working

1 together.

2 So on the point that many people have

3 already made -- I won't belabor it -- we sent more

4 than -- close to 30 million URLs were noticed last

5 year on full-length content. So we already made this

6 point -- noticing not working. So --

7 MS. TEMPLE CLAGGETT: And just to -- I think

8 this is something that came up in the New York

9 roundtables. Do you focus, maybe not exclusively, but

10 primarily on full-length content when you're sending

11 out notices?

12 MS. VALENTINA: Correct. We're looking for

13 piracy of full-length content, primarily, yes.

14 And so just for example, Deadpool we sent

15 over 26,000 links to search, and we're still finding

16 it in the top search results -- so just the same

17 experience that a lot of the content creators have

18 identified.

19 But I wanted to turn to your third question

20 on the filtering question. And again, just looking at

21 Deadpool -- and we pulled and confirmed 673 unique

22 files, infringing files, that have unique hash values

1 that we were able to confirm. Of those, the top 20
2 percent of those accounted for 78 percent of the
3 infringements. The top 20 percent of those accounted
4 for 91 percent of the infringements. So I just wanted
5 to give you the context here for a sort of hash
6 filtering regime, or at least as a tool.
7 And then I looked at some of the major host
8 sites like, for example, Google Video, we noticed over
9 60,000 URLs in 2016. On OneDrive, we noticed 90. On
10 Dropbox, we noticed 17. So hash filtering, no hash
11 filtering -- big difference. So I think there's more
12 we can do to work together here.
13 The other thing we've noticed is that a lot
14 of these legitimate platforms, host platforms, are
15 actually providing the back end to pirate sites. We
16 noticed on a couple pirate sites like 123movies,
17 Google Video accounted for 99 percent of the links.
18 I've also seen this on Facebook. I'm not trying to
19 just target Google here. It just happens to be what
20 I've got. We're seeing this on Facebook more and
21 more. Now that they're allowing longer video up-posts
22 whereby you can access and stream a full-length copy

1 of Deadpool without even logging in to your account.
2 So again, pirate sites are using some of these
3 legitimate platforms as their back end.
4 So I'm just saying there are things that we
5 should be doing to work together to do more above and
6 beyond notice and takedown.
7 MS. TEMPLE CLAGGETT: And on the stay-down
8 point, so I guess from your perspective when you were
9 talking about stay-down, you were talking about stay-
10 down of full-length films. You're not suggesting that
11 a stay-down regime should focus or even include clips
12 or things like that.
13 MS. VALENTINA: Well, I'm starting with the
14 easier case because I think we need to figure out that
15 first, and then we can get to the harder cases. But
16 certainly we've seen with Content ID on YouTube that
17 you can implement policies as to a certain length that
18 you want to make sure is kept down. So I think there
19 is room, but let's at least get the easy cases right,
20 and let's do more with the big players. We have the
21 resources. We are talking to our business partners.
22 And then we can fine-tune for some of the harder

1 cases.
2 MS. TEMPLE CLAGGETT: Thank you. Ms.
3 Keller.
4 MS. KELLER: Thank you. So I direct
5 intermediary liability work at Stanford CIS now.
6 Before that, I was at Google for a number of years
7 working on the inside of these notice-and-takedown
8 processes, both under the DMCA and under the systems
9 of a lot of other countries, so I feel like I've seen
10 the other thousand flowers blooming, the other 999
11 flowers, and can sort of report back. That includes a
12 lot of experience with countries that have greater --
13 other discussions about the takedown, stay-down
14 matter, so we'll definitely come back to that if
15 that's something that's right for this panel.
16 I want to say that from my personal
17 experience, there are a lot of bad takedown requests.
18 I think you've heard that from every person who's been
19 on the inside of this. And by that, I mean false,
20 fraudulent accusations that are trying to silence a
21 competitor, silence a critic, etc. And the people who
22 are the victims of these false accusations, whose

1 videos disappear, whose web search -- webpage can't be
2 found in search results, are not in this room because
3 they're very disparate and sort of a classic public
4 choice situation.
5 The people who send those bad notices I think
6 mostly are not in this room either. We have a room
7 full of rightsholders who are very sophisticated about
8 this, who I think are acting in good faith, and trying
9 to only send valid notices. And so this sort of --
10 the messy world of removals that silence lawful
11 content all the time. And it's hard to see it in this
12 venue. And another --
13 MS. TEMPLE CLAGGETT: And that's why we are
14 trying to decide on a solution to address that. It is
15 also difficult, too, because a solution that
16 potentially -- we talked about -- the counter-
17 notification process and more damages, potentially,
18 for false notices. But do you feel that you should
19 apply that to the rightsholders in this room if they
20 are actually complying with or in good faith operating
21 under the current regime? So that's why it's
22 interesting to hear that dichotomy from you, as well.

1 MS. KELLER: Right. I mean, it's very hard
2 to go down the road of saying that there are good
3 actors and bad actors and we can identify them in
4 advance and treat them differently. So I think that's
5 -- it's a complicated premise. But I did -- you know,
6 I want to put out there piracy is a problem. You
7 know, the things that rightsholders are here
8 complaining about is a problem. On the other side,
9 over-removal based on erroneous or malicious notices
10 is a problem, and any solution to one risks burdening
11 the other. We have to acknowledge that this is a
12 trade-off.
13 What the DMCA does to try to help this,
14 which I think you guys have been talking about a lot,
15 is it puts forth this really well-thought-through
16 dance. I think it is much better than systems I've
17 seen in other countries because it has -- in this
18 respect, because it has procedural protections where
19 the speaker who is accused can get notice that their
20 content has been removed. They can counter-notice, et
21 cetera. But I think what we're hearing here is that
22 those procedural protections are failing us.

1 The statistics that I've seen in the record,
2 or that I put in with my submission with Annemarie
3 Bridy, suggest that there's a rate of something like
4 0.1 percent counter-notices, whereas the various
5 studies looking at removals that were wrongful in the
6 first place suggest that that's like 4 percent at the
7 low end or 28 percent at the high end. So the ratio
8 of bad notices to counter-notices correcting them is
9 not what I think Congress expected it would be, or
10 what any of us would hope that it would have been.
11 And that leaves us in a situation where I agree with
12 you.
13 Ideally, you don't want intermediaries
14 adjudicating this. This shouldn't be something that
15 tech companies figure out about the free speech of
16 their users or about the copyright claims of
17 rightsholders. But I think realistically in many
18 cases that is the most effective check on over-removal
19 is that these tech platforms are sort of thrust into
20 the middle and wind up making those decisions.
21 If I could take a little bit to the question
22 of takedown, stay-down, I feel like we use that word

1 very generally as if it were a single thing. But just
2 as we've heard that there's this great diversity of
3 kinds of platforms, of kinds of rightsholders, or
4 kinds of operators, I think the question of what
5 takedown, stay-down would even mean as a technical
6 matter is completely different for different platforms
7 depending on what kind of files they have, what kind
8 of content is at issue. And so I think it's something
9 that is very hard to generalize about.
10 We know that Google invested they say $60
11 million in Content ID, and yet Mike, if he's in the
12 room, reports a Content ID fail like every day. It's
13 constantly mis-targeting things and taking down lawful
14 speech. And so if that's sort of what the state of
15 your best technology can accomplish, I think we should
16 worry a lot about what automated, you know, software-
17 based removals would look like with other systems
18 developed by intermediaries that can't afford that
19 kind of money and engineering time to throw around.
20 MS. TEMPLE CLAGGETT: Right. Although,
21 Content ID -- correct me, and maybe you know because
22 you have -- from your prior experience, involves

1 contractual relationships, right, with rightsholders
2 who specify -- I think we heard this a little bit --
3 the length and so forth than can be -- should be
4 blocked or monetized, or whatever? In other words,
5 that's not really a pure -- there are other parameters
6 feeding into Content ID, as I understand it.
7 I think that the stay-down proposal that
8 I've -- we've been hearing, generally here and in New
9 York, was full-length content on a site where it's
10 clear it's unlicensed. I mean, at that level, I mean,
11 do you have a -- assuming that you could develop
12 technology to identify full-length content, do you
13 have a point of view on that and sort of -- that level
14 of takedown, stay-down as opposed to cases where
15 they're shorter excerpts, there may be fair use, et
16 cetera?
17 MS. KELLER: Yeah. I mean, I think in a
18 universe where we could develop this kind of perfect
19 technology, something that always spots infringement
20 and never has false positives and over-removes, that
21 might be an attractive option. But I don't think
22 we've seen an example of that working in practice so

1 far. And so the result is we see over-removals, and
2 we see a situation where the companies that can afford
3 to build or to license from Audible Magic these
4 filtering technologies have a great -- they have an
5 advantage commercially because they can do deals with
6 rightsholders. They are in a very -- a favorable
7 position. If that were mandated by law, that would
8 effectively entrench the people who can afford to do
9 it now and be -- make it very difficult for new
10 innovators, the next Google, the new intermediaries
11 coming along, to come into compliance with the law.
12 MS. CHARLESWORTH: So maybe, might a
13 potential solution on that level be that maybe there
14 would be certain criteria before that requirement
15 kicked in, in other words, some recognition that
16 smaller sites might not have the means to purchase the
17 technology, or license, or whatever it would be, but
18 that larger sites that had more wherewithal might be
19 able to adopt that technology?
20 MS. KELLER: Yeah, I think that's an
21 interesting question, and that's part of, as I'm sure
22 you know, part of the discussion in Europe now, too,

1 is whether there's a way to make that definition that
2 wouldn't greatly distort the market or have a lot of
3 unintended consequences. You know, it would be very
4 weird as a start-up operator to know that once you hit
5 a certain revenue or a certain number of users, the
6 rules are going to change and you need to sort of game
7 your development plan to suddenly need to do different
8 things when you hit that point.
9 Defining the point is an interesting
10 question. If it's a matter of number of users, then I
11 think Wikimedia would -- has lots and lots of users,
12 might be the kind of thing that we ask to filter. If
13 it's a matter of revenue, you know, it plays out other
14 ways. It's a difficult question knowing who you would
15 target if you did try to draw a line like that.
16 MS. TEMPLE CLAGGETT: Okay, thank you. Mr.
17 Midgley.
18 MR. MIDGLEY: Yeah, thank you. So I'm here
19 representing the university community in higher ed,
20 which I think is an interesting player in the
21 ecosystem. We at BYU receive -- we're not going to
22 get a billion notices or anything close to that.

1 We're -- hundreds per year is our volume, and the vast
2 majority of those notices that we receive -- and my
3 office acts as the designated agent to receive these
4 notices -- they're not 512(c)-type notices; they're
5 512(a) and (b). We're acting more as a pass-through
6 OSP, and so, you know, we view our role quite
7 differently in that situation. What are we to do with
8 all these notices received, because I just want to
9 make sure this panel is aware that we operate the
10 Higher Education Opportunity Act regulatory regime,
11 which requires that we have developed and implemented
12 written plans to effectively combat unauthorized
13 distribution of copyrighted material by users of our
14 network.
15 And, you know, one of the technology-based
16 deterrents that's available to us, and which we're
17 encouraged as an institution to use, is a "vigorous
18 program of accepting and responding to DMCA notices."
19 So what that looks like for a university is a
20 difficult problem. I mean, we certainly get these
21 notices. We are happy to receive them and pass them
22 through to our users, but we do find ourselves, you

1 know, wondering what exactly it means to have a
2 vigorous program of accepting and responding to
3 notices when it's not content that we're hosting; it's
4 individual student devices and things where this
5 content might be hosted.
6 So we're doing everything we can to educate
7 our users, and we know this is a problem for, you
8 know, college-age kids across the country. They --
9 believe me, I'm well aware that this rising
10 generation, in particular, views the social compact
11 quite differently than those of us of a different
12 generation.
13 I just also wanted to make one final
14 comment. I know there was a lot of discussion earlier
15 about political speech. We're also, as an educational
16 institution, you know, we're quite interested in fair
17 use. We had a recent encounter on YouTube where
18 speech that we were very confident would qualify as
19 fair use, and we found ourselves in a notice, counter-
20 notice situation where the speech was being
21 suppressed. And, you know, there really wasn't a good
22 mechanism for us to get that resolved.

1 We were, you know, again, totally confident
2 it qualified as fair use for an educational nonprofit
3 institution, but I know there has been a lot of
4 discussion about OSPs acting as the adjudicators of
5 these things. And I think from our perspective, it's
6 not necessarily -- we understand that the federal
7 court is there to help us get that issue resolved and
8 it's between us and the rightsholder, but as a
9 practical matter, you know, possession is nine-tenths
10 of the law, and the OSP is the one who can either make
11 the content available or not. And so when they choose
12 to avail themselves of the safe harbor by taking the
13 content down, you know, for all practical purposes,
14 that's an adjudication from an uploader's standpoint.
15 And I think that's, if I'm kind of reading
16 the room correctly, I think that's how I'd
17 characterize what is meant when people say that OSPs
18 are acting in an adjudicatory role. It's when they
19 decide to avail themselves -- of course, they can
20 waive that requirement and take the risk themselves if
21 they want. And, you know, when we're sitting in that
22 role as the OSP, sometimes we might do that for the

1 varied concerns that have been raised. We're not
2 confident that our students know their fair-use rights
3 as well as we do, and we might feel more comfortable
4 asserting them in certain instances because we feel
5 like we're the party that has the legal expertise to
6 make those decisions.
7 MS. CHARLESWORTH: Do you think it would
8 help to have a small claims or an alternative dispute
9 resolution process that had limited -- more limited
10 liability and was easier to access procedurally?
11 MR. MIDGLEY: Yeah, I mean, I do think -- I
12 mean, I'm sympathetic to some points that have been
13 raised here about, in any other context, the rule
14 would not be the speech comes down and then we figure
15 out what happens, you know. I think the general
16 presumption would be the speech stays up while it gets
17 adjudicated, or, you know, some sort of TRO or
18 something issues. And we have various situations
19 where that might occur in a non-DMCA context. So I --
20 you know, exactly what the dispute resolution looks
21 like, I don't think the OSPs want to be in that role
22 probably would be my guess. But I think there are

1 mechanisms where you could try to get very efficient
2 early truly independent decision-making to help
3 relieve the OSPs of the -- probably the unwanted
4 position of trying to decide these things, merely
5 because they feel like it's -- they're the only person
6 who can make, you know, the right decision so …
7 MS. CHARLESWORTH: Thank you. Mr. Miller.
8 MR. MILLER: Thanks. One point I just want
9 to sort of start with, and I think it's important to
10 underscore, and it goes to a question raised a few
11 minutes ago, at least from our perspective, even
12 though we're all operating, obviously here, operating
13 under and here talking about the 512 system, for us it
14 really is all about full-length content. You know, we
15 -- the vast, vast, vast majority of notices that we
16 send are for full-length content, to clear pirate
17 sites, sites that are up to no good. Maybe they're
18 torrent indexing sites; maybe they're curated
19 streaming sites.
20 And I think it's really important to
21 underscore that fact because while we're having an
22 absolutely valuable conversation about fair use and

1 content on it sounds like predominantly user-generated
2 -- UGC sites, for us, that's a very small part of
3 where -- of the universe in which we send notices.
4 And I just want to make that point because
5 at least from our perspective, to the extent that
6 these kinds of activities we're having here today lead
7 to, you know, to policy recommendations, and changes,
8 and what have you, we don't want the baby thrown out
9 with the bathwater, so to speak, from our perspective.
10 But, again, having these conversations about political
11 speech and abuses online are absolutely important.
12 And to the extent we get counter-
13 notifications and -- which isn't very often. We had
14 six of them last year, and all of them were on
15 YouTube. You know, we'll obviously take a very close
16 look at that, but -- and I guess focusing on counter-
17 notifications specifically because there has been a
18 lot of talk about it going around the table on this
19 round -- on this panel.
20 As was mentioned on the prior panel, the
21 motion picture studios -- six major motion picture
22 studios sent 104 million takedown requests last year,

1 and we had a total of 210 counter-notifications. Now,
2 some around this table may say that's because the
3 counter-notification process is broken, but that is an
4 incredibly small number. And it seems to me that,
5 statistically speaking, that there's probably a reason
6 for that, and the reason is, is the vast majority of
7 those are full-length content, clearly pirate --
8 pirated infringements. So, you know, to the extent
9 that we are, again, here looking for solutions, I just
10 want to sort of keep that in the forefront of our
11 mind.
12 MS. CHARLESWORTH: Thank you. Mr. Riley.
13 MR. RILEY: Thank you. I think that it's
14 become increasingly clear that we're talking about two
15 different problems here, two different worlds, maybe,
16 and the technology is not perfectly capable of
17 segregating these two. So we need the legal process
18 that is at the core of the DMCA to continue to persist
19 and be the adjudicator. So on the first set of
20 questions and problems here, we have fraudulent
21 notices that lead to the limitation of valid activity.
22 For that, in our filing, we proposed a couple of

1 pieces that use the legal system that is in the DMCA
2 to try to address that, ways in which to make sure
3 that that notice represents a serious and valid
4 activity.
5 But I don't think that gets at the sort of
6 core-scale question, which is what prompted the front
7 of this discussion. I think that's the second set. I
8 think that's what my colleagues here are talking about
9 in focusing on full-length standards.
10 And where we focus our position on this is
11 that it's just generally a bad idea to use computer
12 systems and technology to force this kind of takedown
13 and automatic takedown of content. I'd have to see a
14 system -- we're talking about hypothetical systems
15 that could be more finely tuned than what we have up
16 here today. I'd have to see something like this to
17 understand and to be able to really engage with it in-
18 depth.
19 But our starting point in this space is --
20 just as we took a strong stance against SOPA/PIPA
21 years ago, when you're talking about technology that
22 automatically takes down content, you're getting into

1 this space where it's just not able to make the
2 distinction between these two worlds. We're not able
3 to say this is an example of a bad guy that's being
4 persecuted by a good rightsholder, although there are
5 plenty of those examples, and we're not able to say
6 this is a good guy, a documentary filmmaker who's
7 being chased by somebody who doesn't like the way that
8 they're talking about and is using this for political
9 reasons.
10 MS. CHARLESWORTH: I'm sorry, just to cut
11 through a little bit, but I mean, one of the proposal
12 that's -- I don't want to say it's a proposal, but
13 idea that's floating around is-- I think your neighbor
14 to your right mentioned this -- full-length content on
15 a clearly unlicensed site. You know, it maybe -- has
16 a URL-stacking system where the minute you take it
17 down, another URL fills the slot. I mean, are you
18 saying that -- I mean, we do have some degree of
19 technology that I think is capable of identifying
20 that. It probably could be perfected more. Are you
21 saying your position is that even in those cases,
22 there's no automated process that would be

1 appropriate?
2 MR. RILEY: I'm saying that our starting
3 point is skepticism. I'd like to see the technology
4 once it gets to the point where it's perfected. But
5 it's a framework that makes me deeply uncomfortable.
6 We talk a lot -- and I first of all want to start by
7 saying I find it much better to be talking about that.
8 Not everyone is so limited in their talk about how
9 automated systems are used or should be used in this
10 context. There are many people who are not in this
11 room, as Daphne points out, who are pushing for
12 automated systems that would be far more aggressive
13 than that. It's hard for me to imagine success in a
14 world where we are writing laws that are specifying
15 the use of technology to take content down and that
16 that doesn't lead to a world where there are tons of
17 false positives.
18 MS. CHARLESWORTH: Well, if you were in the
19 shoes of someone who's distributed, say, a full-length
20 film or -- and you saw on a clearly pirate website
21 that every time you sent a takedown notice the full-
22 length film popped up again, are you saying that the

1 rightsholder should send manual notices or that there
2 shouldn't be -- I mean, I'm trying to wrap my head
3 around this because I think in general most commenters
4 here have acknowledged some role for automation.
5 There's certainly a lot of disagreement about the
6 appropriate role, but maybe I'm just not following.
7 MR. RILEY: No, and our filing does this
8 well. We say automation of some processes reduces
9 unnecessary time and burden. I don't think that we
10 would say there's no automation, merely that there are
11 limits to the effect that it can have in a context as
12 difficult to perceive with technology as this. If I
13 could introduce a related point to that that I don't
14 think has been teed up, from a technology perspective,
15 it's very easy to keep generating more and more copies
16 of these full-length content that have different
17 hashes, that have different fingerprints. So that's
18 yet another reason why I don't believe that this kind
19 of system is the ultimate solution, even in this
20 broader context.
21 MS. CHARLESWORTH: Okay, thank you. Ms.
22 Seidler.

1 MS. SEIDLER: Thank you --
2 MS. CHARLESWORTH: You've been very patient,
3 by the way, this end of the room. Thank you. And I
4 know it's late. We'll -- we're going to adjust the
5 lunch hour a little bit, but I do want to get through
6 the last speakers.
7 MS. SEIDLER: First, I want to say thank you
8 for having me here today. I really appreciate the
9 opportunity to share my experience and opinion on some
10 of what's been discussed here.
11 Right off the bat, I want to echo what Mr.
12 Miller said with regard to a narrative that's been
13 developed with regard to takedowns versus, you know,
14 fraudulent, abusive takedowns. And I really think we
15 have to look at the scales once again and understand
16 and recalibrate to appreciate the overwhelming volume
17 of infringing content that exists online that creators
18 and rightsholders have to combat every single day.
19 And I am very much a believer in free speech
20 and have training as a journalist, so I care very
21 deeply about the notion that some of this could be
22 suppressed using abusive tactics. But I think we have

1 to rebalance things a little bit and put it into
2 perspective. I did want to address a couple things
3 about this counter-notice issue because there's been
4 much said about how difficult it is, how onerous it
5 is.
6 Well, think about the creator who has to
7 figure out sending the takedowns, first and foremost.
8 That's -- that takes time. That takes effort. And
9 you're telling me that the user on the other end who's
10 on the receiving end of a takedown notice can't spend
11 some time to figure out how to send a counter-notice?
12 And I want to tell you one little anecdote.
13 It's happened multiple times, actually, but on
14 YouTube, sending a takedown notice for a full-length
15 copy of a film only to receive a counter-notice
16 claiming fair use, and because we don't have the
17 resources to go to court to enforce the takedown,
18 within 10 days, the full copy of the movie is back
19 online. So it's not always the system where it's the
20 poor little uploader that gets the short end of the
21 stick. And that's why I do believe that the -- you
22 know, some sort of adjudication outside the federal

1 court system, where -- I would even just like the
2 person's email so I could communicate with them. I've
3 tried to do that on YouTube and say, hey, look, fair
4 use doesn't apply when it's a full copy of the film.
5 Will you please take it down? I'm happy to do that.
6 But there's this sort of, you know, anonymity that's
7 built in, at least on YouTube, that makes that
8 impossible. So I just think there's a lot more there
9 there than what's been addressed here.
10 MS. CHARLESWORTH: Thank you. Mr. Siegel.
11 MR. SIEGEL: Thank you for having us. So my
12 client is Copyright Enforcement Group, and Copyright
13 Enforcement Group does primarily for independent movie
14 studios the same type of work that Devon Weston's
15 Digimarc does, so I won't go into the -- a long
16 description of the labor-intensive work that goes into
17 finding the infringers, making sure that the works
18 that are infringed are, in fact, the works. It's very
19 labor-intensive. The question had to do with the
20 scalability of responding to takedown notices.
21 What we deal with is if it's not the
22 elephant in the room, it's actually the rhinoceros,

1 which has hardly been mentioned, but it's really what
2 people have been talking about, which is the file-
3 sharing infringements. That is the big problem in the
4 report that the Copyright Office left out. From
5 NetNames, the biggest amount of internet traffic is
6 infringing traffic, and the biggest part of infringing
7 traffic is the file-sharing traffic.
8 Now, it turns out that the -- if you take a
9 look at Forbes, the ISPs are making billions of
10 dollars. They've got the money to scale their
11 services. They make a point of saying buy the more
12 expensive service. You can upload 40 movies in a
13 second. You can download a two-hour motion picture in
14 less than ten minutes.
15 MS. CHARLESWORTH: And the record will
16 reflect that Mr. Siegel is showing us some charts,
17 which I think are also in your comments, right?
18 They're appended to your submission -- written
19 submission?
20 MR. SIEGEL: At least some of them are. But
21 I want to talk about scalability. There are hundreds
22 of millions of notices being sent out, and the ISPs

1 are saying, oh, we can't handle this. Well, we also
2 send out notices to ISPs in Canada, and in Canada the
3 ISPs have to forward our notices. They have to do
4 that. And every -- almost every single one of the
5 ISPs have found a way to turn around the notices in a
6 day. Now, the big problem we're all facing is
7 anonymity. I say that we would cut down infringement
8 to almost nothing if we could get to the infringers.
9 But the rights owners have to fight like
10 hell just to get an infringer. The courts make it
11 very difficult. The courts make it very expensive.
12 It's a huge burden on the content creators just to get
13 the name of an infringer and then to have to bring the
14 lawsuit.
15 Now, I've handled suits where we've gone
16 after people that would destroy evidence, and we've
17 been able to get court orders to get into their
18 businesses to seize the evidence. Well, nowadays, we
19 can't do that. We have absolute evidence that
20 infringement's going on, and we cannot get there in
21 time to prevent the destruction of the evidence.
22 As a matter of fact, we had an expert go in

1 to get evidence, and the infringer told him my
2 attorney told me to destroy the evidence. And that
3 happened two months before we could get in. So we
4 have a big problem, and essentially section 512 does
5 not help the infringer -- does not help the content
6 creators. Section 512 is helping the ISPs who are
7 making billions of dollars -- make more money from
8 their infringing customers.
9 MS. CHARLESWORTH: Thank you, Mr. Siegel.
10 Mr. Taplin.
11 MR. TAPLIN: Thank you for having me.
12 Before I was a professor at USC, I was an independent
13 film and television producer to movies like Mean
14 Streets, Last Waltz and worked for Bob Dylan. And so
15 I want to associate myself with East Bay Ray and Ellen
16 because I don't think the artists are being
17 represented enough here.
18 I want to acknowledge the true elephant that
19 is not in the room. This is not about fair use or
20 small OSPs; it's not about false takedown notices.
21 This is about YouTube and Google. As a Public Citizen
22 report wrote on Google, Google's influence is most

1 profound and least quantifiable in its use of vast
2 resources to accrue soft power, such as funding those
3 who might raise alarms about its practices.
4 Five of those soft power assets of Google
5 are on this panel. First panel allies of Google like
6 Professor Urban, Jeff Lyon, and McSherry said 512 is
7 working great, but great for whom? Since YouTube
8 started, revenues in the music business have fallen
9 from 20 billion a year to 7 billion a year. Last two
10 months, seven indie music labels went out of business.
11 In that same 10-year period, YouTube revenues went
12 from 1 billion -- 1 million to 7 billion. YouTube
13 streaming audio files make up 56 percent of all
14 streaming audio, and yet YouTube contributes almost
15 less than 11 percent of the revenue to the streaming
16 audio business. This -- as to Ms. McSherry's
17 contention that lots of people are making lots of
18 money on YouTube, less than 0.33 percent of YouTube
19 videos have a million views, which would maybe earn
20 you $4,000.
21 As to Mr. Engstrom, another one of Google's
22 beneficiaries, says the problem is that there needs to

1 be more content available on legitimate sites. In the
2 music business, every single tune from everything in
3 the world is available on legitimate sites. And yet
4 YouTube and the pirate sites still represent more than
5 60 percent of the market. So this notion that if we
6 just put all this content out on legitimate sites this
7 stuff would stop is not true. We cannot compete.
8 So what's the problem? YouTube allows us to
9 have Content ID only if we'll accept their egregious
10 licensing agreements, and only then do you get to use
11 Content ID. So essentially you're blackmailed into
12 having to use these tools. So the bottom line is
13 simply this. YouTube's going to gross $10 billion in
14 2018, according to Credit Suisse. They can afford to
15 pay artists fairly, and they have to decide whether
16 they want to remain part of the problem or become part
17 of the solution. Thank you.
18 MS. CHARLESWORTH: Thank you, Mr. Taplin. I
19 guess, Mr. von Lohmann, we'll let you respond.
20 MR. VON LOHMANN: Well, frankly, I think
21 this isn't the panel to fight about YouTube.
22 Obviously, YouTube has been at the forefront of

1 voluntary measures for over eight years now. I think
2 we'll have time in that panel to address that.
3 I will simply point out to Mr. Taplin's
4 farrago of accusations that YouTube actually does pay
5 artists. We have licenses with all the major movies
6 studios, many indie labels, many indie studios. And
7 content ID, of course, is an engine for that licensing
8 and I think is a bright spot among online servers,
9 both encouraging creativity on the platform and also
10 paying creators who are using that platform.
11 Mr. Taplin is just flat wrong when he
12 suggests that you have to sign up to some onerous
13 agreement in order to use content ID. Sure, there is
14 an agreement to use it because under the DMCA if we
15 create knowledge evidence without a promise not to be
16 sued, essentially we would be creating liability for
17 ourselves by operating Content ID unless the
18 rightsholders basically say to us, yeah, we want you
19 to use Content ID and we're not going to sue you based
20 on the knowledge evidence created, so --
21 MS. CHARLESWORTH: Can I just ask, I'm
22 sorry, he mentioned that you -- there was a licensing

1 requirement. Are you saying there is none to sign up?
2 MR. VON LOHMANN: That is false.
3 MS. CHARLESWORTH: And I had another
4 question. This came up in the New York panel. We
5 heard from at least one musician there that she was
6 ineligible for Content ID. Are there limits on who's
7 eligible in terms of, I don't know, the amount of
8 content, the size of the rightsholder? What are the
9 basic criteria for Content ID?
10 MR. VON LOHMANN: Yeah, and I think this is
11 probably better for our panel tomorrow, but I'm happy
12 to answer it. I mean, we're a little out of time
13 here, but the answer -- the short answer is there are
14 eligibility criteria. It is an enterprise-based
15 system, much like the system that Digimarc discusses
16 and others. It's not a system that works well for
17 just anybody who wants to pick it up. It has, as has
18 already been mentioned, a number of tools to adjust
19 when do you want to monetize, when do you want to
20 block, for what length content, and what territories,
21 for what portfolio of works. It's a complicated
22 system. It's an enterprise system. So we try to

1 figure out does this person need this capability, and
2 that depends on a whole bunch of factors, including do
3 they have a lot of content on the platform that they
4 want to takedown. Do they have a lot they want to
5 monetize?
6 So let me just come back to the question you
7 asked at the beginning. And there's been a lot of
8 talk about takedown, stay-down and filtering, and I
9 want to make sure I have a chance to address that
10 because that seems to be at the heart of a lot of what
11 people are talking about.
12 Google has been doing takedown, stay-down
13 longer than any other platform at scale, period.
14 Content ID is a takedown, stay-down system for
15 rightsholders that choose to use it that way. The
16 good news I think from our point of view, from the
17 point of view of users and rightsholders alike, is the
18 majority of Content ID partners opt not to block, not
19 to use it as a takedown, stay-down system, but instead
20 use it as monetization system.
21 One example, today half of revenues
22 [generated on YouTube] for the recording industry, the

1 music industry generally, come from Content ID, made
2 possible by that system matching, monetizing and
3 paying the rightsholders. So, yes, Content ID can do
4 takedown, stay-down. It does that for creators.
5 Ninety-eight percent of the copyright management that
6 occurs on YouTube goes on through Content ID. So to a
7 large extent, Content ID has made the DMCA process
8 obsolete on YouTube. That's not to say it doesn't
9 exist; we still get takedown notices. But 98 percent
10 of the work is being done by content ID.
11 So we definitely understand that takedown,
12 stay-down can work. But we also understand that it's
13 no silver bullet; it's no panacea. You've heard some
14 of the reasons why already, but let me just emphasize
15 that Content ID systems, and filtering systems like
16 it, depend on a certain set of characteristics to
17 work. So, for example, you need the content. You
18 can't fingerprint and match something you don't have.
19 So takedown, stay-down is not a panacea for linking.
20 It's not going to work for, you know, sites like
21 Twitter, like Facebook, like Google+, like other
22 services that are principally users sharing links. We

1 don't have the content.

2 It's not going to work for search. We don't

3 have the content. We don't have every piece of

4 content, every video, every sound recording that is

5 available. We don't download that when we crawl, so

6 it's not going to work there. It's also not going to

7 work for private file listing services, Dropbox,

8 Drive, SkyDrive, because users can simply encrypt that

9 content. And if that content is encrypted, no magic

10 fingerprinting system is going to solve that. So my

11 point is there is a place for filtering technology.

12 It works for some providers in the right contexts, and

13 that is why it makes sense to develop as part of a

14 voluntary effort. And you've seen that.

15 I mean, in the comments that have been filed,

16 YouTube, Facebook, Tumblr, Twitch, SoundCloud, Daily

17 Motion, Scribd, all examples of online services who

18 have implemented filtering matching systems. I just

19 want to note that, contrary to Ms. Valentina's

20 statement or suggestion, Google Drive does hash

21 matching. So we do that, another voluntary measure.

22 We've done hash matching on YouTube since the -- 2006,

1 I think.
2 So there's plenty of room for progress here,
3 and plenty of progress is being made. It's being made
4 through voluntary efforts for the platforms where it
5 makes sense and where it's feasible. But suggestions
6 that somehow the law, by mandating takedown, stay-down
7 will magically solve this problem, that's not going to
8 work. It's particularly not going to work if a lot of
9 the sites in question aren't even in the United
10 States.
11 And so let me just finish by pointing out
12 the rogue sites that people are most worried about,
13 the cyberlockers that keep posting the same content,
14 those folks are not winning lawsuits in the United
15 States in reliance on the DMCA. The DMCA is not
16 sheltering those services. Many of them are outside
17 the United States where the DMCA isn't terribly
18 relevant, and the ones that were in the United States
19 like Grooveshark and Hotfile, they did not succeed
20 under the DMCA safe harbors in sheltering their
21 businesses.
22 So, long story short, I think the DMCA is

1 working well, and it is actually encouraging the kind
2 of voluntary collaboration that Congress had in mind.
3 MS. CHARLESWORTH: Okay, thank you. I had
4 one more follow-up for you somewhat unrelatedly, but
5 related to the discussion on counter-notices. I had
6 seen some -- an article or an announcement that
7 YouTube was going to be assisting counter-notifiers or
8 somehow helping to support their legal efforts. Can
9 you describe that program, because it wasn't entirely
10 clear from what I read, I wanted to make sure I
11 understood it?
12 MR. VON LOHMANN: Sure. It's a program on
13 YouTube, as you mentioned. And the idea is if a
14 YouTube video has been targeted by a DMCA takedown
15 that we believe is abusive, that has no basis -- the
16 video is clearly non-infringing, we have said that we
17 will offer to the YouTube uploader the protection of
18 basically up to $1 million in legal fees should that
19 user get sued if the user opts to accept that offer
20 from us. And if they do, we will then leave the video
21 up in the jurisdictions that recognize fair use.
22 Well, so far, just the United States, but we're

1 investigating whether we can expand that to the other
2 fair-use jurisdictions.
3 And so, yes, -- that is essentially instead
4 of a counter-notice because if the user counter-
5 notices, we have to leave that video down for two
6 weeks as the statute requires. And our point with
7 this is to recognize that if a notice is plainly
8 abusive on its face, the video shouldn't have to come
9 down for two weeks. But, of course, if we leave it
10 up, we not only run the risk that YouTube will be
11 sued, which is a risk we're perfectly happy to take if
12 we think the notice is facially bogus, but we would
13 also potentially be exposing the user to a lawsuit by
14 leaving their video up.
15 So we want to leave the choice to the
16 YouTube user. Do they want to counter-notice? Do
17 they want to take us up on our offer to protect them
18 if they get sued? Or do they want to take that video
19 down, because we have had occasions where some users,
20 even with those offers of protection, haven't been
21 willing to take the risk?
22 MS. CHARLESWORTH: So you answered one of my

1 points, which is that you don't require -- then
2 there's no counter-notification in the situation where
3 you take on the defense, as it were, or --
4 MR. VON LOHMANN: It's not required.
5 MS. CHARLESWORTH: It's not required.
6 MR. VON LOHMANN: We can allow users to
7 choose that option if that's what they --
8 MS. CHARLESWORTH: Okay. And so how does --
9 in your view, how does that square with the 512
10 requirements? Like, how do you make your decision to
11 leave something up without a counter-notice? I'm
12 curious about that.
13 MR. VON LOHMANN: Right. And here I
14 actually disagree with your characterization of what
15 Congress had in mind with the DMCA. The DMCA is not
16 mandatory on service providers. It's a safe harbor
17 that exists for service providers who choose to comply
18 with those requirements. It's clear in the
19 legislative history that it was not meant to supplant
20 -- the background copyright principles. So if you're
21 a service provider and you're quite confident that
22 there is no infringement, you don't need a safe

1 harbor. We don't need a safe harbor from liability
2 that doesn't exist.
3 So when we see a notice and we're quite sure
4 that that content is not infringing, we choose to
5 reject that notice. We give up the safe harbor, as
6 we're entitled to do, and as Congress clearly
7 intended. You know, there's no requirement that we
8 accept notice -- well, as I said, we don't need a safe
9 harbor if we haven't done anything wrong. If there's
10 no infringement, I don't need a safe harbor to protect
11 me in a circumstance where there's no liability in the
12 first place.
13 That's what this program is for. It's for
14 the takedown notices we get that have no basis, where
15 we think it's either clearly a fair use or -- and we
16 get this all the time -- we get notices that are, you
17 know, just -- we don't have to go to fair use. It's
18 just the content isn't in there, or it's for a non-
19 copyright reason -- this happens to use every week.
20 We reject many takedown notices on YouTube, and on
21 Search and our other products, where the notice that
22 we receive is just clearly targeting lawful activity.

1 And we are so confident that it's lawful that we're
2 willing to forego the safe harbor.
3 MS. CHARLESWORTH: And so do you see safe
4 harbor as being on a notice-by-notice basis then and
5 not on a global basis? Is that implicit in what
6 you're saying?
7 MR. VON LOHMANN: Absolutely.
8 MS. CHARLESWORTH: Right.
9 MR. VON LOHMANN: I mean, again, I don't
10 need a safe harbor in a circumstance where there's no
11 liability.
12 MS. CHARLESWORTH: Well, what about other
13 liability or potential liability on YouTube? In other
14 words, you don't view yourself as losing the entire
15 safe harbor. It sounds like what you're saying is you
16 view those safe harbors as limited to that particular
17 alleged infringement?
18 MR. VON LOHMANN: I think that's absolutely
19 clear on the face of the statute. The statute does
20 have other requirements like, you know, terminating
21 repeat infringers and things of that sort that I think
22 are more platform-based. But, yeah, as to an

1 individual notice, I don't think our decision to
2 reject a notice where there is no infringement and no
3 liability would in any way, you know, create liability
4 for something else.
5 MS. CHARLESWORTH: Thank you. Ms. Weston,
6 last but not least.
7 MS. WESTON: So I want to focus my comments
8 primarily on the sort of inefficiencies and costs that
9 we as a vendor working between rightsholders and OSPs
10 have seen.
11 So Digimarc itself has a notice-and-takedown
12 branch that works primarily on behalf of book
13 publishers, but we are also the world's leader in
14 digital watermarking technology. So there's
15 definitely a couple of angles where we've seen, you
16 know, the fact that this is not a scalable solution.
17 Right now, 512 is not scaling to meet the needs on
18 either side.
19 So, for example, I think, you know, it's
20 worth pointing out we work with very large and very
21 small OSPs. We've had OSPs reach out to us and say
22 we'll send, you know, 1,000 takedown notices. They'll

1 write a very casual email back that says, hey, we've
2 got a guy looking at this, and we'll take care of it
3 as soon as possible. So we totally appreciate the
4 fact that there's some OSPs out there who are trying
5 to do this, and it's on a very, you know, manual
6 scale.
7 Additionally, you know, there -- I think Mr.
8 von Lohmann pointed out one of the sites that has
9 affected book publishers for a long time, Scribd, has
10 -- was one of the first extremely early implementers
11 of a filtering technology that's been remarkably
12 effective for book publishers. So there are things
13 that can be done that we've seen, but it's -- right
14 now, this is, you know -- it's going up and up and up,
15 and it's affecting both the rightsholders and the
16 OSPs, so we're kind of uniquely positioned to see
17 that.
18 I wanted to speak a little bit more about
19 this idea of the OSP as the adjudicator. The idea of
20 filtering, I think, is a powerful one, and there are
21 certainly vast improvements that could be made in that
22 regard. As a service provider and a licensor of

1 digital watermarking technology, this sort of takes
2 fingerprinting to the next level. And it is distinct.
3 So fingerprinting relies on a database of, you know,
4 files of these works. The onus in those sorts of
5 scenarios really does fall on an OSP or some other
6 provider, whereas the digital watermarking is embedded
7 at the time of distribution.
8 So one of the things that we sort of
9 envision is a method of, you know, digitally
10 watermarking all of this content. These are unique
11 IDs that could be tied to like a unique copyright ID
12 or something of that ilk. The OSPs could be provided
13 with a reader before any user uploads -- content, you
14 know, channels through this reader. If it's got that
15 watermark on it, it's just rejected, or it's put into
16 a private mode, or something like that. So I think,
17 you know - I think that there are -- I know there's a
18 panel on solutions, but this is something that we're
19 very heavily focused on are the kind of proactive
20 filtering solutions.
21 And then also just the fact that, you know,
22 this really isn't working for anyone who's trying to

1 comply. I know the non-compliant people, as someone
2 pointed out, are not in this room, so it's sort of all
3 of those factors notwithstanding, but there are people
4 who are on both sides of the spectrum who are trying
5 to, you know, both protect their own rights, protect
6 the rights of the creative industry, and then also
7 just to, you know -- if they have a legitimate
8 business model, if they have a legitimate OSP, they
9 don't want to deal with this either. They want
10 solutions that will sort of preclude them from
11 becoming the adjudicator. So it's definitely
12 something that I think we've observed is, you know --
13 it's not working now, but there are solutions I think
14 that are out there that we can focus on.
15 MS. CHARLESWORTH: Well, thank you very
16 much. We obviously have run a fair amount over, and
17 so I'm sorry we're not going to be able to get around
18 the room again. We will, I think as was mentioned
19 earlier, have a reply, a written reply comment phase,
20 which we'll be announcing in -- probably in the fairly
21 near future, and then we also have an open mic at the
22 end of the day tomorrow for people who feel compelled

1 to speak more. You can sign up -- I think the list is
2 out on the outside table. It will be out on the
3 table.
4 We're going to ask people who are on the
5 next panel to eat a quick lunch. So we're still going
6 to be behind, but we're going to try and catch up. So
7 1:45 is when we'll be starting Panel 3. I understand
8 there are a few fast food places outside, and there's
9 also a cafe on the -- which may be your quickest
10 option. Thank you, and we'll see you back at 1:45.
11 (Lunch recess)
12
13 SESSION 3: Applicable Legal Standards
14
15 MS. TEMPLE CLAGGET: -- take your seats.
16 We're going to get started in just a few moments.
17 Okay. This panel is entitled Applicable
18 Legal Standards. In earlier sessions today, we heard
19 about some of the concerns that people had raised with
20 respect to whether the DMCA is continuing to be
21 balanced and to be working effectively. Some
22 highlighted the just sheer volume of notices that are

1 now being sent under the notice-and-takedown process.
2 Others highlighted the overall online environment and
3 the rise of piracy. And then still others highlighted
4 legal interpretations of the DMCA and noted that, in
5 their view, some legal interpretations of the DMCA's
6 provisions have potentially skewed the balance that
7 was initially struck by Congress when they enacted it
8 in 1998.
9 So today's panel now will ask you all to
10 focus on legal interpretations under the DMCA. Have
11 those legal cases that have construed provisions of
12 the DMCA construed them appropriately? Have they done
13 so in a way that has continued to support the
14 collaborative nature of the DMCA process, or have they
15 been construed either too narrowly or too broadly?
16 Before I begin with my first question, though, I'm
17 going to ask -- I guess I'll start on this side this
18 time -- everyone to again briefly say their name and
19 their affiliation. And then once I ask my question,
20 again, as before, if you're interested in speaking,
21 please raise your placard. We'll start over here.
22 MR. WORTH: Good afternoon, I'm Stephen

1 Worth, Associate General Counsel with Amazon.
2 MR. WILLEN: Brian Willen from Wilson
3 Sonsini. I've represented a number of OSPs in DMCA
4 litigation, including YouTube in the Viacom case for
5 seven years, so …
6 MR. SHEFFNER: Ben Sheffner, Vice President
7 of Legal Affairs, Motion Picture Association of
8 America.
9 MS. SCHRANTZ: Ellen Schrantz, Director of
10 Government Affairs and Counsel at the Internet
11 Association.
12 MR. SEDLIK: Jeff Sedlik, President and CEO
13 of the PLUS Coalition.
14 MR. O'CONNOR: Sean O'Connor, Boeing
15 International Professor at University of Washington
16 Seattle.
17 MR. NOORMOHAMED: I am Ryan Noormohamed.
18 I'm here for Tulane University Law.
19 MR. MURPHY: Tom Murphy. I'm chair of the
20 Politics and Organizing Committee of Content Creators
21 Coalition. I work with musicians on this.
22 MR. MIDGLEY: I'm Peter Midgley. I'm the

1 directory of Copyright Licensing Office at Brigham
2 Young University.
3 MS. MCSHERRY: I'm Corynne McSherry. I'm
4 the legal director for the Electronic Frontier
5 Foundation.
6 MR. HARTLINE: Devlin Hartline, the
7 assistant director at the Center for the Protection of
8 IP at George Mason University.
9 MS. GELLIS: Cathy Gellis. I'm a lawyer in
10 private practice, and I typically represent the
11 interests of online service providers and the public
12 interest speaking through them.
13 MR. FEERST: I'm corporate counsel at
14 Medium.
15 MR. ENGSTROM: Evan Engstrom, Executive
16 Director at Engine.
17 MR. DODA: Paul Doda, Global Litigation
18 Counsel at Elsevier.
19 MR. CROWELL: Carl Crowell, an attorney from
20 Oregon.
21 MR. COLEMAN: Dan Coleman. I'm managing
22 partner of Modern Works Music Publishing, which is an

1 administrative agent for individual songwriters and
2 composers.
3 MR. BRIDGES: Andrew Bridges. I'm at
4 Fenwick & West in San Francisco. I do litigation on
5 both sides of the copyright divide, and I give advice
6 to start-ups and online service providers.
7 MR. BORKOWSKI: George Borkowski, Senior
8 Vice President for Litigation and Legal Affairs at the
9 Recording Industry Association of America.
10 MR. BALLON: Ian Ballon, in private practice
11 and Executive Director of Stanford University Law
12 School's Center for E-Commerce.
13 MS. TEMPLE CLAGGETT: Thank you. So my
14 first question -- as I alluded to earlier, there are a
15 number of provisions in the DMCA that aren't
16 specifically defined. Because of that, that has led
17 sometimes to litigation and courts kind of construing
18 or further defining them through case law. So we want
19 to focus on various cases and how they've interpreted
20 the DMCA. We're going to start off with the knowledge
21 standards that courts have applied under the DMCA.
22 As many of you know, there are two knowledge

1 standards that can take an ISP out of the DMCA safe
2 harbors, either actual knowledge of infringing content
3 or what has been called "red flag" knowledge, that is,
4 facts or circumstances in which infringing activity is
5 apparent. So the question I have for you all is: Have
6 courts properly interpreted the concept of red flag
7 knowledge consistently with the intent of the DMCA?
8 Has it been interpreted too broadly, too narrowly? -
9 - have courts' interpretation of red flag knowledge
10 affected the operation of the DMCA as a whole? Raise
11 your placard if you're interested in responding. I'll
12 start over here with Mr. Worth.
13 MR. WORTH: Thanks. So the short answer
14 that I would give is yes, but instead of focusing on
15 the detail in those decisions, I'd rather talk about
16 really the policy that I think these decisions have
17 furthered, and that the Copyright Act and the Office
18 should focus on furthering, as well. First, I believe
19 that rightsholders need an incentive to identify
20 content specifically. And that's because, without it,
21 OSPs simply can't identify and administer those
22 takedowns properly.

1 So as an example, we get a letter from time
2 to time from a record label saying here's an example
3 of three songs that you're using on your site that we
4 haven't provided to you. Take them down, and take
5 down any other infringing content that is ours, and
6 provide us statements and pay for all uses of that
7 content. The problem is we don't know what is their
8 content, so we have no ability to take it down and
9 provide that kind of reporting. It also puts OSPs in
10 a situation where we're asked to mediate disputes
11 between artists and songwriters and labels and
12 publishers. So, you know, rights move around, and
13 rights change, and sometimes labels lose rights.
14 Sometimes publishers lose rights. Sometimes there's a
15 dispute about that. And if rightsholders can't keep
16 track of licenses or properly determine what fair use
17 is, it seems incorrect from my perspective to ask OSPs
18 to do that.
19 Second, we shouldn't be charged with
20 scouring our servers for what might be pirated
21 content. From the perspective of Amazon Web Services,
22 this creates obvious privacy concerns. But in the

1 music space, the metadata is notoriously poor. Again,
2 rightsholders don't even know what content they're
3 licensing to us when we sign a deal with them.
4 Finally, OSPs shouldn't be prevented from
5 being good actors and doing what's right to review
6 content for fear of the plaintiffs' bar and statutory
7 damages. So the example I would give there for Amazon
8 specifically is Kindle Direct Publishing. We review
9 every piece of content that's provided to scour it for
10 -- to consider it for content appropriateness, to make
11 sure that adult content is properly flagged as adult
12 content and children can't get access to it. And
13 there we believe we're doing the right thing for our
14 customers. And that shouldn't lead to red flag
15 knowledge and potential liability.
16 MS. TEMPLE CLAGGETT: So I guess a follow-up
17 question. So in your view, is there no amount of
18 generalized knowledge -- whether it's how flagrant the
19 general kind of infringing activity is on the site or
20 whether, as some courts have said, even whether it's
21 welcomed by the ISP -- that should trigger red flag
22 knowledge absent the specific knowledge of specific

1 infringement?

2 MR. WORTH: It's hard for me to have an

3 opinion on that because it doesn't really apply to our

4 business, but it seems to me that if you have a

5 platform that is basically created to pirate content,

6 then, you know, that condition might be satisfied.

7 MS. TEMPLE CLAGGETT: Thank you. Mr.

8 Willen.

9 MR. WILLEN: So in the -- excuse me. In the

10 two major copyright circuits, the two major cases, the

11 Viacom case and the Veoh case, you've had eight

12 federal judges that have asked the question and

13 answered the question of whether knowledge under the

14 DMCA is specific or general. All eight of those

15 judges have found correctly that specific knowledge is

16 required both for actual knowledge and for red flag

17 knowledge. That -- when you have eight federal judges

18 that all agree, there's a good reason for that. The

19 structure and text of the statute make clear that

20 specific knowledge is required, whether you're talking

21 about actual knowledge or red flag knowledge. Both

22 require, in response to knowledge, the expeditious

1 removal of content, the same as the response to a
2 takedown notice.
3 That is impossible when you're talking about
4 generalized knowledge. The only way to do expeditious
5 removal is by having a particular piece of content or
6 a particular set of items that you know to be
7 infringing. So those decisions are right. They are -
8 - comport with the text of the statute. They're
9 consistent with the legislative history of the
10 statute, which emphasizes that red flag knowledge is
11 meant to be a rigorous standard. The legislative
12 history couldn't be clearer about that.
13 It's also consistent with the proposition
14 that while knowledge is important, it's not meant to
15 be the main event. It's not meant to be the
16 centerpiece of the statute. The centerpiece of the
17 statute is the provision that we have been talking
18 about in earlier panels, the notice-and-takedown
19 regime. That is the balanced cooperative expeditious
20 regime that Congress put at the center of the DMCA and
21 intended to be the primary vehicle for getting content
22 down. Knowledge is a supplement to that, but not the

1 main story.

2 And there's a good reason for Congress and

3 the courts that have looked at this to have made that

4 determination. The reality is that determining what

5 is infringing is vastly easier for copyright owners

6 than it is for online services. Infringement is an

7 extraordinarily difficult thing to assess, requires a

8 whole host of background knowledge about what the work

9 is, who the author is, who posted it, whether it was

10 authorized, whether it's fair use -- a long checklist

11 of factors. Most service providers are simply not in

12 the position to make those kinds of determinations.

13 Copyright owners are, and that's why Congress

14 correctly gave them the primary responsibility for

15 enforcing their copyrights by identifying and bringing

16 to the attention of service providers infringing

17 material.

18 MS. TEMPLE CLAGGETT: So when a service --

19 when a -- excuse me -- a copyright owner has

20 identified infringing material -- let's talk about a

21 full-length work -- and then the service provider is

22 on notice that the copyright owner says that's mine;

1 it's not licensed -- is there any responsibility then
2 to takedown additional instances of that work from the
3 service provider once they're put on notice of the
4 infringement and the copyright owner has done the work
5 of figuring out there's a -- you know, that they have
6 a claim?
7 MR. WILLEN: Well, there's a -- there's sort
8 of a practical and a legal response to that. So
9 practically, most responsible service providers do
10 something in the way of -- whether it's MD5 hashing or
11 other mechanisms to try to take the body of copyright
12 notices that they receive and make sure that identical
13 copies of those are not reposted. That's certainly
14 what YouTube has done for over ten years, and many
15 other services have done something similar. So even
16 if that is not something that's required by the
17 statute, there are good reasons that service providers
18 might do that, and often do.
19 The legal answer, I think, is no. So the
20 notice-and-takedown process is designed to identify
21 particular instances of infringement. Beyond that,
22 there is no obligation on service providers to

1 affirmatively seek out, monitor, or look for
2 additional instances of infringement that haven't been
3 called to their attention. Now, if they come across
4 them, then of course the knowledge provisions can kick
5 in. But the requirement to go to take a takedown
6 notice that doesn't identify a particular set of
7 material and say, well, on the basis of that, we are
8 now going to go try to seek out and find additional
9 instances of that is something that is not required by
10 the statute and would be inconsistent, I think, with
11 the basic structure that the statute creates.
12 MS. CHARLESWORTH: Well, what about the
13 representative list language? How do you square that?
14 MR. WILLEN: Well, so the -- there's two
15 aspects of the representative list provision. The
16 takedown notice can identify a representative list of
17 copyrighted works that the rightsholder owns, but that
18 does not mean that you can provide a representative
19 list of infringing instances of those works on a
20 particular service. The statute doesn't include a
21 representative list provision for identifying
22 infringements. It includes a representative list

1 provision for identifying works. Those are two
2 different things. And I think the case law is very
3 clear about this. In particular, Judge Stanton's
4 decision in the Viacom case, a portion of the decision
5 that didn't make its ways up into the Second Circuit
6 Appeal, considered and rejected precisely that
7 argument, the argument that you can identify a portion
8 of the instances that you believe to be infringing on
9 a service and expect the service to fill in the gaps
10 and find instances that have not been specifically
11 brought to its attention.
12 MS. CHARLESWORTH: But what if I sent a
13 notice and said this is the work, this is my song,
14 here's the name, and here's an example of a couple
15 URLs where it appears, and that's my representative
16 list? Can you find other instances of that song
17 through a hash mechanism or something like that? Are
18 you saying that judge -- I mean, what's your view of
19 that?
20 MR. WILLEN: Well, so my view of that is
21 that we have a statute that I think answers that
22 question, right? I mean, so the provision requires

1 that the takedown notice provide information
2 reasonably sufficient for the service provider to
3 identify the particular instances of infringement that
4 are occurring. That has to be understood against the
5 general rule in section 512(m) of the statute that
6 there's no affirmative obligation to police, or
7 monitor, or go out and look for potential instance of
8 infringement. So putting those two things together
9 with the burden and the responsibility is on the
10 copyright owner to identify the instances by URL or
11 some other mechanism that points directly to the
12 material that they consider to be unlawful, that then
13 the service provider can take, and in the expeditious
14 manner that the statute requires, remove that
15 material. So the -- go ahead.
16 MS. TEMPLE CLAGGETT: So I -- we're getting
17 a little bit beyond in terms of red flag and now
18 talking about representative lists, but I'm going to
19 follow up and ask a question about that particular
20 issue, as well. So then what is the practical, in
21 your view, effect of the representative list
22 provision? What does it mean? What obligation would

1 it impose on an ISP, if anything at all? I mean, is
2 it a nullity? What practical application does the use
3 of the term representative list in the statute mean?
4 MR. WILLEN: So I think the answer to that
5 sort of goes back to the -- to 1998 and we try to
6 think about what Congress was trying to do, and so
7 there's some examples in the legislative history, in
8 particular, of, you know -- so you have a particular
9 site that is all clustered together and has a bunch of
10 infringements of a particular copyright owner's work,
11 the representative list provision is meant to say that
12 the copyright owner doesn't have to include in the
13 takedown notice an enumeration of every single work
14 that that person or entity owns in order to have it be
15 a valid takedown notice. But it's not meant to
16 alleviate the responsibility of the copyright owner in
17 the notice to provide information reasonably
18 sufficient to the service provider to allow the
19 service provider to find and remove expeditiously the
20 particular instances of infringement that are at
21 issue. So it is an important provision; it's in there
22 and needs to be taken seriously. But it's not a

1 substitute for the particular identification of

2 specific instances of infringing activity.

3 MS. CHARLESWORTH: It doesn't seem very

4 important the way you're describing it. I mean, I

5 think to Karen's question --

6 MR. WILLEN: Well, look --

7 MS. CHARLESWORTH: What is the -- what

8 practical impact would it have?

9 MR. WILLEN: Well, so I -- look, we have --

10 Congress clearly could have chosen to -- it knows how

11 to use the term representative list, so it clearly

12 could have chosen in the provision that relates to the

13 identification of the infringing activity, it

14 certainly could've chosen to include language that

15 says a representative example of infringing activity

16 occurring on a particular service. It didn't do that.

17 It only used the representative list language in the

18 provision of 512(c) that relates to the identification

19 of the copyrighted works that are at issue. So

20 there's - there are just two different things,

21 copyrighted works that are being infringed on the one

22 hand versus the instances in which those works are

1 being infringed. And given that the purpose of the
2 takedown regime is to have taken down particular
3 instances of infringement expeditiously, it certainly
4 makes sense for Congress to have required that the
5 identification of the material that's supposed to be
6 removed needed to be specific, particularized, and not
7 representative.
8 MS. ISBELL: I actually want to go back to
9 the discussion of the statutory interpretation of red
10 flag knowledge versus actual knowledge. When you look
11 at the statute, when it talks about actual knowledge,
12 it says knowledge of material or activity. And then -
13 -
14 MR. WILLEN: I think it says the material
15 for actual knowledge.
16 MS. ISBELL: The material for an activity --
17 but when it's talking about red flag knowledge, it
18 instead says --
19 MR. WILLEN: Activity.
20 MS. ISBELL: -- circumstances from which
21 infringing activity is evident. And so how do you get
22 from activity being a specific requirement for a

1 specific identification of a location? How does that
2 square with the language of the statute?
3 MR. WILLEN: Well, so the provision that
4 we're talking about is the red flag knowledge
5 provision, not the takedown notice provision. So the
6 answer to that is twofold. So, one, you have to
7 interpret the red flag knowledge provision in light of
8 the next step in the analysis, which is the removal
9 obligation. And so if you're hung up on the definite
10 article, the presence of the word the in the actual
11 knowledge provision but not in the red flag knowledge
12 provision, the definite article shows up in the
13 provision that requires expeditious removal of the
14 material. So that's one way that you know that it
15 still has to be specific.
16 And then with respect to the use of the word
17 activity, the answer to that is in the legislative
18 history. So Congress explained that the reason it
19 used the word activity wasn't to distinguish between
20 some general and specific obligation, but instead to
21 eliminate the possibility that there would be fights
22 about the sort of technical location in which the

1 actual infringement was happening. So the idea is
2 that we don't want people saying, well, the
3 infringement only occurs when the item is downloaded
4 or transmitted, and so it doesn't happen on our side;
5 it happens on your computer and therefore we don't
6 have any obligations.
7 The word activity there -- the legislative
8 history explains this -- is meant to rule out that
9 argument and make clear that activity -- infringing
10 activity is occurring regardless of where the -- where
11 technically, as sort of a technical copyright matter,
12 the -- in violation of the exclusive right is
13 occurring. And so the difference in wording in those
14 provisions doesn't have anything to do with the
15 difference between a general knowledge approach and a
16 specific knowledge approach. It has to do with that,
17 and then of course with the difference between a
18 subjective standard of knowledge and an objective
19 standard of knowledge.
20 MS. ISBELL: So under your, I guess, view of
21 red flag knowledge, it requires this evidence of
22 knowledge of specific infringement no matter what, I

1 guess, other general knowledge the ISP might have or
2 any other circumstances in which they might welcome or
3 encourage infringing material. So how do you square
4 that with inducement? Do you -- are you saying that
5 an ISP that actually induces infringement or promotes
6 infringement if -- as long as they don't have specific
7 knowledge of specific infringement should still have
8 the ISP -- the safe harbor?
9 MR. WILLEN: So I think it's important to
10 recognize that the knowledge provisions are not the
11 only provisions in the DMCA. So, in particular, the
12 DMCA has a control and financial benefit provision. I
13 think that the inducement analysis -- the -- we don't
14 want to have bad rogue pirate sites claiming DMCA safe
15 harbor protection. I think we can all agree on that.
16 And that's not what the DMCA was meant for. So sites
17 that are engaged in inducing activity, that is, they
18 are engaged in -- whether encouraging users to
19 infringe or taking affirmative steps to solicit, seek
20 out, or promote infringement -- while I think have not
21 necessarily categorically excluded from DMCA
22 protection, I think that's a perfect example of what

1 control under the DMCA entails.
2 So - and this is really what the Second
3 Circuit said in the Viacom case, that if you are going
4 around encouraging users to infringe, if you are
5 engaged in sort of masked piracy and that's the
6 purpose and modus operandi of your site, the way to
7 exclude you isn't by distorting the knowledge
8 provisions and requiring generalized awareness --
9 where that's not what the statute or its legislative
10 history suggests. The way to get at that problem is
11 by properly interpreting and applying the control
12 provision. And then also it's unlikely that you'd
13 have a site that's doing that that really was
14 terminating repeat infringers. So Judge Posner in the
15 Aimster case -- which is not a decision I think is
16 necessarily perfect, but I think he's right to say
17 that an inducing service is unlikely to terminate
18 repeat infringers and therefore could be categorically
19 excluded from DMCA protection that way.
20 MS. TEMPLE CLAGGETT: Thank you. Mr.
21 Sheffner.
22 MR. SHEFFNER: Thank you. And before I

1 start getting into the weeds on the knowledge
2 standards, I just want to take a step back and address
3 some -- a couple of points that people made in earlier
4 panels, and I think it'll segue nicely into the more
5 specific discussion here. We heard earlier from one
6 of the members of the earlier panels that the entire
7 purpose of the DMCA was to protect OSPs. That's half
8 true. Half of -- part of the purpose of the DMCA was
9 to provide protection to good, innocent service
10 providers that acted in good faith to address
11 infringement.
12 The other half is that it was intended to
13 provide copyright owners with an efficient and an
14 effective way to address online infringement. So it's
15 a balance. No one on this -- I haven't heard most
16 people who participated so far saying that the balance
17 should be all the way on one side or all the way on
18 the other side, and we're certainly not making that
19 argument here. It's about finding the right balance.
20 So to concentrate for a second on the how do
21 we address the infringement part, I think it was
22 Corynne McSherry on an earlier panel who said that all

1 we need to do is to provide legitimate services, and
2 essentially piracy will take care of itself; they
3 don't have to do any enforcement. And I think that's
4 right, but it's only half right. Certainly, providing
5 legitimate services is important, and I want to
6 emphasize it is something we do.
7 And I want to correct something that was put
8 into the record earlier. I think somebody said that
9 there were only about 10 or 15 legitimate sites for
10 accessing movies and television content. That's
11 actually off by a factor of about ten. It's in our
12 submission, but as of 2014, there were 112 legitimate
13 sites in -- only in the US for accessing legitimate
14 film and television content. There's over 400
15 worldwide, so to the extent that at one time people
16 may have been able to claim there isn't enough
17 legitimate outlets to watch movies and television
18 content, it probably wasn't true then; it's definitely
19 not true today.
20 To get to your question about the knowledge
21 standards, in order for those legitimate services that
22 I've described to thrive, what you need is a legal

1 environment that is able to allow those to thrive and
2 to put their -- the illegitimate actors either out of
3 business or at least so much on the fringe that
4 mainstream consumers will not access them.
5 Unfortunately, the way that we've seen the case law
6 develop on the specific topic that you asked about, it
7 essentially collapses actual and red flag knowledge
8 and makes them -- and turns the entire DMCA into a
9 notice and takedown provision. It's partly a notice
10 and takedown provision, but the statute goes into
11 quite a bit of detail about actual and red flag
12 knowledge.
13 Unfortunately -- and I'm going to disagree
14 with my colleague from Wilson & Sonsini who just spoke
15 -- we think courts have generally gotten it wrong on
16 this point. What they've essentially done is, again,
17 collapsed the actual and red flag knowledge standard
18 and said none of that matters. No matter how much
19 knowledge -- no matter how much general knowledge you
20 have, even if you -- from the words of one their
21 earlier opinions in the Viacom case, even if you
22 welcome infringing activity, you're still protected by

1 the safe harbor as long as you respond to specific
2 notices of infringement.
3 And the last point -- I know I'm over my
4 time -- representative list. I mean, Mr. Willen did a
5 great job of sort of dancing around the subject, but
6 the bottom line is that the way that he reads the
7 representative list provision is simply to read it out
8 of the statute. It's got to mean something, and
9 looking at the statute -- and I don't have the words
10 in front of me -- but it does actually provide an
11 alternative. It says you can either provide a specific
12 list or you can provide a representative list. That
13 has to mean something. And in the scenario that you
14 posited where a copyright owner sends a notice and
15 they say here's the list of -- here's our works, and
16 here's a list of the URLs -- and I think the statute
17 says very clearly that they have some more obligation
18 if that's just a representative list, to know that
19 that particular work is infringing, and that that's
20 only a representative list, and that they have to take
21 appropriate steps to address other places on their
22 site where that infringing material may be.

1 MS. TEMPLE CLAGGETT: Mr. Sheffner, so a lot
2 of times in this discussion -- I think we heard it
3 from your colleague to your left -- people bring up
4 512(m) and, you know, no duty to monitor. How do you
5 square your analysis of red flag and the service
6 provider's responsibility with the language that says
7 there's no duty to affirmatively monitor for
8 infringement?
9 MR. SHEFFNER: Well, I think -- I mean, the
10 statute says what it says, and there is in general no
11 affirmative duty to monitor. The second you set up a
12 site, you don't have to implement some monitoring
13 system, that's true. That's what the statute says.
14 But you have to square that with the knowledge
15 provisions and the representative list provision, for
16 example. So what -- I think what it's saying is that,
17 yes, in general, you don't have an obligation to
18 monitor, but once you are put on notice, either actual
19 or red flag, you have to do what is appropriate under
20 the statute, and in certain cases it may require you
21 to look around your site to find other instances, once
22 you've been given that knowledge, either the actual,

1 or the red flag, or the representative list knowledge,
2 that has been provided pursuant to the statute.
3 MS. TEMPLE CLAGGETT: Thank you. Ms.
4 Schrantz.
5 MS. SCHRANTZ: Thank you. I would say, yes,
6 the courts have gotten it right. There's a reason
7 that they agree on this issue, and I think it's
8 because the courts understood what Congress understood
9 in 1998, and that's that for the statute to
10 effectively function well in the ecosystem that it
11 does, there has to be that specific knowledge in order
12 to square it legally with 512(m) and others using -- I
13 think Mr. Willen did a fantastic job going through
14 kind of the legislative history there, but also
15 practically, and that's that when it comes to
16 protecting the statute and protecting what's working,
17 if you were to open that up, and weaken it, and skew
18 things by changing the red flag or actual knowledge
19 standards, you're in fact taking a step backwards
20 instead of a step forwards.
21 And what I mean by that -- and this has come
22 up and been a theme I think here -- is that the best

1 way to address what we're talking about and the reason
2 that this comes up is what is the best way to make
3 sure that infringing content stays down, that we're
4 discouraging it? The best way to do that is the
5 various voluntary mechanisms and DMCA Plus type issues
6 that we've seen. And the reason that internet
7 companies and platforms are able to scale, and invest,
8 and experiment the way that they are in those
9 mechanisms like Content ID and others is because of
10 the statute, not in spite of it.
11 It's because it offers those protections,
12 and were we to take a step back in the legal
13 standards, then what you're doing is you're going to
14 start capping the ability for people to experiment,
15 and thrive, and grow. And in such early days of the
16 Internet, let alone the early days of experimenting
17 with those voluntary mechanisms, I think it would be a
18 drastic error to do that by opening up what the courts
19 have gotten right.
20 MS. CHARLESWORTH: I was going to say, are
21 we really in the early days of the Internet? I think
22 I'm starting to think we're not, and this hearing is

1 evidence of that. It's a rhetorical question.

2 MS. TEMPLE CLAGGETT: Thank you. Mr.

3 Sedlik.

4 MR. SEDLIK: My experience is in the visual

5 arts, specifically with independent visual artists,

6 and the question as to whether the courts have gotten

7 it right or not, you have to look at all the players,

8 all the stakeholders. And when you look at

9 independent visual artists, and possibly the same for

10 independent artists of all kinds, it isn't working,

11 because when they go onto a site, find an

12 infringement, it's the tip of the iceberg of

13 infringement. They send a DMCA takedown notice. It

14 comes down. That's great. In a week, it's back up.

15 There are, you know, on certain auction

16 sites, on certain sites selling products with images

17 on them that are packed with infringing content, an

18 independent artist who has no employees could spend

19 their full day, 7 days a week, 20 hours a day, just

20 finding these infringements and submitting DMCA

21 takedown notices. They can't exist. They are

22 dropping out of the creative realm and going to other

1 activity -- other jobs because they can't afford to be
2 creators. They can't sustain [their businesses]
3 because they're not being compensated for the use of
4 their work.
5 So I think that DMCA takedowns are part of
6 the workflow for many independent artists. These OSPs
7 need to be treated fairly, but at the same time, there
8 are technical mechanisms for identifying further
9 uploads of that content, especially with respect to
10 photographs, illustrations, visual art, very
11 effectively. And I'm not talking about MD5 hash
12 because that's not effective for photography because
13 the images get resaved and the hash changes every time
14 it's resized or changed. But there are digital
15 fingerprints of the images. You could have, for
16 example, an opt-out -- a voluntary opt-out database
17 where rightsholders can submit their works, and when
18 works are uploaded to an OSP, the OSP can check the
19 work against the digital fingerprints in their opt-out
20 database and not allow that work to be uploaded unless
21 it's a fair-use circumstance. I've got the stop sign,
22 so I'll stop.

1 MS. TEMPLE CLAGGETT: Thank you. Mr.
2 O'Connor.
3 MR. O'CONNOR: Thanks. So, you know, I
4 think that, with deference to the Circuits, Circuits
5 are wrong sometimes, so we don't know. There could be
6 Circuit splits, and so I don't think we should put too
7 much wait on that two Circuits have weighed in on
8 this. We use independent analysis. Legislative
9 history is tough. I do a lot of legal history work.
10 I love legal history; I look to legislative history.
11 But we always have to remind ourselves that at the end
12 of the day, you never know why a particular
13 representative or senator voted for something, and so
14 even though there's stuff saying, well, we think we
15 meant this -- so there was five people or ten people
16 in a room, we meant this -- it's like a contract. At
17 the end of the day, a contract is signed and you're
18 kind of stuck with the language that's there.
19 So in that spirit, I just want to maybe
20 direct us a little bit in parsing the actual statute,
21 which I'm looking at in front of us. I think some of
22 the confusion is that we have this notion of material,

1 and the way that word is being used throughout the
2 section is that it means material identified by a
3 notice and takedown. But if you start at Part 1, it's
4 not that at all. You have a think about -- okay, so
5 service provider's not liable if there's been user of
6 material. What material? It's material that some
7 user has put somewhere up onto the Internet. It's not
8 restricted to something that's been identified yet.
9 So that material then is what covers us down
10 into A. So then if the service provider does not have
11 actual knowledge that the material -- what material
12 again? The stuff that's been posted, not necessarily
13 identified by anyone -- actual knowledge of the
14 material or an activity using material on the system
15 where network is infringing. Or then you go down, in
16 the absence of such actual knowledge -- what do we
17 mean by such? We mean in the absence of actual
18 knowledge that the material or an activity using the
19 material on the system or network is infringing. All
20 right, that's what we mean by such.
21 So if you don't have that, it's not aware of
22 facts or circumstances from which infringing activity

1 is apparent, so it's got to be something beyond. It's
2 got to mean something else. I think the tempting
3 thing for courts is then you go down to little Roman
4 numeral three, and it says upon obtaining such
5 knowledge or awareness, acts expeditiously to remove,
6 that sounds like you're toggling down to notice and
7 takedown, but you're not because notice and takedown
8 is down in subsection (c). I'd also note that
9 subsection (c), notice and takedown, is subsection
10 (C). We do all this other stuff before. I think it's
11 tempting for the courts, just like in fair use, to
12 reduce everything to the fourth factor of effect on
13 the marketplace. It's tempting for courts to defer
14 down to notice and takedown because it's the clearest
15 thing in the statute, but we can't do that.
16 MS. TEMPLE CLAGGETT: Thank you. Mr.
17 Murphy.
18 MR. MURPHY: So I have three small points to
19 make. The first one, on behalf of the many musicians
20 and creators who can't afford legal counsel --
21 MS. TEMPLE CLAGGETT: Your -- I think your
22 mic isn't on, perhaps.

1 MR. MURPHY: I thought it was. I'll -- how's
2 that?
3 MS. TEMPLE CLAGGETT: Now it's on.
4 MR. MURPHY: Great.
5 MS. TEMPLE CLAGGETT: Red is on.
6 MR. MURPHY: So on behalf of the creators
7 who can't afford legal counsel, who aren't able to
8 bring their issues to court, they won't be able to
9 have any comment on this particular session because
10 they can't actually create case law. And that's one
11 of the problems with this system is that it is tilted
12 towards those who have the resources to pursue
13 litigation to actually create case law and what have
14 you. So there are a lot of instances that we just
15 don't have the ability to quote that I just want to
16 make a reference to here for the hearing.
17 With that, there are at least a couple cases
18 that the intentions seem to be working well, even
19 though the vast other number of cases seemed to be
20 leaning towards supporting technology and waiving them
21 any obligation. So in the A&M Records v. Napster
22 case, they simply presented the issue that, by

1 publishing content, if there's a business method that
2 is incentivized to create a larger user base and
3 therefore to improve their business, I think that
4 principle was upheld very well. I think that there
5 are lots of instances where that hasn't been applied
6 in other cases or it got lost in the weeds of the
7 deliberation that the actual intent that the 512
8 initially came from was intended.
9 And then the second one, Columbia Pictures
10 v. Fung, was also good in talking about when
11 advertising is presented, when there is another
12 business incentive that the viewing of material --
13 whether legitimate or not, there's another business
14 incentive that is creating advertising revenue from
15 that. We haven't talked much about the context of
16 where this content is, and that's something that
17 probably needs further discussion and will be
18 addressed in other panels, I'm sure, before the week
19 is out.
20 MS. TEMPLE CLAGGETT: Thank you. Ms.
21 McSherry.
22

1 MS. MCSHERRY: Hi there. So just to clarify
2 what I was trying to say in the earlier panel about
3 the purpose of the DMCA, what I was trying to point
4 out is that the purpose of the DMCA was not solely be
5 an enforcement tool. So I just want to make that
6 clear for the record. I think the purpose of section
7 512 was to reduce legal uncertainty so that we could
8 have the internet that we have today.
9 Some people don't agree with that internet,
10 but I think there's lots of benefit to the internet
11 that we have today for commerce and also for creators.
12 So that's just briefly -- the other point that I would
13 like to make is I agree that the courts have gotten it
14 right, but I can't really be any more eloquent than
15 Mr. Willen was about that, so hat's off to him.
16 What I would like to say from a user
17 perspective, is that we should not give short shrift
18 to the importance of 512(m), because 512(m) is -- it's
19 called the "Protection of Privacy". It is the
20 provision that makes sure service providers aren't in
21 the position of being pressured to, sort of, monitor
22 all of their platforms. That's important for users

1 because we need to have platforms where we can engage
2 in speech relatively freely without having the sense
3 that the service provider that we rely on is actively
4 monitoring everything we say and potentially feeling
5 pressure to take it down if there's even a whiff of
6 illegality of any kind. That helps make sure that the
7 internet is a really relatively free environment for
8 speech and creativity. So I'll close with that.
9 MS. TEMPLE CLAGGETT: Thank you. Mr.
10 Hartline.
11 MR. HARTLINE: So in legislative history, it
12 says that the purpose of section 512 is for service
13 providers and copyright owners to "cooperate to detect
14 and deal with copyright infringements." So the idea
15 is that they would work together. And the main
16 problem, as I see it, is that the red flag knowledge
17 standard is not being interpreted correctly by the
18 courts. And so I think the proper read is that actual
19 knowledge turns on specifics and red flag knowledge
20 turns on generalities.
21 So returning to 512(m), it's true that in
22 general there's no duty to monitor but that duty, or

1 that lack of duty, goes away once you gain red flag
2 knowledge. So if a service provider knows that
3 something is obviously infringing, then they have a
4 duty to investigate to find out what it is. And it
5 says in the legislative history that Congress didn't
6 want service providers to be able to turn a blind eye
7 to obvious infringement. But if you read 512(m) to
8 say that you can ignore obvious infringements, then
9 that's letting them turn a blind eye. So it's about
10 common sense, and I think that's what Congress had in
11 mind.
12 As far as the removal duties, so, another
13 reason why courts say you need specifics is because,
14 as somebody mentioned earlier, it says you have to
15 remove the material. Well, my answer to that is red
16 flag knowledge, as it says, is awareness of facts or
17 circumstance from which infringement activity is
18 apparent. So how do you get from that to removing the
19 material? Well, you investigate. You have a duty to
20 figure out what is the material and find it.
21 So anyway, the problem is that service
22 providers can ignore widespread, blatant infringement

1 without losing their safe harbors. That's not common
2 sense. And this imbalance incentivizes service
3 providers to do nothing so they don't gain knowledge
4 and jeopardize their safe harbors, and it instead
5 perversely encourages them to avoid gaining knowledge
6 that would allow them to actually do something.
7 MS. TEMPLE CLAGGETT: Thank you. I'm sorry,
8 is it, I can't see your placard, Crowell, Mr. Crowell.
9 MR. CROWELL: Yes. I think Mr. Hartline
10 just said what I was getting ready to say, but I
11 wanted to add on just a few notes to that. DMCA's
12 copyright infringement is based on traditional notions
13 of tort liability and at the time that 512 was passed,
14 there were very few, if any, traditional notions of
15 tort liability as applied to the internet because it
16 was new. And so I see Congress is building a
17 structure on which the traditional notions of tort
18 liability would be interpreted. Unfortunately, with -
19 - as has been mentioned, the collapse of red flag
20 knowledge to specific knowledge, we've lost some of
21 these traditional notions of tort liability
22

1 foundations under which this is all based through
2 statutory interpretation with some of the courts.
3 I believe some of the courts feel
4 constrained by the statutes. And I believe several
5 courts feel constrained by fact-specific rulings from
6 other courts. Specifically if you're going to go look
7 at the liability of an OSP, for what level of specific
8 knowledge is required for an OSP to take down content
9 and how much investigation they're required to do.
10 That's a standard very different when you're going
11 after a specific user. When you have a specific user
12 that has 400, 500 notices that their specific activity
13 is infringing, yet there's no liability because that's
14 not red flag knowledge to the extent of -- that meets
15 the standard for the OSP. I think that's an issue.
16 We'd never see this in a dog bite case where you have
17 somebody whose dog bit 400 people but because the
18 401st person didn't provide a proper notice and
19 specific notice, there was no liability.
20 So I think what we need to look at is we
21 need to look at stepping back from the strict
22 constructs of 512, back to more traditional notions of

1 tort liability as it's applied to copyright
2 infringement and applied to the internet.
3 MS. TEMPLE CLAGGETT: Thank you. Mr.
4 Coleman.
5 MR. COLEMAN: I think that no amount of case
6 law is going to clarify or remedy a statute that is
7 problematic and outmoded. -There are two issues that
8 I wanted to address here, one is the financial benefit
9 prong of 512. I think that the financial benefit
10 prong is Congress' attempt, and maybe the only
11 prescient part of the statute, to say if the OSP is
12 now engaged in an active license, it'd be the licensee
13 out in front in representing the users who are
14 posting. Then it has control over a financial benefit
15 and it cannot fall into the safe harbor. I don't
16 think that the courts have addressed this adequately.
17 And I think that there is another issue
18 that's come up which is the language of the statute
19 and the notions of [infringing or unlicensed]
20 material. US law, and US statutes in particular, and
21 case law too, have done a very poor job of recognizing
22 the commercial value of derivative works. And this is

1 something that has affected the music industry
2 particularly. A lot of what we deal with as content
3 owners when we issue takedown notices are putative
4 video sites where the actual content that's
5 infringing, or the unlicensed content, is music. And
6 because of the safe harbors that we have in the
7 statute, there has been an emphasis on the top-line
8 video content rather than the components of that
9 derivative work. So really what we're dealing with is
10 a statute, 512, that doesn't address the licensing
11 components that are important to bring parties
12 together in solving these issues of liability or
13 potential liability.
14 MS. TEMPLE CLAGGETT: Thank you. Mr.
15 Bridges.
16 MR. BRIDGES: Thank you. I'd like to go
17 first to the statement Mr. Crowell made a minute ago
18 about getting back to first principles, tort law
19 principles. There remains massive confusion about the
20 safe harbor in thinking that it is the new law of
21 copyright infringement. It is not. It is a safe
22 harbor.

1 The standards for direct infringement,
2 contributory infringement, and vicarious liability
3 exist in their own world. And the only time the safe
4 harbor becomes relevant is when somebody is liable for
5 copyright infringement, because section 512 is merely
6 a limitation on remedies. You don't get there until
7 after you've determined that somebody is an infringer.
8 And the safe harbor is a limitation of remedies for
9 infringers. And so we need to be very, very clear
10 about that. There's rampant misunderstanding about
11 that, and I think some courts have been influenced by
12 the confusion between the two.
13 I think that the standards for notices are
14 very clear; there's been a lot of talk about "notice
15 and takedown." Courts have not gotten right the fact
16 that 512(a) doesn't even provide for notices. There
17 is no notice and takedown provision in 512(a); that's
18 512(b) through (d). And their argument is that things
19 that look like 512(c) maybe apply in 512(a). The
20 statute is clear on that.
21 You asked about "representative list," so I
22 did a word search of the entire Copyright Act on the

1 words "representative list," and I think this needs to
2 be clarified right now. It is in 512(c)(a)(ii). That
3 is where the notice is supposed to identify the victim
4 work, not the infringing work. That's 512(c)(a)(iii).
5 "Representative list" is in subsection (ii), not
6 (iii). And so the questions that seem to assume that
7 the "representative list" language applies to both are
8 flat wrong on the statute itself, and courts that
9 interpret the statute as the statute is written are
10 right. Now if somebody doesn't like the fact that the
11 statute is written that way that's another question,
12 but the courts have absolutely gotten it right.
13 And the last thing I'll say is on actual
14 knowledge and red flag awareness; it's not knowledge,
15 it's awareness. David Nimmer got it right in saying
16 repeat in -- I'm sorry, and saying – I'm sorry, that
17 for a – yes, for the -- actually, I'm going to leave
18 that alone for now.
19 MS. CHARLESWORTH: I'm sorry, before you go
20 on, on this point you made about the meaning of
21 representative list, are you saying -- when you say
22 victim works, what does that mean?

1 MR. BRIDGES: It means the copyrighted work
2 of the copyright owner on whose behalf the notice is
3 sent. That is exactly what 512(c)(3)(a)(ii) is about,
4 "identification of the copyrighted work claimed to
5 have been infringed, or if multiple copyrighted works
6 at a single online site are covered by a single
7 notification, a representative list of such works at
8 that site." That's the copyright owner information.
9 The next romanette, (iii), is the alleged
10 infringement information and that is "identification
11 of the material that is claimed to be infringing or to
12 be the subject of the infringing activity and that is
13 to be removed or access to which is to be disabled,
14 and information reasonably sufficient to permit the
15 service provider to locate the material." That
16 actually has two requirements, neither of which is
17 "representative list." In fact, it is very specific;
18 it's "identification of the material" and "information
19 reasonably sufficient to permit the service provider
20 to locate the material."
21 And that's why those decisions that say in,
22 let's say, a search context that a URL is required are

1 absolutely right. URL is "uniform resource locator,"
2 and that is generally the best way to identify -- to -
3 - or to – information -- that is the best information
4 for a service provider to locate material.
5 MS. CHARLESWORTH: So if someone say,
6 identified by URL, a particular page, and said here is
7 a representative list of my copyrighted works that
8 appear on this page, does that meet the criteria --
9 for a notice in your view?
10 MR. BRIDGES: Well, it's one of many
11 criteria for a notice. Does that meet the criteria in
12 a 512(c)(a)(ii)? It may be that that is correct if
13 that is a representative list of the works. I think
14 that this envisions a list itself, not a pointer to a
15 list, so I think the representative list should be
16 explicit in the notice.
17 MS. TEMPLE CLAGGETT: Thank you. Mr.
18 Borkowski.
19 MR. BORKOWSKI: Thank you. I'm going to try
20 to keep this brief only because I agree with what Mr.
21 Sheffner said, and I would like to incorporate his
22 comments as mine because they're probably going to be

1 more articulate than mine are going to be. But I'd
2 like to see it as less of a question of where the
3 courts got certain things right or wrong. It's the
4 fact that what we're dealing with is a statute that
5 was written up during the dial-up era and is, in many
6 ways, woefully inadequate to the current situation.
7 And courts are struggling, and sometimes they get it
8 right and more often than not, I think they get it
9 wrong, and I think that's more of the reason for it.
10 In terms of red flag knowledge, it really
11 has been read out of the statute. It is a more
12 general standard. It talks about infringing activity.
13 There's been this drive, not only as I said in the
14 first panel, to turn this into a notice-and-takedown
15 statute, but the specific knowledge concept has been
16 so wrongfully extended that for example, in the Vimeo
17 case, talking about willful blindness, the court said
18 that you have to be willfully blind to specific
19 instances of infringement. That's an impossibility.
20 If you're aware of a specific infringement, you're not
21 blind to it. It's not possible to be willfully blind
22

1 of something specific because if you know that
2 specific thing, you can't be blind to it.
3 And Viacom also was wrongly decided on
4 specific knowledge part. And a representative list,
5 as Mr. Sheffner said, really does have to mean
6 something, and it really makes a simple dichotomy
7 between specific instances of infringement and then
8 you say, oh and by the way, you should look for other
9 instances of that infringement as well, whether that
10 is giving the name of an artist and an album who
11 may've been infringed and you give specific notice
12 for. If you just say, by the way, we own all of the
13 other rights to this artist, I think that the service
14 provider has an obligation to look for that as well.
15 And I don't think that 512(m) is being
16 interpreted correctly by some. 512(m), like Mr.
17 Sheffner said, simply means you don't have to
18 affirmatively start looking for facts. You don't have
19 to start monitoring your system the day you open up
20 for business. But if you get facts some other way,
21 whether by red flag knowledge or something else, then
22 you have to take steps. The whole idea was service

1 providers and content owners cooperated. And this is
2 an example of that cooperation. If somebody gives you
3 awareness of infringement, then you're not seeking it
4 out affirmatively, but you have those facts now and
5 you have to act.
6 MS. TEMPLE CLAGGETT: Thank you. Mr.
7 Ballon.
8 MR. BALLON: Thank you and I'm just speaking
9 in my individual capacity as someone who -- is the
10 author of a treatise who has been analyzing DMCA case
11 law since 1998. And I wanted to address, based on
12 case law, what the red flag awareness standard means.
13 And in two minutes I really can't fully cover it. In
14 my treatise, I have 264 pages analyzing DMCA case law.
15 Brevity might not be my strong suit, but I will try in
16 two minutes.
17 The red flag awareness provision, in
18 combination with the repeat infringer provision, are
19 two protections in the statute to ensure that pirate
20 or rogue sites do not benefit from the DMCA. And if
21 you look at some of the major cases, it's either one
22 or the other provision, or both in combination that

1 have kept the rogue sites out. In the Fung case, it
2 was knowledge and red flag awareness. In the Aimster
3 case, there was a failure to reasonably implement a
4 repeat infringer policy. In Capitol Records v. Escape
5 Media -- the Grooveshark case -- there was no
6 implementation of a repeat infringer policy. The
7 Hotfile case was again, failure to reasonably
8 implement a repeat infringer policy. The Usenet case
9 was both red flag awareness and repeat infringer. And
10 then the Napster case was a peer-to-peer system and
11 they weren't eligible as a service provider.
12 But I think that's important because I do
13 think it serves a role. It's very clear from the
14 discussions today and just in general that there's a
15 very real problem of piracy that should be addressed,
16 and there's a very real problem of rogue sites. But
17 I'm not aware of any case that has held that a pirate
18 site or a rogue site is entitled to the DMCA. The
19 DMCA is a safe harbor; it does balance interest --.
20 But I think that that's important because I think if
21 we talk about red flag awareness, I don't think an
22

1 adjustment to that standard, one way or the other,
2 impacts rogue sites or pirate sites.
3 There's a very big problem with rogue sites,
4 but that's a separate problem from the DMCA, and I
5 think that that's important.
6 The other thing that I want to say with
7 respect to Mr. Crowell's point about a service
8 provider that had gotten 400 notices; 400 notices does
9 not meet the standards for repeat infringement policy.
10 We live in a baseball culture, and courts have largely
11 accepted three strikes as an acceptable policy. Four
12 hundred strikes would not allow a service provider to
13 benefit from the DMCA.
14 MS. TEMPLE CLAGGETT: Thank you, and I'm
15 going to ask a question about the repeat infringers in
16 a second. But I -- but -- my initial question when we
17 started off was on red flag knowledge when we started
18 getting into the representative list issue, and since
19 we did a bit of discussion on that, I did want to
20 follow up and to see if anyone else had any specific
21 comments on the representative list issue as well.
22 How has that been interpreted? Has it been, in fact,

1 read out of the statute, or what is the practical
2 application of the representative list?
3 So since we kind of discussed it both, I
4 wanted to just see if there was anybody else who
5 wanted to talk about the representative list issue
6 before we moved on to another provision. And I'll
7 start with Mr. O'Connor and then go back over here.
8 MR. O'CONNOR: Sure. So I want to -- I
9 like what Mr. Bridges did with -- because I'm a fan,
10 as you can tell, of carefully parsing this stuff, and
11 I think it is important to see that there is
12 distinction between (ii) and (iii). However, you
13 know, I think what we have to be careful of is that
14 even in the work it's doing for (ii), representative
15 has to mean something. Otherwise it would've just
16 said a list of such works. So then we have to think
17 of what that can mean. Representative, we know if we
18 do things like empirical research, representative
19 means you don't talk to everyone; you get a
20 representative sample.
21 So it seems that what the copyright owner
22 can do then is to put together a list of works, this

1 is a representative list of the works that I have,
2 let's say a list of songs, and then give reasonably
3 sufficient --. Now we've moved on to (iii),
4 reasonably sufficient [information] to permit the
5 service provider to locate the material. I'm not sure
6 that has to mean that it is the exact location of it.
7 I'll just stop there.
8 MS. TEMPLE CLAGGETT: Thank you. Mr. Doda.
9 MR. DODA: Actually, I was waiting for the
10 next round to react to some of the comments that were
11 just made.
12 MR. TEMPLE CLAGGETT: Okay. Mr. Crowell?
13 MR. CROWELL: I just wanted to clarify the
14 record. I actually have an adjudication of a 400
15 notice case issue where the party was dispatched 400
16 notices, acknowledged receiving a large number of
17 them. But because of the court's interpretation of
18 the law, because none of those notices were over the
19 specific content of my client, there was no specific
20 notice for that content, so there was no knowledge.
21 And it has -- the interpretation that the
22 knowledge must be specific has been over-read with

1 respect to non-OSP situations. Sometimes a certain
2 level of specificity is needed for the OSP to find the
3 content that needs to be removed. Sometimes it has to
4 do with an actor who's a repeat infringer. And you
5 know, whether we like it or not, 400 notices of
6 wrongful conduct, of infringing conduct, because none
7 of them were specific as to the conduct at issue of my
8 client, there was no liability.
9 MS. TEMPLE CLAGGETT: Thank you, and I'll go
10 back to you, Mr. Doda, if you want to respond?
11 MR. DODA: Thank you. So I wanted to pick
12 up on what I think is a byproduct of the cases. So,
13 not so much to disagree with eight federal judges,
14 although I do, but rather to talk about what that's
15 created. And what I think that's created is that
16 there's no incentive for proactive measures that came
17 out of those cases. There's no incentive for the
18 cooperation between rightsholders and service
19 providers that the statute originally envisioned. And
20 instead I think, in fact, there's incentive to avoid
21 knowledge and thereby avoid liability exposure.
22

1 So that causes me to think of ways to search
2 for other means for that incentive. And a couple
3 things come to mind. One is that when we talk about
4 standard technical measures, as long as standard
5 technical measures, and I should say some of these
6 views are my own views, not my company's views
7 necessarily, but as long as we talk about standard
8 technical measures as an absolute condition to safe
9 harbor treatment, I don't think there's incentive for
10 that cooperation. And so maybe one thing to consider
11 is that adoption versus non-adoption is a factor in
12 safe harbor.
13 Now that raises the issue of well, how do
14 you even get to a point where you can create standard
15 technical measures? We've advocated that there should
16 be some sort of government prodding, government
17 guidance towards efforts to do these things. It's not
18 a one-size-fits-all. It's certainly a monumental
19 task. It won't even be required of every service
20 provider, but rather, we heard this morning about
21 "Classic" sites. Those are probably sites with low
22 volume and no need for some technical measures. On

1 the other hand, there are massive large volume sites
2 that would benefit from some form of stay-down. And
3 there are -- there were 10 examples given this morning
4 of sites that have done that. And so maybe if there's
5 incentive towards that, it can become workable.
6 I hope I get a chance to talk about
7 injunctive relief. And the other thing I wanted to
8 mention, that even in the instances of voluntary
9 measures, which I think I heard Google say this
10 morning that one of the reasons that they require a
11 contract is that while they want to engage in
12 voluntary measures through the Content ID, they don't
13 want to be sand-bagged with knowledge for purpose of
14 lawsuits. So I think rightsholders also have to
15 recognize that there has to be some holding of the
16 powder when there's cooperation on the other side.
17 MS. TEMPLE CLAGGETT: Thank you. Mr.
18 Sedlik.
19 MR. SEDLIK: To Mr. Bridges' point about
20 information sufficient to locate the material. I
21 agree that of course a URL, a uniform resource
22 locator, is information, but so is the work itself.

1 So we need to stop thinking in the 50s and 60s and
2 think, you know, it's 2016 here now. The actual
3 digital object that is the "work" is the "information"
4 by definition, and providing the OSP with a copy of
5 that work as is done, for example, on YouTube
6 currently, is sufficient to locate all examples of the
7 material existing on a site unless they've been
8 drastically modified.
9 MS. TEMPLE CLAGGETT: Thank you. Mr.
10 Bridges.
11 MR. BRIDGES: One last point because two
12 speakers have referred to 400 notices as perhaps
13 constituting enough, let's say, for the repeat
14 infringer termination policy. The fact is there are
15 many -- I don't know if I can say many -- there are
16 certainly major copyright agents from major copyright
17 holders that deliberately inflate the numbers of
18 notices they send. They observe a condition, they
19 observe no change in that condition, and they may
20 serve hundreds of thousands of notices about something
21 that they have no knowledge about.
22

1 And this -- I'm identifying Rightscorp in
2 particular, as somebody who does that, who has sent
3 millions, maybe hundreds of millions of notices. The
4 fact that it has sent hundreds of millions of notices
5 doesn't mean that there is knowledge about any one
6 notice because most of those notices, if not all of
7 those notices, were sent without knowledge on
8 Rightscorp's part of an actual infringement.
9 And the court found in a case involving
10 Rightscorp, as a matter of law, it had sent, I think,
11 over 300,000 notices for somebody who didn't even own
12 a copyright. And then those notices in a 512(a)
13 context, which are takedown notices, can merely
14 identify an IP address and say nothing about the
15 account holder or subscriber personally. So I just
16 wanted to dispel the notion that large numbers
17 necessarily mean something, because many times they
18 don't.
19 MS. TEMPLE CLAGGETT: And is there a
20 placard?
21 MS. CHARLESWORTH: I just had a follow up
22 question. When you say there's deliberate inflation,

1 I couldn't quite -- I want to understand; are you
2 saying they send the notice for the same material that
3 hasn't been taken down? In other words, what's the --
4 how are they inflating?
5 MR. BRIDGES: I'll give you an example of
6 Rightscorp at its peak. It looked for BitTorrent
7 transmissions of torrents that it associated with
8 works that it was tracking. And it might have a
9 torrent with 100 songs in it, and it was tracking 20.
10 It would find out through its software if somebody had
11 a BitTorrent client open to the internet with a bit
12 field indication that it had at least 10 percent of
13 the torrent, a 10 percent threshold. Whether those 30
14 songs were in the torrent or not didn't matter. If it
15 found at least 10 percent of the torrent there, it
16 would send a notice to the ISP to send on to the user,
17 or to the account holder -- it would send a separate
18 notice for every song, so that was 30 songs. And it
19 would go back an hour later; yep, still there, another
20 30 notices. It would go back an hour later; still
21 there? Yeah, another 30 notices, with no intervening
22 action coming from the IP address, with no actual

1 detection that the material was there without actually
2 triggering a transmission. And the reason it did that
3 is that its notices were in fact notices demanding
4 payment per infringement, per song. And notices
5 saying "if you don't pay, you're liable for $150,000
6 per infringement and call this number if you don't
7 agree with us." Then Rightscorp would say, "then you
8 should take your computer to the police department and
9 file a report. And the police might take your
10 computer away for five days to see what's on it."
11 Those are the notices that Rightscorp sent.
12 Why? Because Rightscorp makes money per notice. But
13 because some percentage will yield money from people
14 who just want to get Rightscorp off their back. They
15 may be completely innocent. There are number of
16 complaints to government agencies about this practice.
17 But it has a vested interest in sending hundreds of
18 millions of notices so that it can monetize
19 settlements based on those notices. And when you're
20 in a business model like that, there's in fact no
21 incentive to be careful that the notice is accurate
22 because you just want to blast the notices out there.

1 They go to account holders who may've had no
2 involvement with any infringement because they had a
3 Wi-Fi network or maybe because of a grandma with an
4 elder care provider using the Wi-Fi. But Grandma
5 would get the notice saying "pay up or we can sue you
6 for $150,000 or go to the police and hand your
7 computer over so that they can inspect it and see
8 what's going on." Every reason to dramatically
9 inflate the number of notices. And what that in fact
10 means is that none of those notices were worth the
11 paper they ended up getting printed on.
12 MS. TEMPLE CLAGGETT: Thank you. Is it
13 mister --
14 MR. FEERST: Feerst.
15 MS. TEMPLE CLAGGETT: Feerst, sorry.
16 MR. FEERST: Thanks. I wanted to briefly
17 follow up on one of Mr. Doda's last points, if I
18 understood it correctly, which is that there is a
19 perverse incentive built into red flag knowledge, at
20 least in part because -- well, because of potentially
21 being sandbagged with that knowledge. When you're
22

1 trying to do something voluntary and look around for
2 things that are infringing.
3 I can speak as a person on the shop floor
4 trying to implement these sorts of policies. And I
5 can say that part of my mandate and part of what
6 Medium is trying to do is have a place where people
7 write online that is vigorous but also civil. And I
8 think, on the internet, there's been a lot of call for
9 that.
10 In contrast to Medium, there are anything-
11 goes environments, like I just said before, and the
12 CDA 230 allows us to look for harassment and other
13 things because the Good Samaritan provision allows us
14 to find things and allows us to voluntarily figure out
15 ways to make the site more hospitable to writing, and
16 responding, and parodying, and many other things. The
17 fear of running into red flag knowledge is a deterrent
18 to that exact process of trying to potentially find
19 things that you should be taking down.
20 And so the push and pull here is, I suppose,
21 that the knowledge imputed may give you an incentive
22 to avoid liability, but it also gives you an incentive

1 to avoid liability by doing the opposite. And so
2 these fit together in an odd way and I say, merely as
3 a practical implementer of these, we are constrained
4 from looking for more and an expansive red flag
5 knowledge standard will further constrain us.
6 MS. TEMPLE CLAGGETT: Thank you. I wanted
7 to move on to the definition, or the lack of
8 definition, for repeat infringer, to see if anyone has
9 any views on that particular issue. Many people have
10 identified the repeat infringer requirement in the
11 DMCA as an important backstop. It's an eligibility
12 requirement that applies across the board to all OSPs,
13 whether they are actually required to do a notice-and-
14 takedown or not. So a question that I have is how
15 have courts interpreted repeat infringer policy?
16 There have been recent cases on that. Have they
17 gotten that aspect right, or does that definition need
18 to be further clarified or have further guidance?
19 MR. WILLEN: Well, so here again, I think
20 the courts are generally getting it right. There has
21 been some interesting recent case law. The key point
22 about repeat infringer, which I think is in the

1 statute and that is reflected in the case law, is that
2 it's a flexible policy. There is not a one-size-fits-
3 all repeat infringer standard. That was, I think, a
4 deliberate choice that Congress made, and it was a
5 wise choice.
6 There are something like 100,000 registered
7 DMCA agents, and there's probably not that many
8 services, but there's a lot of services that are
9 relying on the DMCA safe harbors in their everyday
10 operations. Those services run the gamut from very,
11 very large to very, very small. They host all sorts of
12 different kinds of content. They are infinitely
13 varied in their business practices, in their
14 operations, and in their -- the nature of their user
15 base.
16 And so the idea of having a kind of straight
17 jacket repeat infringer policy that would uniformly
18 apply to Google and a tiny start up is both
19 impractical and foolish. So the idea of fundamentally
20 letting service providers, giving them the initial
21 discretion to, for the specific purposes and the
22 specific nature of their service, to come up with a

1 repeat infringer policy that does what the basic
2 purpose of the statute, which is to make sure that
3 users who are repeatedly and flagrantly violating
4 copyright law, have a realistic understanding that
5 they will lose their access if they do not reform
6 their behavior.
7 With that general principle in mind,
8 allowing service providers the flexibility and the
9 discretion to figure out how to apply that mandate to
10 their particular circumstances is extraordinarily
11 important, and for the most part the courts have
12 recognized that.
13 MS. TEMPLE CLAGGETT: In your view, what
14 would be -- what would trigger the, repeat part of the
15 -- or the infringer part of that definition? Does
16 that also depend on the type of ISP or do notices, for
17 example, in your view trigger repeated -- would they
18 trigger a repeat infringer policy; or do you think
19 that it requires adjudication, that this person has
20 actually been found by a court to have infringed
21 copyright?
22

1 MR. WILLEN: So I think it's not -- the
2 argument that repeat infringer means infringer, and an
3 allegation of infringement is not infringement, I
4 think, has some merit to it. I don't think you need
5 to go that far. I think that using takedown notices
6 as a proxy, takedown notices that are not counter-
7 notified, whether the user is given the opportunity to
8 respond to the takedown notice; if the user doesn't
9 send a counter notification, to treat that -- to
10 recognize that that is not necessarily a conclusion of
11 infringement. There are a number of reasons that
12 users may not choose to send counter-notices, and the
13 fact that they don't is not definitive evidence that
14 they are infringers.
15 I think for, again, for purposes of this
16 flexible common sense policy, a certain number of
17 takedown notices that are not countered is an entirely
18 plausible way for service providers to determine who
19 ought to lose their access. At the same time --
20 MS. TEMPLE CLAGGETT: Would you apply that
21 to the section 512(a) ISP as well?
22

1 MR. WILLEN: Well, I mean, the standard --
2 it's a standard, unlike the notice-and-takedown
3 regime. So the notice-and-takedown regime doesn't
4 apply to as we said -- as we heard earlier, correctly,
5 there is no notice in takedown regime for 512(a)
6 services. The repeat infringer policy, of course,
7 applies to those services.
8 Now, if those services are getting takedown
9 notices that they're not supposed to get under the
10 statute, I think it is a little bit odd to have them
11 treat those as proxies given that Congress made a
12 choice not to require them to accept takedown notices.
13 Now, if they choose to honor takedown
14 notices or choose to implement them in a particular
15 way, again, going to my general point that this is a
16 provision that in the first instance is going to be
17 implemented and applied by service providers; that's a
18 choice that they can make. I don't think it's a
19 choice that's required by the statute.
20 Just the other point that I would make,
21 though, is that I think there's a valuable role for
22 copyright education in the repeat infringer policy

1 context. So you definitely have blatant, bad users
2 who are just trying to rip content off. Everyone
3 would agree with that. At the same time, you have a
4 number of users on these services, particularly
5 classic user generated content sites, YouTube and
6 others, that are not lawyers, not necessarily
7 sophisticated, and genuinely don't know what's allowed
8 and what's not.
9 And so when you have takedown notices that
10 come in for those users, you have to make sure that
11 the people that you are terminating are the bad ones
12 and not the ones that sort of innocently are trying to
13 create, let's say, a home video and use an entire song
14 thinking, oh, that's something that I can do. Well,
15 you know, maybe it's not, but treating that person
16 like a flagrant commercial pirate, I think, is not
17 appropriate.
18 So taking into account, taking into a repeat
19 infringer context, the ability to one, distinguish
20 between those different use cases and to give the
21 innocent users a chance to reform their behavior, a
22 chance to understand why they may have run afoul of

1 copyright law, and giving them an opportunity to do
2 better in the future, whether that's through some sort
3 of informal copyright education, which was what Google
4 does, or through the process of expiring strikes that
5 are assigned so that after six months or a year that
6 strike disappears, again, I think it's all part of the
7 reasonable and flexible policy that Congress had in
8 mind.
9 MS. TEMPLE CLAGGETT: Thank you. Mr.
10 Sheffner.
11 MR SHEFFNER: I'll be brief. This is
12 actually an instance where I agree with the vast
13 majority of what Mr. Willen just said.
14 (Crosstalk)
15 MR. SHEFFNER: This is an area, unlike some
16 other areas of the DMCA, where the courts have largely
17 gotten it right. Even within the flexibility that the
18 language of the statute is terminate in appropriate
19 circumstances, even within that relatively fuzzy
20 language, that broad framework, the courts have still
21 gotten it right.
22

1 Just two points I want to emphasize. As Mr.
2 Willen said, the obligation under section 512(i) to
3 terminate repeat infringers in appropriate
4 circumstances applies to all of the four separate safe
5 harbors, (a), (b), (c) and (d). Let there be no
6 question about that because I think some of the
7 comments challenged whether in fact that does apply to
8 (a). But I think under just basic rules of statutory
9 interpretation, it is clearly the case that that
10 applies to all four.
11 Then also on the point I think someone
12 raised as well, you are not a "infringer" for purposes
13 of 512(i) unless a court has fully adjudicated the
14 case and issued a final judgment, which says
15 infringer, and I think courts have appropriately said
16 that is not the standard. We saw that in a recent
17 case, which just went to a jury verdict in the Eastern
18 District of Virginia, the BMG v. Cox case, and we were
19 heartened again to see the court say there that no, a
20 series of appropriate notices puts the -- creates the
21 knowledge necessary on the part of the service
22

1 provider to trigger that obligation to terminate in
2 the case of repeat infringers.
3 MS. TEMPLE CLAGGETT: Thank you. Ms.
4 Schrantz.
5 MS. SCHRANTZ: Thank you. I also agree that
6 the courts have generally gotten it right. Again,
7 because I think they're recognizing what Congress
8 recognized in the 90s, which is that hampering OSPs
9 with the more straightjacket approach, I guess if we
10 term it that way, would in a practical sense undermine
11 other parts of the law. It would undermine
12 limitations and exceptions in the law, but it also
13 critically ignores the diversity that I think we've
14 talked about quite a bit today, that Congress not only
15 was aware of what could happen but hopeful would
16 happen in the online space.
17 And so when we talk about is in appropriate
18 circumstances the best way, which we've heard, I
19 think, from others here today, several cases where
20 that has not shielded infringing sites from
21 responsibility. Instead, it's not shielded them but
22 allowed flexibility to diverse platforms. We

1 represent nearly 40 companies, and I can tell you that
2 what's right for one company would not be right for
3 another.
4 And so I, myself, couldn't come up with a
5 standard that would be right for every member of the
6 Internet Association because they are so diverse both
7 in scale and in terms of the practical facts of the
8 platforms and how they operate.
9 MS. TEMPLE CLAGGETT: Just one quick follow
10 up. I'm gratified that it actually seems as we're
11 going down the line, we've got an area of consensus
12 although from the New York round tables, there was a
13 little bit of a difference of opinion about repeat
14 infringer, not that the courts have gotten it wrong,
15 but that it shouldn't actually apply to section -- the
16 512(a) mere conduit.
17 There was some suggestion, I think, from
18 Verizon representatives that in the case of
19 terminating access to the internet, that's a somewhat,
20 I guess in their view, draconian result. And so,
21 therefore, there should be some potential legislation
22 to potentially take out or not apply that particular

1 provision to section 512(a). So I didn't know if you
2 had any --
3 MS. SCHRANTZ: I'll just say on that -- I
4 mean, we -- that's not a member of the Internet
5 Association, so I will leave to better legal scholars
6 than myself a discussion about that. But since that --
7 I do remember that from the New York round tables and
8 again, I think that's not something that I would speak
9 to, yeah.
10 MS. TEMPLE CLAGGETT: Mr. Sedlik.
11 MR. SEDLIK: So just to chip in, I --
12 there's a bit of a consensus here. I liked what Mr.
13 Willen and Mr. Sheffner had to say, but I do need to
14 caution them. Where the copyright meets the road, so
15 to speak, you have this fox guarding the henhouse
16 situation that occurs. Just to give you a real world
17 example, Online Auction House has thousands of sellers
18 selling t-shirts of infringing work, and they are --
19 it's obvious that it's infringing work, objectively
20 obvious that it's infringing work. Individual
21 creators are -- and rightsholders are filing DMCA
22 takedowns, and the auction house takes one down at a

1 time, but they know that it's unlikely that any one of
2 those individual creators is going to bring a suit
3 because they can't afford to do so.
4 And so they allow these infringements to
5 continue, these sellers to continue. And putting the
6 power in their hands to determine when they're going
7 to stop this infringer -- this infringing company from
8 continuing to sell t-shirts is a bit dangerous, I
9 think. They shouldn't be -- they're making
10 collectively millions of dollars a week probably off
11 of the selling of all of these thousands of infringing
12 works.
13 MS. TEMPLE CLAGGETT: Thank you. Mr.
14 Midgley.
15 MR. MIDGLEY: Yeah, I just want to point out
16 I think that universities are kind of a special case
17 when they're acting as OSPs in this area. I just
18 wanted to point out for the record a couple things.
19 First of all, we -- not-for-profit
20 educational institutions have 512(e), which doesn't
21 apply to a lot of other people here, and that covers,
22 you know, faculty and graduate student employees,

1 which is very nice. But in the case of, you know,
2 undergraduate students who are users of our networks,
3 a lot of times these notices come in in batches. So
4 how we're counting a notice, if a single student is
5 involved in a cluster, let's say, of multiple notices
6 that come in in a single 24-hour period, does that
7 count as a cluster of notices, or how do we count
8 that?
9 And then terminating their access to a
10 university network is really tantamount to expelling
11 them from the university. I mean, it's a practical
12 matter. You know, in the year 2016 if you don't -- if
13 you're a student at a university and you don't have
14 access to the university's computer network, you know,
15 it's not just like shutting off my internet service
16 because my teenager was doing something in the
17 basement or whatever.
18 I mean, that's a -- so I think we just need
19 to be careful, and I -- speaking on behalf of the
20 university, we would sure love some clarity for our
21 particular use case about what counts as repeat
22 infringers and in a 512(a) context, which we find

1 ourselves in frequently, we certainly want to avail
2 ourselves of the safe harbor, but administering a
3 repeat infringer policy in these areas can be tricky
4 for us, so.
5 MS. TEMPLE CLAGGETT: I guess if you could -
6 - can you share? I mean -- do you have a general
7 standard in terms of, as you said, actually taking
8 away a student's access to the internet in the
9 university context? It is quite different than in
10 other contexts when you would take that step to do so,
11 when you feel that – it is or isn't an appropriate
12 circumstances under section 512 to terminate access.
13 MR. MIDGLEY: Yeah, we -- so I'm not really
14 at liberty to talk about specific cases, obviously,
15 but there are a number of contexts. You know, if
16 there -- if students are -- I mean, college students
17 are -- they're wonderful. They pay for my salary, so
18 I can't say too much about them, but.
19 Anyway, they -- you know, there's malware,
20 there's viruses. I mean, there's a lot of reasons from
21 a computer and network security standpoint where
22 there's activity that happens on the network that we

1 need to be mindful of, and infringement is just one of
2 those areas. So this is something, -- you know, we
3 have certainly general network usage policies and so
4 forth, and it includes this language. I'm just -- I
5 don't want our category users to be overlooked in the
6 broader conversation about this because it's -- I
7 think we're an important player and somewhat uniquely
8 situated as an OSP, and these issues can get tricky
9 for people like me.
10 MS. CHARLESWORTH: I'm sorry, I had one
11 follow-up to Mr. Midgley. Have you actually -- has
12 the university actually terminated people under its
13 policy or however it's applied?
14 MR. MIDGLEY: Again, I'm not really at
15 liberty to talk about individual cases, but there
16 certainly have been incidences where network access
17 has been terminated for various reasons, yes.
18 MS. CHARLESWORTH: Thank you.
19 MS. TEMPLE CLAGGETT: Miss -- oh, sorry,
20 Gellis?
21 MS. GELLIS: Gellis.
22 MS. TEMPLE CLAGGETT: Gellis. Sorry.

1 MS. GELLIS: Thank you. I want --
2 continuing the theme from the last panel of talking
3 about --
4 MS. TEMPLE CLAGGETT: I'm sorry. One
5 second.
6 MS. GELLIS: Sorry. Continuing the theme
7 from the last panel of talking about some of the
8 structural problems we have with the DMCA vis-a-vis
9 the First Amendment -- actually I wanted to note that
10 I'd like to comment on 512(h) at some point whenever's
11 appropriate, but in the context of repeat infringers,
12 I think Mr. Midgley brings up a very interesting point
13 when he talks about what the effect on a student is if
14 they terminate a user, that it is functionally
15 expelling them from the community that they're
16 participating in, that there's an online existence.
17 We're not in 1998 anymore. We are now deep
18 into the 21st century where the internet and various
19 platforms on the internet are major venues where
20 information and knowledge is exchanged and how people
21 interrelate with each other. There's a First
22 Amendment right to read, and there's a First Amendment

1 right to speak, and the idea of turning off a user's
2 ability to do either is really something that I think
3 that the study gives us an opportunity to rethink
4 because I think any repeat infringer policy that
5 particularly based on an allegation alone -- we talked
6 in the previous panel about the amount of harm you can
7 do to legitimate speech just by somebody making an
8 allegation that you infringed has a huge effect in
9 this context.
10 "J'accuse! You -- I think you infringe. I
11 think you infringe. I think you infringe." Now all
12 of a sudden, you're not on YouTube. You may not be on
13 your ISP. Now you can't tweet. Now -- whatever forum
14 you -- your life depends on being able to participate
15 in is now under fire. I would question whether it's
16 appropriate even if the allegation of infringement was
17 warranted, but definitely we should be requiring that
18 there's been, at minimum, adjudication on the merit
19 that infringement has actually happened before this
20 sort of online death sentence is handed down to users,
21 and to put intermediaries in the position where they
22

1 need to inflict it, I think, is something that we
2 really should think twice about.
3 MS. TEMPLE CLAGGETT: Thank you. Mr.
4 Engstrom.
5 MR. ENGSTROM: Sure. A lot of what has been
6 said earlier I think makes a lot of sense. I'd like
7 to hearken back to kind of our earlier conversation
8 this morning about some of the imbalances within
9 various aspects of 512 that might make counter-
10 identifications or accusations of infringement that is
11 a poor proxy for repeat infringements. Given the
12 potential liability that a user faces for uploading
13 content and the very minimal benefit they would get
14 for fighting back, even in the case where it's a
15 legitimate use, it's difficult to look at the absence
16 of a counter-identification as an indication of actual
17 infringement sufficient to warrant termination;
18 particularly when -- as people have already said, the
19 penalties and the cost associated with that are so
20 great.
21 Along that line, I think it's important to
22 preserve a lot of the flexibility that some of the

1 previous speakers have talked about when we're
2 discussing how repeat infringer policies are
3 implemented; I mean, they're not one-size-fits-all.
4 Depending on the size of your company, how you
5 implement these things probably can and should vary so
6 long as -- I mean, obviously there's always a tension
7 between flexibility and rigidity, and the way we apply
8 rules, and how that can most effectively apply to the
9 broadest range of companies to further the goal of
10 promoting the spread of online creativity.
11 So I would push back against some case law
12 that suggests that if you at one point run afoul of
13 failing to implement the repeat infringer policy on
14 the margins, you can never recover the safe harbor as
15 to later applications of the policy. That type of
16 rigid construction, I think, does a lot of harm, and
17 it doesn't facilitate, I think, the fundamental
18 purpose of having a repeat infringer policy, which is
19 to weed out the actual bad actors from the protections
20 of the safe harbor law, ensuring that those that would
21 like to comply can stay within the safe harbor's
22 bounds.

1 MS. TEMPLE CLAGGETT: Thank you. Mr.
2 Coleman.
3 MR. COLEMAN: I think that we're making a
4 rhetorical mistake by focusing on the definition of an
5 online service provider from 1998 that is essentially
6 a passive actor. If we believe that the statute wants
7 to encourage licensing -- content of licensing that's
8 an absolute from the statute except for the ability to
9 not avail oneself of the safe harbor by having
10 financial control.
11 So at the point at which free speech becomes
12 actually commercial distribution, then we’re in an
13 area of regulation. We have other examples of that in
14 law. We have an FCC. It’s no longer a free speech
15 issue; it’s a licensing issue. And I think just from
16 a common sense standpoint, that’s where the statute
17 needs to be addressed by Congress and rewritten to
18 acknowledge the fact that the foxes aren’t guarding
19 the henhouse. We have online service providers that
20 are hiding behind an old statute that assumes that for
21 the most part they’re not going to have a financial
22 nexus with the users when, in fact, they do.

1 MS. TEMPLE CLAGGETT: Thank you. Mr.
2 Bridges.
3 MR. BRIDGES: Thank you. I agree halfway
4 and I disagree halfway with Mr. Willen. First of all,
5 I think that it is very important to remember the "in
6 appropriate circumstances" qualification. I think
7 that -- he talked about takedown notices as a proxy
8 [for determining repeat infringements]. I think
9 that's a good way to counsel clients that use that to
10 be safe. You might have a system that might count
11 takedown notices, but I don't think that should be the
12 legal standard.
13 Because I go back every time when we have
14 these debates to the statute itself, and it calls for
15 "a policy that provides for the termination in
16 appropriate circumstances of subscribers and account
17 holders of the service provider's system or network
18 who are repeat infringers." Now, the Copyright Act in
19 Section 106 defines the rights of copyright holder,
20 and violation of those rights all together makes
21 somebody an infringer. Now, who decides? Who decides
22 who's an infringer? There's only one competent

1 authority to decide who's an infringer, and that's a
2 court.
3 And if the policy is to terminate people who
4 are repeat infringers, not people who are accused of
5 infringement, then adjudication is appropriate. I
6 think that every motion picture studio and record
7 label has been accused of copyright infringement at
8 least three times, and I bet they would not like to
9 have their internet services terminated. I mean, if
10 accusation makes somebody an infringer, then most of
11 the major copyright holders are repeat infringers by
12 that standard. That can't be the case.
13 And I think it's very important -- Mr.
14 Midgley made the good point about university students,
15 but they shouldn't be privileged. Being cut off from
16 a university network, that's pretty bad for a student,
17 I get it. Being cut off from being able to apply for
18 a job, to be able to pay your bills, to be able to pay
19 taxes in California where I have to file
20 electronically, being cut off from all of those things
21 is a big deal for section 512(a) subscribers and
22 account holders, and "appropriate circumstances" in

1 that context requires something very strong, and
2 adjudication is the only way to go. Thank you.
3 MS. ISBELL: Actually, I want to follow up
4 on that. We've heard several times throughout this
5 roundtable and also back in New York that one of the
6 goals of adopting section 512 was to provide for a
7 method of resolving these disputes without resorting
8 to the courts, to increase the certainty in the area.
9 If we're going to say that the repeat infringer policy
10 can only be instituted if you have an adjudication of
11 infringement, does that not defeat the entire purpose
12 of having this sort of extrajudicial process?
13 MR. BRIDGES: No, not at all, because it
14 still allows for the robust notice-and-takedown
15 provisions. It allows for individual acts to be
16 addressed, but I don't think that a fair reading of
17 the DMCA says that, based on an accusation and a
18 blackball that somebody puts into the system, we get
19 to cut people off the internet. I don't think that is
20 what the DMCA was about at all. It was about to
21 stimulate the growth of the internet, and it was about
22 cooperation in reducing the incidence of infringement.

1 And I think kicking people off internet accounts and
2 subscriptions is not the long-term goal.
3 I mean, I get it if somebody is kicked off
4 Facebook, okay? Facebook may be really important, but
5 getting kicked off having your own internet account is
6 a very big deal. And what does it lead to as a
7 practical matter? It means coming in on somebody
8 else's wireless. It means actually stealing somebody
9 else's wireless and using the rogue services because
10 you can't have your actual accounts. It means you go
11 into subversive methods to get what you want. It's
12 not actually necessarily going to reduce infringement.
13 It's just limiting the genuine civic interaction that
14 citizens are entitled to have.
15 MS. CHARLESWORTH: Can I - I'm going to
16 follow up with a question that I also asked in New
17 York. Don't ISPs also terminate users for non-payment
18 and other abuse of their systems, and don't they
19 decide when and how to do that?
20 MR. BRIDGES: Oh, absolutely. First of all,
21 do you think that's really relevant here?
22

1 MS. CHARLESWORTH: Yes, I do, because you're
2 making an argument that the loss of internet is so
3 profound that it can't be allowed in this context.
4 MR. BRIDGES: Yes, okay. You know, a
5 service provider absolutely knows when it has not been
6 paid.
7 MS. CHARLESWORTH: Okay.
8 MR. BRIDGES: It doesn't absolutely know
9 that somebody's an infringer until it gets a certified
10 copy of a judgment of infringement -- multiple
11 infringements or multiple judgments against her -- so
12 that's a great point because the competence of the
13 service provider to know about payment is absolute.
14 The competence of a service provider to know about
15 infringement is zero unless there's an adjudication.
16 MS. CHARLESWORTH: Well, I think there are
17 other circumstances where ISPs terminate users. Isn't
18 that true? For example, for other abuses of the
19 system.
20 MR. BRIDGES: Do you have some examples?
21 MS. CHARLESWORTH: I think some of them were
22 mentioned in the Cox decision.

1 MR. BRIDGES: Which ones? And I'm not here
2 to speak for Cox or to discuss the BMG v. Cox
3 situation, particularly. But I'm happy if you want to
4 give me examples --
5 MS. CHARLESWORTH: It's like I -- spyware
6 and other abuses, the use -- misuse of the system that
7 wasn't necessarily infringement, but they viewed as
8 being detrimental to their commercial interests.
9 MR. BRIDGES: I think -- I don't recall
10 specifically, but I'm not sure there are actual
11 terminations over that.
12 MS. CHARLESWORTH: Okay, well, we can both
13 reread the case, but I think the point that -- the
14 evidence tended to show that were other circumstances
15 besides repeat infringement where Cox was making
16 determinations whether to terminate users.
17 MR. BRIDGES: Actually, I'm happy to have
18 that discussion with you if you want to talk about
19 specifics, but I'll say this. Any network provider
20 acts with respect to threats to the network because it
21 is able to determine certain security threats to the
22 network in a denial-of-service attack. I don't think

1 that accounts were necessarily terminated, and that's
2 what this provision is about. It's termination of
3 subscribers or account holders. That's not
4 interruption of service to deal with a denial-of-
5 service attack.
6 MS. TEMPLE CLAGGETT: And I'm going to
7 actually have to say that we're getting very close --
8 well, we've actually not gotten close, we've gone over
9 the time frame. So really, I think we're going to
10 only actually be able to finish up this round, and
11 then we're going to take a quick break -- with just
12 the people who haven't spoken yet. And I think
13 everyone else has had an opportunity for this session
14 to speak. So I'll finish up with the last two here,
15 and then we're going to take a quick break, and we'll
16 rejoin for the last panel. Mr. Borkowski.
17 MR. BORKOWSKI: Thank you, just a few brief
18 -- excuse me, just a few brief points. I actually
19 would like to see more guidance as to what a repeat
20 infringer is because right now, even in the Cox case,
21 to have a straight-faced argument saying that 14
22 instances of infringement may or may not have been

1 enough strikes me as a little strange. Basic words
2 typically mean basic things, and repeat means more
3 than one. It's two or more. And I think it'll be
4 good if the courts were able to focus more on giving
5 us guidance because it'll be important for both sides,
6 for service providers and for content owners, to have
7 some guidance on that point.
8 I do agree that you do not need an
9 adjudication to be an infringer under the DMCA. The
10 DMCA is a process that allows private actors to act
11 outside the judicial process if they so choose. A
12 takedown notice, for example, a counter-notice -- this
13 is the same kind of thing. And if you wait for an
14 adjudicated infringer, you would read this part of the
15 statute out of the statute because it takes years to
16 have an actual adjudication. If Congress had meant
17 for that to be the case, it would've said repeat
18 adjudicated infringer. It didn't. It said repeat
19 infringer within the context of the structure of the
20 DMCA.
21 And I also think it would be really useful
22 if there was a way to have more transparency into what

1 these repeat infringer policies are. The ISPs don't
2 have to reveal exactly what they do. It would be nice
3 if we could get metrics from them as to how many of
4 these notices they get and how many people they
5 actually terminate. And finally, in terms of the fear
6 about, you know, termination and not having access to
7 the internet, it says -- well, it does say in
8 appropriate circumstances, but there's no reason to
9 say that an ISP can't prevent an abusive subscriber
10 from connecting to known pirate websites.
11 It doesn't have to cut them off from the
12 internet. Technology clearly exists for that to
13 occur, and then that obviates some of the other
14 problems I've heard. And that's going to -- say one
15 thing about something Mr. Bridges said because he said
16 the same thing that was said earlier, which is not
17 correct. The DMCA was not created to spur the growth
18 of the internet. That was one of the two things it
19 was created to do. The other two things were to
20 protect content owners and allow them to enforce their
21 rights on the internet.
22

1 MS. TEMPLE CLAGGETT: Thank you. Last
2 person for this session, Mr. Ballon.
3 MR. BALLON: Thank you. Just a very quick
4 observation. Just going back to the legislative
5 history, the reason Congress used terms that they
6 didn't define was because they understood that the
7 internet in 1998 was going to be -- was something that
8 was going to change very rapidly. Even six months
9 later, the internet would be different. And in 1998,
10 they were looking at Yahoo and at AOL. And so you
11 have terms -- you have ambiguity – "in appropriate
12 circumstances." You have terms like "information
13 location tools," which didn't exist before the DMCA.
14 It was just something created to be much broader than
15 links, which is what initially they were talking
16 about.
17 And as an observation, whenever you have
18 that kind of ambiguity, for companies that are
19 compliance-oriented, it creates pressure to do more
20 than what the law requires. If there's ambiguity,
21 it's not clear what a "repeat infringer" is or it's
22 not clear what an "appropriate circumstance" is. For

1 a compliance-oriented company, they will err on the
2 side of caution. And then for companies that are not
3 compliance-oriented, they will play things more on the
4 wire. Litigation is very expensive. For responsible
5 service providers, there is pressure from ambiguity to
6 do more than the law requires. And other companies
7 that don't, fall outside the safe harbor and at, you
8 know -- at their risk.
9 MS. TEMPLE CLAGGETT: Great, thank you. I
10 want to thank everyone who was participating in this
11 session. Sorry that we weren't able to get to all of
12 the various ambiguities of the statute. But, again,
13 as we said, in each session, we will provide an
14 opportunity at the end of the roundtables for everyone
15 to provide comments, and we have another written
16 comment period coming up. Since we are a little bit
17 beyond the schedule, we're going to go -- I'm going to
18 I think cut off a little bit of the break and go to
19 3:40 and so just have really a ten-minute break. And
20 we'll back here at 3:40 for our final session of the
21 day. Thanks.
22 (recess)

1 SESSION 4: Scope and Impact of Safe Harbors
2
3 MS. CHARLESWORTH: Everyone, we've been very
4 deficient up here in the moderator position because
5 we've let everything run long because we've been very
6 interested in everything you've had to say. We do,
7 though, actually have a hard stop in terms of leaving
8 the courthouse, and so this panel is going to be a
9 little shorter because we need to have you exiting by
10 4:45 because the idea is everyone needs to be out of
11 the court at 5 o'clock.
12 So with that in mind we're going to shorten
13 the time period for responses to a minute and a half.
14 It's a little bit more of a lightning round, if you
15 will. This last session today is on the Scope and
16 Impact of the Safe Harbors, so it addresses the reach
17 of the safe harbors, but I think in terms of impact,
18 what we're particularly interested in hearing about is
19 the impact on creators, the impact on intermediaries
20 and licensing activities, and the impact on online
21 service providers in terms of their ability to
22 function in the environment. So those are fairly

1 broad topics. I know from New York we had a lot of
2 different points of view on them, but we're really
3 trying to gauge how does this really affect the
4 various players' day-to-day activities, including
5 users of the internet, as well? So which way did we
6 go last time? Did we start on this side?
7 MS. ISBELL: Here last time.
8 MS. CHARLESWORTH: So we're going to start
9 over here with anyone who wants to offer comments on –
10 - I'm sorry? Oh, yes, okay. Very quickly, announce
11 your names and who you represent, and then we'll start
12 over here with any comments.
13 MS. BAILEY: Lila Bailey, Internet Archive.
14 Thanks.
15 MS. CHARLESWORTH: I'm sorry. If we can
16 just quickly go around –- I screwed up. I forgot to
17 have everyone -- just very quickly go around and give
18 your affiliation.
19 MR. BERLIANT: Jordan Berliant -- I'm sorry.
20 Jordan Berliant, Revelation Management Group. I'm
21 still an artist manager.
22 MS. CHARLESWORTH: That's good.

1 MR. BRIDGES: Andrew Bridges, Fenwick &
2 West.
3 MR. CADY: Eric Cady, Independent Film and
4 Television Alliance.
5 MS. ISBELL: Everyone, there should be a
6 little red light on your microphone if it's on. If
7 you don't see the red light, it's not.
8 MR. CADY: Eric Cady with the Independent
9 Film and Television Alliance.
10 MS. CUSEY: Rebecca Cusey with the Arts and
11 Entertainment Advocacy Clinic at George Mason Law.
12 MR. RAY: East Bay Ray, independent musician
13 and songwriter for the band Dead Kennedys.
14 MR. ELLERD: Steven Ellerd. I represent
15 myself.
16 MR. GREEN: Dave Green with Microsoft.
17 MS. KELLER: Daphne Keller, Stanford Center
18 for Internet and Society.
19 MR. HARTLINE: Devlin Hartline with the
20 Center for the Protection of IP.
21 MR. LAMEL: Joshua Lamel. I'm the executive
22 director of Re:Create.

1 MR. MARKS: Steven Marks, on behalf of the
2 Recording Industry Association of America.
3 MR. MASNICK: I'm Mike Masnick with Techdirt
4 and the Copia Institute.
5 MR. PASSMAN: Don Passman. I'm an
6 entertainment lawyer and author of All You Need to
7 Know About the Music Business.
8 MR. TAPLIN: Jonathan Taplin, Director,
9 Annenberg Innovation Lab, University of Southern
10 California.
11 MR. SEDLIK: Jeff Sedlik, the PLUS
12 Coalition.
13 MS. SCHRANTZ: Ellen Schrantz, Internet
14 Association.
15 MS. VALENTINA: Elizabeth Valentina, Fox
16 Entertainment Group.
17 MR. WILLEN: Brian Willen, Wilson Sonsini.
18 MR. DODA: Paul Doda, Elsevier.
19 MS. CHARLESWORTH: Okay, thank you. So with
20 that, we'll go to my very broad question about the
21 impact of the section 512 notice-and-takedown system
22

1 on the various constituencies who are affected by it.
2 Ms. Bailey, will you lead us off?
3 MS. BAILEY: Sure. Thanks so much. So the
4 impact that we are seeing at the Internet Archive is
5 that basically we've been able to preserve a huge
6 amount of digital culture, both that was born digital
7 and also content that was once analog and has been
8 turned into digital, and the safe harbor has allowed a
9 lot of that activity to occur. I also just wanted to
10 respond quickly to Mr. Taplin, in particular, and then
11 other more sort of veiled references to this whole
12 conversation being about Google and YouTube. I really
13 hope that it isn't because it shouldn't be. The huge
14 diversity of online service providers is very
15 important because there is also a huge diversity in
16 internet users and content, and having the ability to
17 have educational and noncommercial users play on the
18 same level playing field as Google is very important
19 for everyone. And treating everyone as if they have
20 Google-level resources would mean we are left with
21 only Google-level OSPs. Thank you.
22 MS. CHARLESWORTH: Thank you. Mr. Berliant.

1 MR. BERLIANT: Thanks. So I said earlier in
2 the first session that impact on artists has been --
3 that their earnings through recorded music have been
4 decimated. And I'd be happy, if you want, to submit a
5 redacted -- some redacted royalty statements so you
6 can see just how decimated it's become. But I think
7 it's important to understand as a practical matter
8 what actually happens as a result of the way that the
9 current safe harbor provision is being interpreted and
10 works.
11 I have a rather significant worldwide artist
12 who's going to announce a release tomorrow. It -- I
13 literally found out 45 minutes ago that the release is
14 already up on a Russian site. By tonight, there'll be
15 hundreds of fans that download that music and put them
16 up on YouTube, thinking that they're doing a service
17 to other listeners and other fans, and it'll be
18 impossible for the label to police that and -- with
19 enough takedown notices. Now, on a broader level,
20 what is really affecting the artist and -- is the
21 label's inability to window the releases.
22

1 None of us saw Star Wars on free television
2 the day it came out because the film companies are
3 able to window their releases. That's what the record
4 industry would like to be able to do, but as a
5 practical matter cannot do because the album is always
6 up in its entirely for free on YouTube and other sites
7 that users can just upload to without any
8 repercussion. And as a practical matter, it is
9 impossible for labels to police them with enough
10 takedown notices. So we cannot window the releases to
11 put them up for sale and to pay streaming tiers two,
12 three, four months before it goes up for free. And
13 that's what's really killing us.
14 MS. CHARLESWORTH: Thank you. Mr. Bridges.
15 MR. BRIDGES: Thank you. I want to go back
16 to a conversation I watched in front of my eyes in
17 2005 I think it was [actually November 2001]. This is
18 about the economic impact on artists and the like, and
19 one of the rationales for the DMCA. Tim O'Reilly at a
20 conference asked Hilary Rosen, then the president of
21 the Recording Industry Association of America, the
22 following question: "How do you account for the fact

1 that 99 percent of all recording artists are failures
2 from an economic standpoint?" And her response was,
3 "well, there's simply too much music and too many
4 musicians for the existing channels of distribution."
5 Now, I thought that was remarkable because I
6 think she was worried more about too much music and
7 too many musicians. I saw the problem as too few
8 channels of distribution. The internet and a variety
9 of services have provided vast new opportunities for
10 all sorts of artists to gain an audience, and the DMCA
11 has helped spawn a lot of innovative services.
12 Rightsholders have chosen to work with some -- have
13 chosen not to work with some. But the benefits have
14 been enormous, and the DMCA has helped give some
15 additional layer of encouragement to service
16 providers. Bear in mind -- this is a point I make
17 virtually all the time -- the statutory damages regime
18 in the United States is unconscionable. Lawsuits
19 against service providers -- I've defended at least
20 four or five lawsuits with claims of over $1 billion,
21 and to have any additional layer of protection is
22 important.

1 MS. CHARLESWORTH: Thank you. Mr. Cady.
2 MR. CADY: The fact is that IFTA members are
3 facing unprecedented theft of their content online
4 without any workable means of enforcing their rights
5 through section 512. It's IFTA's position that the
6 current law provides too great an umbrella to excuse
7 the ISPs from responding to pervasive notices of
8 illegal activity occurring on their networks rather
9 than encouraging the parties to work together to
10 incorporate now-common technology to accomplish a
11 notice, takedown, and stay-down framework. Thank you.
12 MS. CHARLESWORTH: Thank you. Mr. -- Ms.
13 Cusey, excuse me.
14 MS. CUSEY: Thank you. When we spoke to
15 artists, what they saw was an array of online sites
16 that profited off of their work without their
17 permission. And it didn't really matter to the
18 artists if it was by links or if it was by hosting the
19 content. What mattered to them was that somebody else
20 was making money off of their work. And definitely we
21 saw that this made -- created a disincentive to create
22 because not only did they have the financial hit that

1 they couldn't survive on their art as they should be
2 able to, but it's just deeply discouraging to put so
3 much effort into creating and then to see other people
4 reaping the benefits of that.
5 MS. CHARLESWORTH: Thank you. East Bay Ray.
6 MR. RAY: Yeah, I'd like to second that. I
7 mean, here's another chart, a 2001 to 2015 chart --
8 MS. ISBELL: Mic on, please.
9 MR. RAY: Oh, sorry. Hello? The music
10 revenue is going down; the takedown notice is going
11 up. The law was supposed to balance it. And I have
12 to say music is still making money, but it's going to
13 the plantation owners. Here's a website with an ad
14 for Alaskan Airlines, flowers, and all the Dead
15 Kennedys' tracks in Russia. These are served by ad
16 networks, either Yahoo or Google ad networks. So the
17 Russian mob's making money. The ad networks are
18 making money. We're not getting a piece of it, and
19 it's like -- yeah, everybody wants free, cheap cotton,
20 well, we can go back to the sharecropper system, but
21 it's, you know, it's just not -- I didn't have my --
22 I'm getting confused here.

1 But what she said is like, as an artist,
2 when I -- we put stuff out, we, you know, plan the
3 artwork, where we're going to locate it, where we're
4 going to do the interviews, and we've had a very
5 successful career as a small business enterprise and
6 as an independent artist. But now, people just take
7 stuff and spread it, and it's kind of a forced
8 collectivization. Like, ooh, you know, it's like
9 people like -- well, let me help you, like -- I know
10 how to move our music; I don't need an ISP to tell me
11 how to move music. As a matter of fact, our music,
12 you know -- I've been through vinyl, cassettes, CDs,
13 downloads, streaming -- my music will be around after,
14 you now, Pandora and Spotify are out of business.
15 MS. CHARLESWORTH: Thank you. Do you try --
16 do you attempt -- currently attempt to sell your music
17 like on downloads and --
18 MR. RAY: Yeah, we're on iTunes, and we're
19 on Pandora, and we have vinyl. And yeah, we're a very
20 sophisticated small business.
21 MS. CHARLESWORTH: And do you find that the
22 system impacts your ability to sell music?

1 MR. RAY: Yeah, yes. About 2010, our income
2 was dropped in half. And all the musicians I know,
3 which are mostly independent, and some jazz musicians,
4 some reggae musicians -- the income has dropped in
5 half and has stayed that way. And -- but the money is
6 being made by other people. It's a redistribution of
7 wealth that's going to the wrong people. It's like
8 paying -- your pizza truck driver's taking all the
9 money, and the pizza maker's not making it, you know?
10 It's like, you know -- it's like how are you going to
11 have good pizza if the truck driver -- his ad is on
12 the side of his van, and it's like, ooh, let me give
13 you a free pizza. It's not -- and you know, in five,
14 ten years, it's going to, you know, disappear.
15 MS. CHARLESWORTH: Thank you. Mr. Ellerd.
16 MR. ELLERD: I look around the table, and
17 everybody here -- should I use this one? Is it on?
18 MS. CHARLESWORTH: Mm-hmm.
19 MR. ELLERD: Yes, I guess so -- and
20 everybody here is representing some group. They
21 represent a law firm. They represent an organization
22 of some kind, whether it's studio or whether it's

1 internet technology based, or they -- I'm just me. I
2 put graduate student on here because I have to put
3 something, but I'm not established in the business or
4 anything else of that nature. I'm just a citizen very
5 concerned about these kind of debates and whether
6 they'll cut me off from being able to engage in the
7 cultural debate going around.
8 I've talked earlier about the Content ID
9 system at YouTube, but also at Vimeo, at Vevo, at
10 other systems as well. And I've sat here and listened
11 to guys like the man at Paramount say that, well,
12 that's not what we're after; we're not after you guys;
13 that's not happening; you're not getting fair-use
14 claims. The only fair-use claim I actually have at
15 the moment is from Paramount, and they haven't
16 answered yet back on this week. I contested about 20
17 other claims on about a half a dozen videos I've made,
18 and I've won all except for two, and those two were
19 questionable enough that on my own judgment I said,
20 yeah, okay, I'll take those down. I think I could win
21 a fight on that, but I'm not. The other times, even
22 the companies, after a claim first, ask questions

1 later policy, would renege. So in my experience, the
2 real effect of the DMCA laws on such fair-use
3 arguments is about nine to one.
4 MS. CHARLESWORTH: Well, but --
5 MR. ELLERD: Out of every ten,
6 MS. CHARLESWORTH: From what I hear --
7 MR. ELLERD: -- only one of
8 MS. CHARLESWORTH: Sorry.
9 MR. ELLERD: -- even by their standards.
10 MS. CHARLESWORTH: From what I hear you
11 saying, though, you were using the Content ID dispute
12 resolution process. Is that correct?
13 MR. ELLERD: Yes.
14 MS. CHARLESWORTH: And so a couple times
15 you've withdrawn your counter-notice or whatever --
16 the counter-claim -- and a number of other times, the
17 copyright owner has withdrawn their claim.
18 MR. ELLERD: It's -- there seems to be some
19 misunderstanding about how the system works. Would
20 you like me to outline it from the user perspective?
21
22

1 MS. CHARLESWORTH: No, I think I understand.
2 I mean, if there's a dispute -- in other words, if the
3 -- if it gets blocked, it comes to you and you can --
4 MR. ELLERD: A plain infringement comes to
5 me. I then appeal that to them. They then decide
6 whether the appeal is valid or not. If it comes back
7 and they think it's not valid -- and there's no
8 incentive for them to think it's valid, I then have to
9 appeal -- basically counter-appeal that. Now they
10 decide if it's real or not. If it's real enough, we
11 send you an actual DMCA takedown notice. There seems
12 to have been an effort today to limit the Content ID
13 as something that's not actually part of the DMCA, but
14 it is. In practical de facto effect, it very much is.
15 It's almost the same exact process; it's just a
16 preliminary process before you get to the other one,
17 and it's created a ridiculous sense that makes you a
18 criminal immediately in the minds of the uploader.
19 This is not -- I don't disagree with taking
20 down piracy sites that do full music, that do full
21 movies, etc. But somewhere there's still got to be a
22 place for us to use our fair-use rights. These are

1 not just merely affirmative defenses. I've heard that
2 said earlier today. Lenz v. Universal is quite clear,
3 and it's a matter that's been under debate for, you
4 know, a century and a half. There are certainly
5 documents from the copyright studies themselves.
6 Going back through that century, they've
7 always affirmed that fair use is both a defense and an
8 affirmative right given in the case law and the
9 understanding of free speech. So I know I do things
10 properly. I've been verified by many of the companies
11 that sit up here and say we're not affecting you at
12 all. But they do it through third-party companies to
13 give themselves plausible deniability. It's a whole
14 other business model set up under the DMCA, just like
15 copyright trolling, which has also been mentioned
16 earlier, although maybe not in that terminology.
17 MS. CHARLESWORTH: But I just -- and I want
18 to move on, but just so the record is clear, in a
19 number of instances you asserted your fair-use rights
20 and the copyright owner did not follow through with an
21 actual DMCA notice, so your work was reposted. Is
22 that correct?

1 MR. ELLERD: Right.
2 MS. CHARLESWORTH: Okay, thank you.
3 MR. ELLERD: Specifically, they would
4 monetize it. It's not like my videos are making any
5 money in the first place, but there is principle
6 involved here. And the principle is that this
7 shouldn't be happening in the first place, not outside
8 of a proper legal jurisdiction. And I do not think
9 simply giving a claim first, ask questions policy in
10 the hands of anybody is a legitimate adjudication
11 process.
12 MS. TEMPLE CLAGGETT: Okay. Mr. Green.
13 MR. GREEN: I had this conversation with my
14 wife a couple nights ago, and I said could you name me
15 one activity that you engage in that doesn't implicate
16 in some way an online service, and she thought about
17 it for a moment, she goes, sleep. And I held up my
18 Microsoft band which tracks my sleeping and posts it
19 to the cloud, and she rolled her eyes. But I want us
20 to think about that for just a moment. My trip down
21 here to come to the round table implicated no less
22 than 12 online services in the last 24 hours. I went

1 online to book a flight, to search for restaurants, to
2 book a hotel. I Skyped my wife last night, and my
3 kids. I posted some photos to Facebook. I mean, I
4 could go on. I went to a chat group to talk about a
5 hobby that I'm interested in. I shared a posting with
6 one of my colleagues here on the table here that has
7 the same interests that I do. That's the world that
8 we live in.
9 I'm tired of talking about 1998 because we
10 live in 2018, and we shouldn't be looking backwards 20
11 years. We need to be looking forward 20 years.
12 Businesses, governments -- I mean, the entire
13 ecosystem as we know it is moving online. That's all
14 of us. That's how we have to view the context of the
15 topics that we're talking about today. That's not to
16 minimize the impact of really critical issues like
17 piracy, but we have to put them into their
18 perspective. We have to look at the totality of
19 online conduct, which is by and large legitimate, and
20 we have to focus on real solutions to the real
21 problems that we've heard about today.
22

1 We've got to be good digital citizens, and
2 we've got to move beyond the discussions that we've
3 been having, including in the last panel. If we're
4 still having a discussion about what the statute means
5 -- if we're still having round tables on what a proper
6 notice should look like 18 years after the passage of
7 the statute -- 512 isn't broken, but our digital
8 citizenship needs a refresh and review. I'm excited
9 tomorrow to talk about voluntary measures. I'm
10 excited to demonstrate the companies -- the many
11 companies on the rightsholders side and on the ISP
12 side that are putting their heads together, that are
13 putting their engineers together, and they're acting
14 like good responsible digital citizens to solve very
15 real and very clear problems.
16 And I've heard some new ones in the last
17 round tables that are acutely impacting individual
18 rightsholders that we need to put our heads together
19 and solve and resolve. That's the discussion that I
20 want to have. There's one discussion we're not
21 having, and it's not on any of these round tables.
22 We're not having that enforcement discussion. There's

1 a disproportionate number of bad actors -- of rogue
2 actors that don't exist inside of the 512 regime.
3 We're not having a discussion about what to do about
4 them. They inflict not only harm on rightsholders;
5 they inflict responsibilities, obligations, and severe
6 impacts and resources on legitimate services,
7 including Microsoft. That's the digital citizenship
8 discussion that we need to be having, and I welcome
9 anyone at these round tables to engage in those kinds
10 of discussions.
11 MS. CHARLESWORTH: Thank you, Mr. Green.
12 Ms. Keller.
13 MS. KELLER: Yeah, I want to talk a little
14 about scope in the sense of who counts as a 512(a)-(d)
15 protected entity. Looking at some of the submissions
16 for this process, I saw discussion of active and
17 passive intermediaries as a relevant consideration for
18 that. And that gives me the willies because that is
19 the distinction that is drawn a lot in the case law in
20 Europe under the E-Commerce Directive. And it leads
21 to outcomes that are, I think, very strange as a
22 technical matter, including taking away the safe

1 harbor because an entity indexes hosted content and
2 makes it searchable, taking away a safe harbor because
3 they run advertisements, taking away a safe harbor
4 because they suggest related content, and so forth.
5 I don't think any of us realistically would
6 say that those features, which are standard in
7 contemporary platforms, and are expected by users, and
8 are a big part of the foundation of how we all use the
9 internet to communicate now -- I don't think anybody
10 would say that those are reasonable grounds to exclude
11 an intermediary from the safe harbor. So I hope we
12 are not somehow on the verge of importing that into
13 the DMCA discussion. I think what the active-passive
14 distinction is trying to get at is this question does
15 the intermediary somehow engage with the content in a
16 way that ought to make it responsible for it. And
17 those questions in the DMCA I think are addressed
18 through the knowledge and red flag provisions and
19 through the right and ability to control provisions.
20 And we should keep that question there and not let
21 there be this seep into the scope of the safe harbor
22 potentially being undermined as a technical matter.

1 MS. CHARLESWORTH: Thank you. Mr. Hartline.
2 MR. HARTLINE: Yeah, so I think that the
3 broad scope of the activities that are protected under
4 the safe harbors lead to a situation of unfair
5 competition. So you have sites that allow anonymous
6 uploads. They manipulate content by transcoding.
7 They arrange the content. They make it searchable.
8 They put their ads next to it. They even pay users
9 for uploads. So they become distribution hubs for
10 user-generated content that act as total substitutes
11 for licensed sites. So under the common law, these
12 sites would be infringing, probably even direct
13 infringers, because they have so much volitional
14 conduct.
15 And the point of the DMCA was not to grant
16 immunity to service providers this broadly. It was to
17 codify the case law -- cases like Netcom. So the
18 source of the problem are these improper legal
19 standards that we talked about on the last session,
20 red flag knowledge, right and ability to control,
21 direct financial benefit, repeat infringers,
22 representative lists. All these things are being

1 interpreted in the wrong way, and so you lead to these
2 situations where you have these UGC sites that force
3 copyright owners to compete with themselves. And so
4 these sites that are supposed to be cooperating with
5 copyright owners are, in fact, directly competing with
6 them.
7 MS. CHARLESWORTH: Okay, thank you. I think
8 we're up to Mr. Lamel.
9 MR. LAMEL: Thank you. I think I win the
10 record of sitting through the longest amount of
11 roundtable time without actually testifying since I've
12 been here since one in New York.
13 MS. CHARLESWORTH: Now's your moment.
14 MR. LAMEL: And I'm going to actually talk
15 about the safe harbors and the role that the safe
16 harbors play in promoting creativity in a way that we
17 haven't heard, with the exception of one YouTube
18 creator who testified in New York. I'm going to name
19 some names, and I think they're names that are going
20 to be names that most people sitting at this dais
21 don't know, names like Lilly Singh, and Rhett and
22 Link, and Michelle Phan. These are people who are

1 creators, and they are creating original content
2 online and posting it online, and making a lot of
3 money, okay? -- and have millions of people who are
4 following them and watching them almost daily.
5 And this idea that somehow the internet from
6 a creativity perspective is piracy and cat videos is -
7 - I think that's probably 2005. But that's not where
8 the internet is today. And unfortunately, I think,
9 because so many of the people are consuming this
10 content are under the age of 25, we don't necessarily
11 recognize it as -- I mean, I'm probably one of the
12 younger people at this table, and I'm 40. So I get to
13 say I'm not a millennial. But how the millennial
14 generation is consuming content, what types of content
15 they're choosing to choose -- it's not just piracy.
16 It's not just illegally downloading things. As a
17 matter of fact, I see illegal downloading as a gen-X
18 thing because of Napster more than I see it as a
19 millennial issue. They are watching and consuming
20 original internet-only created content every day, and
21 I just want to make sure that that gets on the record
22 at these proceedings.

1 MR. CHARLESWORTH: Okay. Mr. Marks.
2 MR. MARKS: Well, I think I beat you by one
3 person because I sat through all of New York, and I
4 haven't talked yet today so -- two minutes early. I
5 agree with some of the comments that have been made
6 today about not focusing so much on interpretations of
7 Congressional intent or statutory provisions. And I'd
8 rather, for my comments, focus on what's actually
9 happening in the market consistent with the panel
10 title about the impact of the safe harbors and
11 specifically the significant economic advantage that
12 we believe is provided by the safe harbors over direct
13 competitors.
14 In our view, the safe harbors have turned
15 into, for some, a legally sanctioned subsidy. This
16 subsidy is what accounts for the disparity between
17 rates that are paid by companies like YouTube and
18 other on-demand streaming services. The impact is
19 more than the difference between what a YouTube or a
20 company like it would've paid, and what they would've
21 paid in the market and what they actually pay. It
22 goes far beyond that because, let's face it, a

1 competitor of that service will not pay the market
2 rate if its competitor has a subsidy. And the knock-
3 on effect carries even further into the music industry
4 because of statutory licenses. The CRB sets rates for
5 services like Pandora and it's looking at rates for
6 other services. Those rates are lower because of the
7 safe harbors and then, therefore, the rates that are
8 set under the compulsory license is lower. And you
9 have this cascading affect that results in literally
10 billions of dollars that are lost.
11 And the numbers are startling. We've, you
12 know, talked a lot about how much video services pay.
13 They paid $227 million in 2015. That's not just
14 YouTube. Actually, YouTube is just a part of that.
15 YouTube is smaller than that. And whether it's
16 wholesale or retail, it's really irrelevant.
17 The absurdity of that number being half of
18 what vinyl is speaks for itself. And the fact that
19 worldwide 900 million people that operate under safe
20 harbor platforms have generated $634 million is also
21 an indictment of this law that we're talking about.
22

1 In practice, we've heard how a system works.
2 You have a platform that uses the safe harbor to build
3 an audience and then knowing that the notice and
4 takedown doesn't keep the content down, it gets a lot
5 of users and then it leverages that situation to go to
6 a rightsholder potentially to get a below-market
7 license. And I haven't even mentioned pure piracy
8 sites or short-term profiteering that goes on when
9 certain companies get into the game knowing that they
10 can game the system for four to five years and then
11 before they're shut down àla Grooveshark.
12 The New York roundtables started with a
13 remark about A Tale of Two Cities. And while it's
14 certainly true with respect to opinions about what
15 isn't working, I would say there appears to be near
16 consensus that there are, in fact, problems with the
17 current system. That is, everybody that I've heard up
18 here on any side has been talking about problems.
19 Some people may say, well, we shouldn't fix anything.
20 But they're still talking about a lot of problems that
21 exist. And I would echo the comments of my colleague
22 earlier today and those others who said we're willing

1 to have a dialogue to talk about all of these
2 problems, not just the ones that we've identified or
3 another person's identified but everything. And that
4 kind of meaningful dialogue I think is owed to rights
5 owners, to ISPs, to consumers, to everybody in the
6 ecosystem.
7 MS. CHARLESWORTH: Thank you. Mr. Masnick?
8 MR. MASNICK: I'm going to try and go
9 quickly through a few different perspectives that I
10 have that I think haven't necessarily been covered
11 today that well.
12 First off, I'm an independent content
13 creator myself. And I need to question a little bit
14 of the framing of some of this about content creators
15 against safe harbors.
16 I make my living being able to create
17 content and to deliver it online. Without the DMCA
18 safe harbors I would not be doing that. It's
19 difficult to overstate how important the safe harbors
20 have been to me personally. I have written -- been
21 sent bogus -- or had my hosting company receive bogus
22 DMCA notices trying to take down things that I've

1 said. I rely on many platforms that simply would not
2 exist absent these strong safe harbors.
3 We post videos to YouTube, images to Image
4 Air, podcasts to SoundCloud, messages and content to
5 Facebook, Twitter and many more. Without the
6 protections of the safe harbor, many of these sites
7 likely would not exist or it would be very difficult
8 for an independent creator like myself to use them.
9 I should note that I'm also a small platform
10 provider in that our site hosts comments. And we have
11 received DMCA notices and other threats about content
12 on the site regularly and we would not be able to
13 handle it if we had to face legal consequences for
14 that. We are not large. We have no legal budget to
15 deal with the legal threats that we are not protected
16 from by safe harbors.
17 So please be extremely careful about making
18 changes to these safe harbors. One may think that it
19 will serve the interest of creators. The opposite may
20 very well be true.
21 Research that we recently released showed
22 that the best way to reduce copyright infringement

1 over and over again was to enable more innovation in
2 the marketplace providing more legitimate services and
3 more options and more business models. Removing safe
4 harbors creates the opposite effect limiting the
5 innovation, providing more market power to the few
6 large players who can actually handle those kinds of
7 legal threats. This will not be good for creators; it
8 will not be good for innovation; it will not be good
9 for the economy; and it will not be good for the
10 public. Thanks.
11 MS. CHARLESWORTH: Thank you. Mr. Passman?
12 MR. PASSMAN: Yeah. I want to use an
13 analogy that I acknowledge upfront is not perfect but
14 I think it makes the point.
15 Suppose I have a swap meet and there's 500
16 booths and I get a call from the local church that in
17 Booth 27 they're selling cocaine. So I kick out the
18 tenant. And then the next day I get a call that in
19 Booth 30 they're selling cocaine. So I kick that
20 tenant out. And then I get a call that in Booth 47
21 they're selling cocaine. And I kick them out. And
22 this goes on for six months, every day.

1 At some point am I not guilty of being
2 involved in selling cocaine and, at some point, isn't
3 the public aware that this is a place to come to get
4 cocaine? The point is that I think the DMCA safe
5 harbor was intended to protect relatively innocent
6 infringers -- an example, like a news stand that's
7 selling a Time Magazine with an infringing article in
8 it -- not to build multibillion dollar businesses by
9 using the DMCA to take an advantage in the
10 marketplace, as Steve has already said. The truth in
11 the marketplace is that the deals for music streaming
12 services -- which can essentially be duplicated if
13 you're taking raw material and continually putting it
14 up, it's continually available -- can be duplicated
15 for a lesser fee which creates a disparity in the
16 marketplace, an unfair advantage and the ability, as I
17 said, that I don't think was the intent to build
18 multibillion dollar businesses based on a competitive
19 advantage.
20 MS. CHARLESWORTH: Thank you. Mr. Taplin.
21 MR. TAPLIN: I want to address your real
22 point of the human cost of these things. When I was a

1 young man just out of Princeton, I went to work for a
2 group called The Band. And a singer named Levon Helm,
3 who was the drummer and recorded a famous song called
4 The Weight.
5 And for many, many years, long after the
6 band stopped recording, Levon earned a good $100,000 a
7 year from record royalties. And when the CD came in,
8 that increased.
9 And in 2001, that just stopped. And then in
10 2002, he got throat cancer and he was unable to make a
11 living and had to struggle to pay his medical bills.
12 A lot of us chipped money in to help him, but that
13 went away. And when he died a couple of years ago, we
14 had to have a benefit concert to have his wife keep
15 their house. So that's the human cost of what this
16 tsunami has done.
17 Now, you can go on YouTube today and there
18 are 10 million views of The Weight, the song that
19 Levon sung, on YouTube. But he never made any money
20 off that. And so this is the problem with the system.
21 East Bay Ray said there's been a
22 reallocation of revenue and I believe it's on the

1 order of $50 billion a year from content owners and
2 creators to the owners of monopoly platforms, like
3 Google, that pay for Mr. Masnick's institute. And
4 that's got to stop. That's all I can say.
5 MS. CHARLESWORTH: Mr. Sedlik?
6 MR. SEDLIK: Thank you. Well, you know that
7 myth that the internet is made up of piracy and cat
8 videos? It's false, because those cat videos are
9 actually pirated. So it's actually all made up of
10 piracy.
11 (Laughter)
12 MR. SEDLIK: The American Photographic
13 Artists and the Digital Media Licensing Association
14 are two organizations in the PLUS Coalition and asked
15 me to speak on their behalf here today.
16 We actually have publishers and ad agencies
17 and museums and libraries and the full group of
18 stakeholders that either create or distribute or use
19 or preserve visual works. But these two organizations
20 asked me to bring some comments here today.
21 In the statute it says that the infringement
22 that the statute is intended to address is "by reason

1 of storage at the direction of the user." And we
2 don't think that "storage" was meant to indicate the
3 manufacturer of hard goods with the uploaded works on
4 them, or the making of derivative works and then
5 putting them on hard goods, the selling of ads
6 associated with these works that are uploaded, the
7 gathering of commercial marketing and advertising
8 information from the visits to the site through
9 traffic. We don't think an OSP who is engaged in
10 these activities should be immune from liability for
11 commercial exploitation on things like mugs and
12 posters and calendars and baby bibs and T-shirts.
13 So we would suggest that this word
14 "storage," even though there is some case law on this
15 -- of course we all know -- we would think that the
16 more appropriate word there would be "displayed."
17 In terms of the impact on licensing, without
18 the takedown and stay-down, we have conflicting usages
19 and competing usages and artists that are robbed of
20 their exclusive rights. And they have a lost the
21 opportunity to benefit from their exclusive rights for
22

1 a limited time. And this robs them or, let's say,
2 removes their incentive to create.
3 MS. CHARLESWORTH: Thank you. Ms. Schrantz?
4 MS. SCHRANTZ: Thank you. I'll
5 begin by saying that the companies that our
6 association represents are both creators and
7 distributors and platforms. They have Golden Globes
8 and they also distribute content. They have both the
9 sending and receiving perspective here, and so
10 dividing it into both for the benefits for the
11 internet and benefits for creators, the internet's
12 scale and diversity and growth I don't think has been
13 disputed here today. But I will say that there is a
14 reason the United States is home to the most creative,
15 innovative industries in the world and that is because
16 of smart decisions like section 512 and Section 230
17 that allowed that to happen.
18 It is now the great American export of the
19 21st century, 6 percent of GDP in 2014 or $967
20 billion. Internet platforms have had tremendous
21 employment benefits both by creating, I believe, over
22 12 million jobs but by enhancing efficiencies and

1 traditional industries and lowering barriers to entry
2 for small and independent creators, which leads me to
3 the second category, the benefit for creators, which
4 I'll say in three short points are that platforms
5 provide unprecedented ways for both content creation
6 and consumption, opening global markets to even the
7 smallest and most independent of creators.
8 Our platforms host millions of independent
9 artists who release music, books, videos, sell goods,
10 all things that they would not be able to do but for
11 the platforms that exist under 512. Secondly in
12 benefits to creators, there's been a growth overall in
13 the creative industries, movies, music, books. Mr.
14 Masnick has several studies out that include
15 statistics on that that I believe are cited in our
16 written comments.
17 Third, and this has been touched in a couple
18 of ways, the DMCA has reduced infringement. Just a
19 few years ago, complaints about BitTorrent platforms
20 accounting for 50 percent of traffic in the U.S. has
21 largely been replaced by platforms like Netflix and
22 YouTube which are now over 50 percent of prime viewing

1 traffic. BitTorrent's now in the single digits.
2 Studies have also indicated that
3 introduction of lawful online video and music
4 platforms that exist because of section 512 is
5 followed by reductions in online infringement by 50 to
6 80 percent in many cases.
7 MS. CHARLESWORTH: I just have a follow on
8 question. You're talking about the export, the
9 internet as an exported service or good. Are you
10 talking about the actual just conductivity or are you
11 talking about the content on those sites?
12 MS. SCHRANTZ: I used that broadly to
13 include everything. There's a reason that these are
14 critical pieces of trade negotiations today and that's
15 because when internet platforms expand globally and
16 operate in global markets, we see tremendous growth
17 here at home in entertainment industries and internet
18 industries and all of the above.
19 MS. CHARLESWORTH: So some of the value
20 that's being exported is creative content then, do you
21 agree with that? Am I understanding that correctly?
22 MS. SCHRANTZ: In terms of global market?

1 MS. CHARLESWORTH: Yeah.
2 MS. SCHRANTZ: The access to global markets
3 is tremendous. Now, an independent creator can upload
4 a video in a matter of seconds and make a living by
5 accessing audiences in a hundred countries. That's
6 incredible. That could not have been imagined when my
7 parents were my age and that benefit cannot be, I
8 think, overstated enough.
9 MS CHARLESWORTH: But it also includes
10 commercially released content, correct? In other
11 words, I mean, what we're hearing from the movie
12 studios, the record labels, that's also part of that
13 number in terms of the value that's being exported --
14 their content.
15 MS. SCHRANTZ: I'm talking about legal
16 content and I'm also I think -- I think there's two
17 parts. One is the growth in industries in legal
18 content. The second part of my point was that by
19 growing that legal content that is how we are best
20 addressing infringement. I believe Mr. Masnick
21 referenced a recent study and the numbers I just gave
22 over the comparison of BitTorrent traffic over time

1 and another study that looked at video and music
2 platforms is that by growing those lawful and legal
3 services that are paying creators and growing that,
4 not only are we enhancing their ability to make a
5 living and grow, but we're decreasing infringement
6 here in the United States. So there's dual benefits.
7 MS. CHARLESWORTH: So how do you separate
8 out -- when you're doing those numbers, how are you
9 separating out the legal content versus content that's
10 infringing?
11 MS. SCHRANTZ: Which numbers?
12 MS. CHARLESWORTH: Well, again, you cited a
13 very large number. I think it was 600 billion, I
14 can't remember. In your opening remark, what was --
15 MS. SCHRANTZ: In terms of percentage of the
16 GDP?
17 MS. CHARLESWORTH: Yeah.
18 MS. SCHRANTZ: The methodology for that, I
19 mean, frankly would probably take me till 4:45 to go
20 through, but I'm happy to follow up with the study
21 itself. And I believe it is cited in our written
22 comments what internet industries includes. But that

1 is a wide number that casts a wide net in terms of
2 what internet industries are.
3 MS. CHARLESWORTH: Because I think one of
4 the concerns or questions that's been raised is that
5 some of that value is value that's -- I think we heard
6 it over here -- is being driven by creators whose work
7 is up there, maybe not by choice but is either being
8 constantly replaced or reposted. And so the question
9 is, when you look at those numbers, is there a way to
10 break out the numbers from licensed content or content
11 that's affirmatively placed up there from content
12 that's up there as a result of not being able to take
13 it down?
14 MS. SCHRANTZ: I think the more kind of
15 fundamental piece of that is that this wouldn't exist
16 at all without the DMCA, that the legal content and
17 growth and in internet industries, in traditional
18 industries, in entertainment industries that has
19 exploded because of the internet would not be possible
20 without this law.
21 And so when we look at what that includes,
22 we can break it down in many different ways, but my

1 point in citing that number is that that number goes
2 to show how critical the DMCA has been for our
3 economy, both as a country but also for individuals,
4 for platforms, for creators who are all benefitting
5 from this law.
6 MS. CHARLESWORTH: Okay. Thank you. Ms.
7 Valentina?
8 MS. VALENTINA: Yes. We'll have a more
9 fulsome response to some of those studies and things
10 as I don't have all the data at hand. But I will say
11 to the extent that there has been any decrease in
12 peer-to-peer, there also has been an alarming increase
13 in streaming, piracy.
14 And also, I can say that anecdotally, I
15 mean, there's a lot of sort of the legitimate space
16 and that kind of thing. But to the extent that we
17 release legitimate content, the minute we release a
18 high-quality version of our content, it's pirated. So
19 there's a lot of talk about making the legitimate more
20 available and more quickly and earlier and usurping
21 those windows, but then that just means we have a more
22 perfect pirated copy out there earlier, so that's not

1 the response to that there.

2 But I do want to make a point that has been

3 made to some extent already but I want to make it a

4 little differently and I've got to go back in time, I

5 apologize. But going back to the safe harbors and the

6 functions that they were intended to protect and they

7 were sort of passive-type functions, so these

8 transitory digital network communications and cache

9 copies by legitimate service providers, to the extent

10 that making a copy would be an infringement but you

11 would be immune from damages liability if you

12 fulfilled all those requirements.

13 But what's happened is that the safe harbors

14 haven't been applied to specific functions. They've

15 been applied to entities -- and we've heard this -- to

16 service providers and all the functions that they

17 provide. So it's not just storage anymore. It's

18 streaming. It's streaming copyrighted content. It's

19 allowing for downloading of copyrighted content. It's

20 transmitting copyrighted content to mobile and other

21 devices. It's allowing unlimited downloads or streams

22 for a subscription. And these are distribution,

1 public performance and in the business known as video
2 on demand, subscription video on demand, electronic
3 sell through. I mean, this is the way that we license
4 our content. So expanding the safe harbors to these
5 precise functions is threatening the legitimate
6 distribution and licensing of our content and the
7 viability and going forward the marketplace. So that
8 -- I just wanted to focus on that particular point.
9 MS. CHARLESWORTH: Thank you. Mr. Willen?
10 MR. WILLEN: Great. I just want to -- I do
11 want to respond very briefly since we're getting to
12 the storage point which we hadn't heard earlier. So
13 the only way to -- if you're in a confined storage to
14 storage you'd have no -- you'd have essentially a
15 bunch of black boxes.
16 The way that the internet works is that
17 content that is stored on a site has to be seen. In
18 order for it to be seen, a copy has to be transmitted.
19 The idea that somehow the 512(c) safe harbor is
20 limited to storage defined narrowly and exclusively as
21 storage and doesn't extend to making that content
22 available for people to see and interact which has

1 been rejected by the courts, and for good reason, is
2 we'd be left with nothing. We'd be left with a safe
3 harbor that protects no services.
4 MS. CHARLESWORTH: Well, I just wanted to --
5 I mean, there is a line of thought that says, okay,
6 well maybe you should be able to see it, but then
7 there's things like syndication and there's some
8 selectivity in terms of what's being changed or
9 distributed sort of more specifically by the provider.
10 And courts, I think you would probably agree, have
11 been fairly generous in the way they've treated the
12 functions that are covered by section 512.
13 So I think one of the questions is: Is the
14 line drawn in the right place? I don't want to go
15 back to legal standards because we've been chastised
16 that that is not the way forward. But I think there
17 is, you know, there's some room in there in terms of
18 what functions you're talking about.
19 MR. WILLEN: yeah. And again, I would go
20 back to my point that eight federal judges have
21 analyzed that exact question and eight have come out
22 in exactly the same way.

1 MS. CHARLESWORTH: One could be in this very
2 courthouse right now.
3 MR. WILLEN: Some are. The point that I
4 wanted to make just briefly though is that, so we've
5 heard a lot about piracy, and piracy may well be a
6 problem, but there's very little reason to think that
7 -- to lay that problem of piracy in 2016 at the feet
8 of the DMCA. We've heard a lot about Russian sites,
9 peer-to-peer sites, streaming sites, Popcorn Time, all
10 of the -- the range of rouge pirate actors that, to
11 the extent of the Foxes and the Paramounts and the
12 RIAAs of the world have a problem that the problem is
13 a problem with offshore rouge illegitimate sites.
14 MS. CHARLESWORTH: What about search results
15 that take you to those sites? I mean, that's a part,
16 you know, that those are available here in the United
17 States?
18 MR. WILLEN: Well, sure. So I don't think
19 the DMCA is the source of those problems, right? What
20 the DMCA has done, is it has given a safe harbor to a
21 range of legitimate services that provide
22 extraordinarily valuable opportunities. So if we took

1 away the safe harbor, for example, for search, the
2 result would not, simply be perhaps a greater
3 incidence of links to infringing sites being removed.
4 Google is removing links constantly. The result would
5 be that the operation of a search engine would become
6 a crippling and perilous financial enterprise because
7 of the problem of statutory damages that we've already
8 talked about.
9 If, in fact, search engines are liable for
10 links to infringing material, which is a proposition
11 that even aside from the DMCA, I think I would
12 question, so if the law had been allowed to develop, I
13 think we may have well ended up with a regime very
14 much like the DMCA with respect to search engines.
15 But if it didn't and the DMCA were removed, I think
16 what you would see is search engines would never have
17 gotten off the ground. Google would never have been
18 able to operate in the first place because the idea
19 that every time you link to some site that may have
20 infringing material, you are all of a sudden on the
21 hook potentially for $150,000 for every copyrighted
22 work. That is -- it's an impossible way to run a

1 business.

2 MS. CHARLESWORTH: But to make Mr. Bridges'

3 point, I mean, you still have to show ultimately if

4 you're out of the safe harbor that there's -- you

5 know, you're a contributory or somehow a secondary

6 infringer. So that addresses what you're saying. But

7 the question of whether -- whether you should delist a

8 link, isn't that sort of separate -- that's a DMCA

9 question? And whether that can -- whether those links

10 actually do feed or at least feed a piracy problem in

11 the sense that if they weren't there, people couldn't

12 find the content, I mean, easily, at least from the

13 United States?

14 MR. WILLEN: So I think this goes to an

15 absolutely fundamental point which is -- and I think

16 that Mr. Bridges made it in the last panel -- the DMCA

17 is not about the substance of standards for

18 infringement. DMCA is a protection that goes above

19 and beyond whatever those existing regimes are.

20 So if you were to take away the DMCA, you

21 would have to establish infringement, of course. But

22 there's no requirement that the Googles of the world

1 comply with DMCA takedown notices. They're not
2 required to do so.
3 And so from that standpoint, what the
4 notice-and-takedown regime is providing is a benefit
5 to rightsholders that they wouldn't otherwise have in
6 exchange for a benefit to service providers that they
7 wouldn't otherwise have. It is creating an extra
8 judicial mechanism for having allegedly infringing
9 material removed quickly and expeditiously.
10 So if we -- in order for -- so what we've
11 heard a lot today is the idea that it's the DMCA
12 that's responsible for this problem of piracy and, if
13 not for the DMCA, that problem would be solved or
14 materially mitigated and it's that proposition that I
15 want to push back very strongly against certainly in
16 the context of search engines but also in the context
17 of sites like YouTube and user-generated 512(c) sites.
18 So the services that have been protected by
19 the safe harbor are services that are providing
20 legitimate functionality, that have a range of uses
21 that are non-infringing and that indeed are
22 contributing greatly to creativity and innovation. On

1 the other hand, the services that are rouge sites that
2 are dedicated to piracy are continually either not
3 granted safe harbor status or would have no claim to
4 safe harbor status.
5 And so there have been cases where there
6 have been lawsuits against those sites. There are
7 cases where there haven't been. Many of them are
8 offshore and very difficult to go after. I understand
9 that. But the notion that if you took away the DMCA
10 and you took away the protections that the DMCA
11 provides that all of a sudden these problems would be
12 solved is a fantasy.
13 MS. CHARLESWORTH: I don't think that's
14 what's -- I mean, I think we have to move on. But I
15 think that what the suggestion is, at least from the
16 comments that -- a lot of the comments that I read, is
17 that search is a means of, you know, when you go
18 online and you can see a link to an infringing site,
19 that that does promote piracy or at least access to
20 pirated works that then substitute for paid uses and
21 that if the DMCA were, I don't know, fill in the
22 blank, tweaked, enforced differently, interpreted

1 differently, that maybe that problem could be
2 mitigated. I think that's the suggestion.
3 MR. WILLEN: So I guess it depends on what
4 the tweak is. But what the DMCA does, what the
5 benefit that the DMCA confers is a not inconsiderable
6 one. It creates a regime where you as a copyright
7 owner can go and in a standardized and straightforward
8 form, you can identify the links, you can identify the
9 links that you want to have removed. And the service
10 provider, if it wants to keep its safe harbor, removes
11 those links. That's what happens.
12 Now that's not a requirement. No one is
13 forced to do that. That is something that service
14 providers are doing because they want the benefit of
15 the safe harbor. It doesn't mean that by not doing it
16 they would be engaged in infringement.
17 And so the idea -- so it may well be true
18 that there are things that could make the notice-and-
19 takedown regime work better at the margins. I'm not
20 suggesting otherwise. But what I am saying is that
21 the idea that it is the DMCA and the regime that it
22 creates that fosters, encourages, enables and

1 facilitates the piracy that, let's just pause it, may
2 be making certain creative people have a more
3 difficult time making a living, I just don't think
4 it's borne out by the evidence or by the way that the
5 statute works on the ground.
6 MS. CHARLESWORTH: I'm sorry.
7 MS. TEMPLE CLAGGETT: Yeah, one quick follow
8 up question on something that you said because we
9 didn't get a chance to discuss it in the prior panel,
10 which I would have asked, but since you mentioned it
11 here, I will ask it now. And you mentioned that part
12 of the problem is actually rouge websites that are
13 located offshore and that the DMCA is just not
14 designed to address this particular issue, but there
15 is a provision in the DMCA 512(j) that does allow for
16 injunctions to block access to sites that are
17 overseas. Why, or do you believe that that provision
18 is underutilized, why is it not being utilized, why is
19 that not being potentially an effective way to go
20 after the rouge websites? Different people have
21 different opinions as to why that is, but I'd like to
22 hear it from you as well.

1 MR. WILLEN: So I mean, I think that 512(j)
2 is probably, to some extent, underutilized. It is --
3 you know, when you're talking about lawsuits against
4 offshore entities, you're getting into some very just
5 procedurally difficult territory.
6 But, you know, it is unquestionably and we
7 have Elsevier next to me. It's something that can be
8 done. You can absolutely go and get default
9 judgments. I know from experience. You can get
10 default judgments against sites that are operating
11 offshore that you contend are engaged in mass piracy.
12 Now, often they are judgment-proof, but you can get
13 injunctive relief against them that has value. I
14 don't want to step on your territory. You can speak
15 about it more directly than I can.
16 But I -- so there are legal tools that exist
17 that our legal system makes available to rightsholder
18 to go after the true rogue sites. My point, and I
19 think the point for this panel, is that that is not an
20 issue that is in any way impacted or made more
21 difficult by the DMCA. If you're talking about a
22 512(j) injunction, you'd really be talking about a

1 512(j) injunction against a legitimate service, a
2 Google of the world, a site that otherwise would
3 qualify for the safe harbor which is why the
4 injunction would be limited to what 512(j) offers.
5 For sites that are not protected or don't
6 show up to defend themselves, they're not going to be
7 limited by a 512(j) and you can get much, much broader
8 injunctions as Mr. Doda knows well.
9 MS. CHARLESWORTH: Okay. So we're going to
10 -- whoever has their sign up now, you can keep it up.
11 But that's -- and then we're going to have -- Mr. Doda
12 is going to have his say. And then everyone else I
13 think we can have about 30 seconds for whoever has
14 raised their sign as of now. And then we will be
15 kicked out and we'll resume again tomorrow. So, Mr.
16 Doda.
17 MR. DODA: So I wasn't planning on
18 addressing this but I think it's very useful actually.
19 So I want to get back to your question about what
20 search engines can do.
21 One question I have is if you're a
22 rightsholder and you bring a lawsuit against massive

1 infringement and you get a judgment and a federal
2 court has decided that it's fully rogue, fully
3 illegal, Pirate Bay, some others that I'm dealing
4 with, and as part of that order there is an
5 injunction, and apart from the DMCA, in other
6 contexts, when injunctions are contemned you often
7 have other third parties that may be, either
8 consciously or not, assisting those sites. And those
9 injunctions have in other contexts been regularly
10 enforced that require those third parties to stop
11 services.
12 And so, you know, with those extreme
13 circumstances, I sometimes wonder why a search engine
14 wouldn't stop serving up that site, the Pirate Bay.
15 So that's one point that I think goes to your
16 question. And I'm talking about, you know, that's --
17 there's Federal Rules and other things that are, I
18 think, useful in that analysis.
19 And I think trying to then shoehorn that
20 into a 512 and saying, well, wait. You know, the
21 analysis of that and whether there's respect for a
22 federal court order has to go through a 512 analysis,

1 I think is kind of skewed.
2 In terms of 512(j), I wasn't planning on
3 addressing that either, but I -- in terms of the scope
4 of the statute in general, I mean, certainly we
5 recognize there's a need for flexibility in terms of
6 the sites and activities that are covered. But we
7 think it's clear that neutral service providers were
8 what were intended. And we're most concerned about
9 the distinction between good faith and bad faith
10 sites. And I want to go back to Mr. Hartline's
11 comment very quickly that, you know, certainly the
12 site's practices that he mentioned are indicative of
13 distribution hubs of wholly illegal content and that's
14 it. They're not sites where it's, you know, an owner
15 of the site distributing content or true user content,
16 all the things that -- there's no one in this room, I
17 think that, you know, fits the bill of the structural
18 infringers. But I do think that 512(j) can be applied
19 in ways that address structural infringers without --
20 establishing common law liability -- but without
21 addressing the safe harbor as to money damages.
22 That's an exception and I think 512(j) can be used

1 effectively to assist in those types of situations.
2 MS. CHARLESWORTH: Thank you, Mr. Doda.
3 Okay. We're really sticking to 30 seconds because I
4 don't want the federal marshals in here. So, Mr.
5 Bridges.
6 MR. BRIDGES: Sure. Let's go to this
7 active/passive distinction, which absolutely did not
8 exist at the time of the DMCA in 1998. What was the
9 quintessential 512(d) information location tool back
10 then? The quintessential one? Yahoo directory. How
11 did it make the directory? It wasn't the spider or
12 bot based search engine. It had rooms of college kids
13 surfing the internet and manually creating lists of
14 places to go. That was totally active and it was
15 quintessentially 512(d).
16 And then just one last point, in 512(d),
17 sorry, there is no liability under legal standards for
18 a search engine just to link to something. I mean,
19 Perfect 10 v. Amazon.com showed that there's no direct
20 infringement. Flava Works wasn't a search engine
21 case, but Flava Works v. Gunterr in the 7th Circuit
22 made it clear that linking to something isn't a

1 contributory infringement. What the copyright holders
2 have gotten from the DMCA in 512(d) is a system that
3 gives them relief that the law would not give them.
4 MS. CHARLESWORTH: Okay. East Bay Ray?
5 MR. RAY: Yeah. Is this on?
6 MS. CHARLESWORTH: Yes. Very --
7 MR. RAY: Search engine issue, I held this
8 up which is like a site with ads on it. But also when
9 you go on the search engine like Google or Yahoo,
10 they'll have links to these illegal sites and then
11 they have advertising. And basically this puts them
12 in a moral hazard where they make money with somebody
13 breaking the law.
14 MS. CHARLESWORTH: Thank you. Mr. Green?
15 MR. GREEN: I always smile when I hear about
16 comments about what an ISP should do with really no
17 insight or perspective or data or metrics about what's
18 effective and what will solve the problem. As I
19 mentioned in my earlier comments, we need to get past
20 the cheap policy shots. We need to get past the sort
21 of dialogue about what could or what might work. And
22 we should get focused on real discussions of what does

1 work.

2 It may be that there are causes of action.

3 It may be that there are activities that all different

4 types of ISPs including search engine can do. We've

5 done some of them voluntarily and we're encouraged to

6 learn more about other opportunities that are

7 supported by data and agreed upon by the folks that

8 understand how the systems work to be effective. And

9 I really am excited about tomorrow's discussion on

10 voluntary measures because, frankly, that's where the

11 rubber meets the road.

12 MS. CHARLESWORTH: Thank you, Mr. Green.

13 Mr. Marks.

14 MR. MARKS: Just to respond to the comment

15 earlier about fantasies, I think the only fantasy here

16 would be that there is no impact by 512. I mean,

17 whether it's Grooveshark operating for years under

18 color of the notice-and-takedown systems and the safe

19 harbors or whether it's the distortions in the

20 marketplace that I was talking about earlier that are

21 denying creators fair market value, there is an

22 impact. And all this talk about, well, the piracy

1 problem is overseas and it's not -- it doesn't really
2 have anything to do with the DMCA is just false.
3 MS. CHARLESWORTH: Thank you. Mr. Taplin,
4 it looks like you have the last word.
5 MR. TAPLIN: Ms. Charlesworth, just to try
6 to tease out your notion of are there tweaks to DMCA
7 that might help deal with the real rogue pirate site,
8 I think we might look towards the British Government's
9 Intellectual Property Office, which in 2013 began
10 publishing a what you call infringing website list,
11 which are known infringing websites offshore and
12 everywhere and they have noted that there has been a
13 73 percent decrease in revenue to those websites
14 dealing with what East Bay Ray said. In other words,
15 advertisers have stopped advertising on those sites
16 and a lot of them have gone out of business. And
17 that's potentially something a real -- I mean, I agree
18 with Mr. Green. We've got to deal with real-world
19 things. And one of the cool things that came out
20 today is, I think there is an agreement across the
21 board that full works need to be protected. Yes, we
22 have disagreements on what constitutes fair works.

1 But full works, even the EFF people, tend to believe
2 that full works need to be protected.
3 So to do that, we have to think about ways
4 that you, the Copyright Office, could help people say,
5 okay, this Pirate Bay is an infringing website.
6 That's the only purpose that it has. And then Google
7 could stop linking to that and Google would probably
8 go along with that. You know, and that's how we're
9 going to make a big difference.
10 MS. CHARLESWORTH: Well, thank you. Fred's
11 not in the room, so we'll see what he says tomorrow.
12 Anyway, that's a wrap for today. We'll see many of
13 you, I think, tomorrow at 9 a.m. Thank you very much
14 for your participation.
15
16
17
18
19
20
21
22

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Tracy Sanbrailo, the officer before whom the

3 foregoing proceeding was taken, do hereby certify that

4 the proceedings were recorded by me and thereafter

5 reduced to typewriting under my direction; that said

6 proceedings are a true and accurate record to the best

7 of my knowledge, skills, and ability; that I am

8 neither counsel for, related to, nor employed by any

9 of the parties to the action in which this was taken;

10 and, further, that I am not a relative or employee of

11 any counsel or attorney employed by the parties

12 hereto, nor financially or otherwise interested in the

13 outcome of this action.

14

15

16

17

18 ________________________________

19 Shanalee Gallagher

20 Notary Public in and for the CA

21

22

1 CERTIFICATE OF TRANSCRIBER

2

3 I, Karynn Willman, do hereby certify that this

4 transcript was prepared from audio to the best of my

5 ability.

6

7 I am neither counsel for, related to, nor

8 employed by any of the parties to this action, nor

9 financially or otherwise interested in the outcome of

10 this action.

11

12

13

14

15 05/23/2016 Karynn Willman

16

17

18

19

20

21

22

–

– 106:8 171:9 179:8 183:2 189:1 205:3 206:17,19 210:17 212:1,9 213:17,18 217:8 219:10 220:9,17 222:18,19,20 223:5,7 224:14 225:18 226:15,16 227:5,8 228:5,6,7,9,10,20 229:13,18 231:8,9,10,12 232:4,6,8,13,18 233:2 234:3,8,15 235:13 236:2,8,13,15,19,20 237:3,4,9,10,15,16 238:3,9 239:12,21,22 242:16 244:11,13,16 245:20,21 246:1 256:16,17 258:3 288:11 295:7 296:13 298:15 299:11 300:4,5,6,9 301:7,11,18 302:12 304:11 305:17 307:9,16 311:2,5,12,18,20 313:12 314:12 315:19,21 316:12,13,15,16,17 317:4,13 319:4,18 320:2,3,9 323:12 324:5 329:6,11 330:4 344:14

$

$0.99 120:19
$1 203:18 313:20
$10 196:13
$100,000 337:6
$12 72:22
$15 98:17
$150 73:2
$150,000 61:21 272:5 273:6 351:21
$22,000 143:14
$227 331:13
$4,000 195:20
$5 70:17
$50 338:1
$6 72:22
$60 174:10
$600 124:12
$634 331:20
$72,000 120:19
$967 340:19

“

“a 295:15
“appropriate 296:22 304:22
“by 338:22
“Classic” 267:21
“cooperate 249:13
“dancing 154:11
“displayed.” 339:16
“DMCA 32:6,11,12 74:9
“How 312:22
“identification 257:4,10,18
“if 272:5
“in 295:5 304:11
“information 257:18 304:12
“information” 269:3
“Internet 130:17
“Music 12:22
“notice 255:14
“On” 11:17
“pay 273:5
“Protection 248:19
“red 217:3
“repeat 304:21
“representative 255:21 256:1,5,7 257:17
“storage,” 339:14
“storage” 339:2
“then 272:7
“uniform 258:1
“vigorous 178:17
“we 119:3
“well 313:3
“work” 269:3

”

”J’accuse 291:10

+

+ 1:4,7,10,15

…

… 19:11 98:4 115:15 121:21 122:19 182:6 214:5

0

0 120:5
0.1 173:4
0.33 195:18
05/23/2016 367:15

1

1 5:5 11:4 104:12 109:19 195:12 244:3
1,000 56:3 208:22
1:45 212:7,10
10 46:20 54:14 55:16,18 56:2 72:12 112:6 120:3,4,17 121:22 124:12 125:22 147:21 154:11,13,15,20 158:16,17 190:18 235:9 268:3 271:12,13,15 337:18 361:19
10:30 89:15
10:42 99:21
100 34:16 56:3 66:1,2 96:15 122:16 131:4 271:9
100,000 276:6
104 15:19 183:22
105 5:9
106 295:19
10-day 164:13
10-year 195:11
11 5:5 104:16,18 105:9 195:15
112 235:12
12 1:8 120:17 122:1 322:22 340:22
123movies 168:16
12-minute 104:16
14 301:21
15 41:22 42:4 71:19 104:8 112:6 235:9

150 71:2
15-minute 104:15
16 63:22
17 168:10
18 324:6
19 124:18
1984 126:6
1997 46:8 86:16
1998 32:10 86:16 88:16 157:3 213:8 227:5 239:9 261:11 290:17 294:5 304:7,9 323:9 361:8

2

2 5:9 41:19,21 43:22 73:16 105:12 106:4 111:11
2,000 58:6
20 14:17 27:8 125:22 126:6 168:1,3 195:9 241:19 271:9 318:16 323:10,11
20,000 71:13 120:8
200 71:3
2001 312:17 315:7 337:9
2002 337:10
2005 312:17 329:7
2006 201:22
2009 22:7
2010 317:1
2013 165:17 364:9
2014 124:17 134:22 235:12 340:19
2015 15:17 124:18 315:7 331:13
2016 1:8 168:9 269:2 287:12 350:7
2018 196:14 323:10
20th 91:12 120:3
210 184:1
212 5:13
21st 91:13 290:18 340:19
230 274:12 340:16
24 322:22
24-7 97:19
24-hour 58:7 287:6
25 151:17 329:10
25,000 55:14,15
250th 111:10
26 41:22
26,000 167:15
264 261:14
27 335:17
28 173:7

3

3 5:13 41:20 44:2 111:11 212:7,13
3:40 305:19,20
30 10:6 21:11 61:13,15 133:19 134:13 167:4 271:13,18,20,21 335:19 358:13 361:3
300 55:17 134:21
300,000 270:11
306 5:16
30-minute 10:5
34,000 16:13
38,000 24:20 26:8
388 16:18

4

4 5:16 173:6 306:1
4:45 306:10 344:19
40 133:19 192:12 284:1 329:12
400 235:14 252:12,17 263:8 265:14,15 266:5 269:12
401st 252:18
40s 126:20
45 311:13
47 335:20

5

5 102:15 112:7 306:11
50 131:5 133:20 341:20,22 342:5
500 71:3 252:12 335:15
50s 126:20 269:1
512 1:3 6:21 9:19 17:13 30:6 31:20 32:10,17 33:5 34:18 39:19 41:1,3 44:17,20 45:9 46:3 47:3 56:1 64:5,17 97:6 101:2,3,4 108:8 115:21,22 116:3,6 157:2 182:13 194:4,6 195:6 205:9 208:17 247:7 248:7 249:12 251:13 252:22 253:9 254:10 255:5 288:12 292:9 297:6 309:21 314:5 324:7 325:2 340:16 341:11 342:4 349:12 359:20,22 363:16
512(a 60:7 178:5 255:16,17,19 270:12 278:21 279:5 284:16 285:1 287:22 296:21
512(a)-(d 325:14
512(b 255:18
512(c 228:18 255:19 348:19 353:17
512(c)(3)(a)(ii 257:3
512(c)(a)(ii 256:2 258:12
512(c)(a)(iii 256:4
512(c)-type 178:4
512(d 361:9,15,16 362:2
512(e 286:20
512(f 143:13,17 156:8,10
512(f)is 150:6
512(g 149:17 155:7,11
512(g)counter-notification 138:3
512(h 290:10
512(i 282:2,13
512(j 356:15 357:1,22 358:1,4,7 360:2,18,22
512(m 226:5 238:4 239:12 248:18 249:21 250:7

260:15,16
56 195:13

6

6 340:19
60 120:5 122:18 124:13 131:4 196:5
60,000 168:9
600 344:13
60s 126:21 269:1
673 167:21
68 67:16

7

7 43:2 99:9 195:9,12 241:19
70 21:11 94:20 116:10 120:6 122:18 131:5
70s 126:21
72,000 120:5
73 364:13
75,000 73:15
78 168:2
7th 1:13 361:21

8

8 119:20
80 131:4 136:6 156:19 342:6
80s 126:21
82 79:10
87,000 57:14 67:2

9

9 365:13
9:00 1:9
90 131:4 136:6 168:9
90,000 9:13
900 119:20 331:19
90s 283:8
91 168:4
94103 1:14
95 1:13
97 87:20
98 200:9
99 168:17 313:1
99.9 103:8
999 170:10

A

A&M 246:21
a.m 1:9 365:13
abandoned 23:22
ability 18:9 21:16 31:2 48:21 70:10 90:10 92:5,7 98:14 118:12 127:12 135:3 162:6 218:8 240:14 246:15 280:19 291:2 294:8 306:21 310:16 316:22 326:19 327:20 336:16 344:4 366:7 367:5
able 7:19,22 9:9 10:16 26:10 31:6,16 33:13,15 34:2 38:16 39:7 40:14 43:18 50:21 51:22 52:3 54:17 69:3,4 80:14,22 97:7 98:17 99:19 104:22 105:7,21 127:17 129:11,13 137:3 152:2 154:19 168:1 176:19 185:17 186:1,2,5 193:17 211:17 235:16 236:1 240:7 246:7,8 250:6 291:14 296:17,18 300:21 301:10 302:4 305:11 310:5 312:3,4 315:2 318:6 333:16 334:12 341:10 345:12 349:6 351:18
absence 133:11 244:16,17 292:15
absent 219:22 334:2
absolute 24:17 116:1 193:19 267:8 294:8 299:13
absolutely 64:7 79:13 92:14 129:9,21 162:13 182:22 183:11 207:7,18 256:12 258:1 298:20 299:5,8 352:15 357:8 361:7
absurdity 331:17
abuse 46:15 49:4 50:11,13 58:8,11,15 59:1,5,13 60:16 62:5 83:18 149:2 150:8 157:14 298:18
abused 46:13 57:10
abuses 69:13 183:11 299:18 300:6
abusing 47:13 62:1
abusive 62:2,10 158:8,14,19 189:14,22 203:15 204:8 303:9
Academy 96:16
accept 50:19 196:9 203:19 206:8 279:12
acceptable 263:11
accepted 263:11
accepting 178:18 179:2
access 20:6 49:7,8,18 50:3 80:2,8,17 85:13 136:16 148:2,8 168:22 181:10 219:12 236:4 257:13 277:5 278:19 284:19 287:9,14 288:8,12 289:16 303:6 343:2 354:19 356:16
accessible 114:11
accessing 235:10,13 343:5
accomplish 116:6 174:15 314:10
according 196:14
account 63:3 85:22 121:1 157:20 169:1 270:15 271:17 273:1 280:18 295:16 296:22 298:5 301:3 312:22
accounted 168:2,3,17
accounting 341:20
accounts 63:4 298:1,10 301:1 330:16
accrue 195:2
accuracy 75:15 103:9

accurate 102:19 103:8 272:21 366:6
accusation 296:10 297:17
accusations 170:20,22 197:4 292:10
accused 131:7 172:19 296:4,7
achieve 80:15 111:8
achieved 79:22
achieving 64:18
acknowledge 95:18 172:11 194:18 294:18 335:13
acknowledged 188:4 265:16
across 18:2 104:8 179:8 224:3 275:12 364:20
act 6:21 45:1,3 52:14 178:10 217:17 255:22 261:5 295:18 302:10 327:10
acted 234:10
acting 95:9 117:19 171:8 178:5 180:4,18 286:17 324:13
action 18:17 21:14 271:22 363:2 366:9,13 367:8,10
active 253:12 325:16 361:14
active/passive 361:7
actively 249:3
active-passive 326:13
activities 183:6 306:20 307:4 327:3 339:10 360:6 363:3
activity 41:10,14 184:21 185:4 206:22 217:4 219:19 228:2,13,15 229:12,16,19,21, 22 230:17,19 231:7,9,10 232:17 236:22 242:1 244:14,18,22 250:17 252:12 257:12 259:12 288:22 310:9 314:8 322:15
actor 266:4 294:6
actors 117:16 137:14 172:3 219:5 236:2 293:19 302:10 325:1,2 350:10
acts 178:3 245:5 297:15 300:20
actual 17:19 27:6 53:19 56:14 60:2 83:6 84:4 101:11 131:8 132:4 138:6 141:18 143:13 217:2 220:16,21 229:10,11,15 230:10 231:1 236:7,11,17 238:18,22 239:18 243:20 244:11,13,16,17 247:7 249:18 254:4 256:13 269:2 270:8 271:22 292:16 293:19 298:10 300:10 302:16 320:11 321:21 342:10
actually 9:16 12:11 21:5 27:14 35:21 40:5 41:9,14 45:13 53:20 54:8 58:14 60:12 62:7 65:6 70:19 82:18 83:9,19 84:16 89:10 93:6 102:4 106:9 111:14 112:15 114:10 117:19 118:2,22 123:22 124:19 125:10 130:3 131:9 144:21 145:1,7 152:13 153:13 164:7 168:15 171:20 190:13 191:22 197:4 203:1 205:14 229:8 232:5 235:11 237:10 246:10,13 251:6 256:17 257:16 265:9,14 272:1 275:13 277:20 281:12 284:10,15 288:7 289:11,12 290:9 291:19 294:12 297:3 298:8,12 300:17 301:7,8,10,18 303:5 306:7 311:8 312:17 318:14 320:13 328:11,14 330:8,21 331:14 335:6 338:9,16 352:10 356:12 358:18
acutely 324:17
ad 315:13,15,16,17 317:11 338:16
add 38:21 126:16 251:11
added 31:13
addition 50:13
additional 105:18,22 115:14 223:2 224:2,8 313:15,21
additionally 17:21 18:10 20:4 209:7
address 16:22 20:3 25:15 37:22 52:14 59:4 66:17,20 82:6,8,10 85:6 103:22 109:16 171:14 185:2 190:2 197:2 199:9 234:2,10,14,21 237:21 240:1 253:8 254:10 261:11 270:14 271:22 336:21 338:22 356:14 360:19
addressed 59:7 191:9 247:18 253:16 262:15 294:17 297:16 326:17
addresses 306:16 352:6
addressing 16:8 113:9 146:4 343:20 358:18 360:3,21
Adele 125:11
adequate 156:11,12
adequately 253:16
adjudicate 42:22 129:13 140:22
adjudicated 163:7,13 181:17

282:13 302:14,18
adjudicates 139:6
adjudicating 117:19 129:19 144:19 173:14
adjudication 119:12,13 155:22 180:14 190:22 265:14 277:19 291:18 296:5 297:2,10 299:15 302:9,16 322:10
adjudicator 160:17,21,22 184:19 209:19 211:11
adjudicators 180:4
adjudicatory 180:18
adjust 95:7 189:4 198:18
adjustment 263:1
admin 20:7
administer 217:21
administering 288:2
administrative 216:1
adopt 176:19
adopted 14:18
adopting 297:6
adoption 267:11
AdRev 131:12
ads 120:11,13 327:8 339:5 362:8
adult 219:11
advance 99:17 172:4
advantage 51:10 176:5 330:11 336:9,16,19
adversary 82:17
advertisements 24:12 46:16 326:3
advertisers 364:15
advertising 24:12 247:11,14 339:7 362:11 364:15
advice 12:13 216:5
advise 125:16
advised 26:3
advocacy 2:11 12:6 96:14 308:11
advocate 116:4,13,22
advocated 267:15
advocating 68:19 121:3 154:21
Affairs 6:11 14:4 214:7,10 216:8
affect 98:13 156:3 307:3 331:9
affected 7:3 125:9 162:4 209:9 217:10 254:1 310:1
affecting 75:12 162:6 209:15 311:20 321:11
affects 98:14
affiliation 213:19 307:18
affirmative 226:6 232:19 238:11 321:1,8
affirmatively 224:1 238:7 260:18 261:4 345:11
affirmed 321:7
afford 33:3 55:15 174:18 176:2,8 196:14 242:1 245:20 246:7 286:3
afield 66:18
afoul 280:22 293:12
afraid 63:7 76:9 139:13
afternoon 213:22
afterwards 129:6
against 37:20 41:14 43:12 89:10 95:8 128:2 138:7 155:16 162:1 185:20 226:4 242:19 293:11 299:11 313:19 333:15 353:15 354:6 357:3,10,13 358:1,22
age 2:20 16:14 329:10 343:7
agencies 111:16 272:16 338:16
agent 19:21 158:1 178:3 216:1
agents 269:16 276:7
aggressive 187:12
aggressively 82:21
ago 98:10 124:12 131:16 182:11 185:21 254:17 311:13 322:14 337:13 341:19
agreed 33:4 363:7
agreement 118:10 197:13,14 364:20
agreements 196:10
ahead 123:11 226:15
aid 160:5
aimed 103:1
Aimster 233:15 262:2
Air 334:4
Airlines 315:14
aisle 93:7

À

àla 332:11

A

alarming 346:12
alarms 195:3
Alaskan 315:14
album 90:21 120:2 260:10 312:5
alert 10:4
Alex 2:19 13:19
algorithms 60:21
align 91:10
aligned 26:22
alike 199:17
alive 56:10
allegation 278:3 291:5,8,16
allege 148:21
alleged 207:17 257:9
allegedly 353:8
alleviate 227:16
Alliance 2:8 3:7 13:16 63:22 68:13 69:1 107:10 308:4,9
Alliance's 39:12
allies 195:5

allocation 78:6
allow 9:7,13 94:19 95:3,4,5 155:6,22 205:6 227:18 236:1 242:20 251:6 263:12 286:4 303:20 327:5 356:15
allowed 10:11 33:10 94:16 126:7 280:7 283:22 299:3 310:8 340:17 351:12
allowing 168:21 277:8 347:19,21
allows 95:7 154:20 196:8 274:12,13,14 297:14,15 302:10
alluded 216:14
alone 240:16 256:18 291:5
already 11:17 89:19 99:20,21 122:9 149:18 163:7 167:3,5 198:18 200:14 292:18 311:14 336:10 347:3 351:7
alter 51:18
alternative 40:7 77:3,16 118:9 181:8 237:11
alternatives 46:1 49:18 50:6 103:15 126:4 127:21
am 70:9 96:7,14 107:6,8 108:6,18 131:21 138:4 152:7 189:19 214:17 336:1 342:21 355:20 363:9 366:7,10 367:7
amateurs 73:18
amateur-serious 73:18
amateurs-not-so-serious 73:18
amazing 45:16 46:6
Amazon 4:17 12:2 49:21 71:11 72:13 93:8 94:6,18 96:8 214:1 218:21 219:7
Amazon.com 361:19
ambiguities 305:12
ambiguity 304:11,18,20 305:5
Amendment 150:18 290:9,22
America 2:6 3:10 4:6 14:5 214:8 216:9 309:2 312:21
American 2:13 107:15 155:6 338:12 340:18
amicus 153:9
among 71:16 74:9 76:16 197:8
amount 7:15 16:9 17:16 27:9 34:3 50:20 51:2 55:21 56:4 62:3 84:1 100:14 103:4,19 112:1 117:3 121:4 132:16,17 134:21 149:2 192:5 198:7 211:16 219:17 253:5 291:6 310:6 328:10
amplified 117:13 133:6
amplify 148:12
analog 310:7
analogy 335:13
analysis 230:8 232:13 238:5 243:8 359:18,21,22
analyzed 349:21
analyzing 261:10,14
and/or 44:6
Andrew 2:7 216:3 308:1
and-takedown 29:1
anecdotal 47:1
anecdotally 346:14
anecdote 190:12
anecdotes 59:15,16 60:2,4
angles 208:15
Annemarie 173:2
Annenberg 4:9 109:8 309:9
announce 14:8 307:10 311:12
announcement 203:6
announcing 211:20
annual 102:16
annually 15:17
anonymity 191:6 193:7
anonymous 155:10 157:16,19,22 327:5
answer 67:12 89:3 94:9 99:4 132:4 198:12,13 217:13 223:19 227:4 230:6,17 250:15
answered 204:22 220:13 318:16
answers 225:21
anticipated 164:2
anti-piracy 11:20 136:17
antithesis 28:20
anybody 72:16 198:17 264:4 322:10 326:9
anymore 29:3 64:20 71:2 290:17 347:17
anyone 20:10 30:18 49:13 99:22 111:2 210:22 244:13 263:20 275:8 307:9 325:9
anything 9:16 47:2 56:5 67:21 75:10 85:11 100:18 115:11 143:20 144:10 146:12 162:15 177:22 206:9 227:1 231:14 274:10 318:4 332:19 364:2
anytime 10:10
anyway 106:17 113:20 250:21 288:19 365:12
AOL 304:10
apart 151:20 359:5
apologize 99:17

347:5
apparent 217:5 245:1 250:18
appeal 225:6 320:5,6,9
appear 155:7 258:8
appeared 44:5
appearing 36:21
appears 225:15 332:15
appended 192:18
Applicable 5:14 212:13,17
application 227:2 264:2
applications 293:15
applied 216:21 247:5 251:15 253:1,2 279:17 289:13 347:14,15 360:18
applies 62:21 256:7 275:12 279:7 282:4,10
apply 92:12 171:19 191:4 220:3 255:19 276:18 277:9 278:20 279:4 282:7 284:15,22 286:21 293:7,8 296:17
applying 233:11
appreciate 6:22 7:6 53:6 189:8,16 209:3
approach 231:15,16 283:9
appropriate 9:2 44:9 48:18 60:11 187:1 188:6 237:21 238:19 280:17 281:18 282:3,20 283:17 288:11 290:11 291:16 295:6,16 296:5 303:8 304:11 339:16
appropriately 23:14 213:12 282:15
appropriateness 219:10
approximately 124:12
April 120:3
arbiter 160:3
Archive 2:2 107:7 111:7,17 112:10,15 113:18 307:13 310:4
area 104:9 281:15 284:11 286:17 294:13 297:8
areas 40:1 281:16 288:3 289:2
aren’t 202:9 216:15 246:7 248:20 294:18
arena 58:16
aren't 37:9,12 52:6,9 65:22 159:19 164:20
arguing 68:5,7
argument 225:7 231:9 234:19 255:18 278:2 299:2 301:21
arguments 319:3
arise 37:19
Ark 71:1
arm 93:12
arrange 327:7
arrangements 7:16
array 314:15
art 92:13,20 98:10 120:21 125:7 242:10 315:1
arthouse 98:7
article 124:11 166:4 203:6 230:10,12 336:7
articles 100:11
articulate 259:1
artist 92:17 118:15 120:19 241:18 260:10,13 307:21 311:11,20 316:1,6
artists 7:5 14:2,8 28:18,19 45:19 46:2 51:10 52:3 55:10 71:17 81:11 82:7 83:3,11 86:1,5,18,22 90:10,19 91:1,10 93:19 125:3,6 127:12 132:20 194:16 196:15 197:5 218:11 241:5,9,10 242:6 311:2 312:18 313:1,10 314:15,18 339:19 341:9
artist's 92:5
Artists 338:13
arts 2:11 241:5 308:10
artwork 316:3
aside 67:9 351:11
aspect 57:6 118:1 275:17
aspects 34:6 224:15 292:9
asserted 321:19
asserting 181:4
assess 113:8 222:7
assets 195:4
assigned 281:5
assist 361:1
assistant 13:21 215:7
assisting 203:7 359:8
associate 6:9 12:2 194:15 214:1
associated 142:14 271:7 292:19 339:6
associating 91:7
association 2:5,13 3:10 4:3,6 13:2 14:5 107:15 214:7,11 216:9 284:6 285:5 309:2,14 312:21 338:13 340:6
assume 38:8 113:22 129:17 256:6
assumed 42:3
assumes 294:20
assuming 49:21 175:11
asymmetries 164:12
attack 83:1 300:22 301:5
attacked 85:10
attempt 65:20 253:10 316:16
attend 7:11
attended 6:22
attention 50:17

222:16 224:3 225:11
attorney 143:15 194:2 215:19 366:11
attractive 175:21
attribute 80:20
auction 241:15 285:17,22
Audible 176:3
audience 7:9 125:22 135:9,12 164:14 313:10 332:3
audiences 132:20 137:4 147:10 343:5
audio 61:15 195:13,14,16 367:4
author 4:8 12:17 26:4 49:5 53:7 166:5 222:9 261:10 309:6
authority 61:12 296:1
authorization 116:16
authorized 165:20 222:10
authors 7:5 23:5,7 25:14,18 28:4 29:12 38:7 94:19
author's 166:1
Authors 26:18
Auto," 32:11
automated 20:15,19,21 21:21 22:2 32:13,18 33:12,21 34:4 35:4,11,17 36:2 41:20 43:19,21 47:8 48:4,11 49:8 52:11 61:14 113:13,22 115:4,5 137:10 153:3 174:16 186:22 187:9,12
automatic 91:21 122:11 129:14 185:13
automatically 21:17 131:6,11 145:18 185:22
automation 21:11 34:12 102:20 103:2 188:4,8,10
Automattic 46:20 54:13,16 108:7 156:18 158:12,20,21
Automattic's 163:4
avail 180:12,19 288:1 294:9
availability 80:1 136:15
available 10:22 14:20 23:4,6 25:17 56:16 80:5,17 90:19 116:16 132:13,17 136:18 151:9 153:21 178:16 180:11 196:1,3 201:5 336:14 346:20 348:22 350:16 357:17
avalanche 56:11
Avengers 16:14
avenue 164:7
average 16:18 80:16
avoid 52:18 251:5 266:20,21 274:22 275:1
avoiding 159:3
award 143:14
awards 93:11 96:16
aware 36:15 53:18 54:6,10 57:4 58:21 178:9 179:9 244:21 259:20 262:17 283:15 336:3
awareness 233:8 245:5 250:16 256:14,15 261:3,12,17 262:2,9,21
away 9:8 12:13 27:8 73:3 112:19 119:12 164:11 250:1 272:10 288:8 325:22 326:2,3 337:13 351:1 352:20 354:9,10
Awesome 130:12

B

babies 46:15
baby 154:14 183:8 339:12
baby" 154:11
background 59:21 102:11 205:20 222:8
backstop 275:11
backwards 239:19 323:10
bad 76:21 91:9 100:22 135:21 136:20 137:14 138:9 144:1 146:13 162:20,22 170:17 171:5 172:3 173:8 185:11 186:3 232:14 280:1,11 293:19 296:16 325:1 360:9
badly 71:4 86:18
Bailey 2:2 89:7 107:3,6 111:2,6 113:11 115:10 307:13 310:2,3
baked 133:7
balance 8:15 21:16 65:14,15,20,21 66:10,12 88:22 95:22 156:7,11 213:6 234:15,16,19 262:19 315:11
balanced 160:19 212:21 221:19
balances 149:1 161:14
balancing 84:2 162:1
Ballon 2:3 216:10 261:7,8 304:2,3
band 125:22 126:11,13 308:13 322:18 337:2,6
bands 126:11
bankruptcy 151:21
bar 219:6
bargain 118:11
bargaining 118:14
barrier 141:10 152:1
barriers 341:1
base 247:2 276:15
baseball 263:10
based 37:1 172:9 174:17 197:19 251:12 252:1 261:11 272:19 291:5 297:17

318:1 336:18 361:12
basement 287:17
basic 198:9 224:11 277:1 282:8 302:1,2
basically 20:22 57:21 123:10 133:9 135:10 138:4 139:14 141:11 143:2 144:8 197:18 203:18 220:5 310:5 320:9 362:11
basics 73:14
basis 22:20 102:16 203:15 206:14 207:4,5 224:7
bat 189:11
batches 287:3
bathwater 183:9
battle 116:1
Bay 2:16 107:17 123:8 166:3 194:15 308:12 315:5 337:21 359:3,14 362:4 364:14 365:5
bear 150:18 313:16
beat 330:2
become 8:10 40:11 69:2 82:17 184:14 196:16 268:5 311:6 327:9 351:5
becomes 18:4 255:4 294:11
becoming 64:20 211:11
bedroom 121:17
beefing 62:16
begin 6:7 7:18 11:2 91:7 94:7 213:16 340:5
beginning 9:18 64:19 199:7
behalf 96:8 114:1 151:17 208:12 245:19 246:6 257:2 287:19 309:1 338:15
behavior 277:6 280:21
behind 20:8 85:13 165:5 212:6 294:20
belabor 144:18 167:3
belief 8:20 119:5
believe 8:19 9:17 16:20 27:19 29:3 55:5 86:5 96:19 117:13 119:4 132:9 153:7 179:9 188:18 190:21 203:15 217:18 219:13 225:8 252:3,4 294:6 330:12 337:22 340:21 341:15 343:20 344:21 356:17 365:1
believer 189:19
below-market 332:6
Ben 4:6 214:6
beneficial 68:11 146:18
beneficiaries 195:22
beneficiary 33:17
benefit 28:12 39:11 64:22 77:5 100:16 232:12 248:10 253:8,9,14 261:20 263:13 268:2 292:13 327:21 337:14 339:21 341:3 343:7 353:4,6 355:5,14
benefits 45:19 313:13 315:4 340:10,11,21 341:12 344:6
benefitting 346:4
Berkeley 13:7 29:22
Berliant 2:4 14:6 89:8,9 91:5,6 307:19,20 310:22 311:1
besides 300:15
best 35:6 94:17 131:19 132:3 137:19 165:3 174:15 239:22 240:2,4 258:2,3 283:18 334:22 343:19 366:6 367:4
bet 296:8
Betsy 4:18 11:19
better 33:6 37:11 68:4 136:16 137:10 144:11 172:16 187:7 198:11 281:2 285:5 355:19
Beyonce 125:2,11
beyond 46:15 81:16,17 83:4 121:19 169:6 223:21 226:17 245:1 305:17 324:2 330:22 352:19
bibs 339:12
Biden 73:21
Bieber 126:3
Bieber's 126:3
bigger 125:2,15,22
biggest 28:10 67:13 88:1 92:7 115:20 192:5,6
bill 360:17
billion 71:3 109:19 177:22 195:9,12 196:13 313:20 338:1 340:20 344:13
billionaires 92:19
billions 192:9 194:7 331:10
bills 296:18 337:11
binaries 74:4
bit 12:9 21:1 30:2 38:21 40:16 47:21 52:22 89:12 94:4 98:1 104:13,19 106:16 113:4,6 114:22 139:11 158:3 159:9 173:21 175:2 186:11 189:5 190:1 209:18 226:17 236:11 243:20 252:17 263:19 271:11 279:10 283:14 284:13 285:12 286:8 305:16,18 306:14 333:13
bite 252:16
BitTorrent 271:6,11 341:19 343:22
BitTorrent's 342:1
black 30:8 348:15
blackball 297:18

blackmailed 196:11
Blain 7:14
blank 354:22
blast 272:22
blatant 250:22 280:1
blind 250:6,9 259:18,21 260:2
blindness 259:17
block 198:20 199:18 356:16
blocked 131:19 175:4 320:3
blogs 43:12 97:9
blooming 170:10
BMG 282:18 300:2
board 68:16 275:12 364:21
boat 27:2
Bob 194:14
body 223:11
Boeing 214:14
bogus 59:12 204:12 333:21
book 22:12,15,17 23:2,4 24:20 26:8 27:16 28:3 48:6 50:9 53:8 114:15 166:1,11 208:12 209:9,12 323:1,2
books 17:9 22:7 24:13 25:8 27:19 111:13 124:2 341:9,13
book's 49:21
Booth 335:17,19,20
booths 335:16
borderline 144:6
Borkowski 2:5 14:3 86:8,9 90:3,5,12 92:16 216:7 258:18,19 301:16,17
born 310:6
borne 356:4
bosses 98:9
bot 361:12
bother 131:1
bothers 96:22
bottom 98:13 196:12 237:6
bounds 293:22
box 30:8
boxes 348:15
boxing 136:19
Boyle 46:19
branch 208:12
Braxton 3:20 13:3 102:7
break 89:16 104:15,16,17 301:11,15 305:18,19 345:10,22
breaking 90:22 362:13
breaks 54:7
Brevity 261:15
Brian 3:12 4:16 13:11 214:2 309:17
Brianna 30:4
Bridges 2:7 216:3 254:15,16 257:1 258:10 264:9 269:10,11 271:5 295:2,3 297:13 298:20 299:4,8,20 300:1,9,17 303:15 308:1 312:14,15 352:16 361:5,6
Bridges' 268:19 352:2
Bridy 173:3
brief 258:20 281:11 301:17,18
briefly 10:18 11:8 213:18 248:12 273:16 348:11 350:4
briefs 153:10
Brigham 3:14 108:16 215:1
bright 197:8
bring 30:1 55:11 69:1 105:22 143:9,10 193:13 238:3 246:8 254:11 286:2 338:20 358:22
bringing 18:14 222:15
brings 25:20 290:12
British 364:8
broad 37:20 281:20 307:1 309:20 327:3
broader 30:7 113:9 133:4,8 188:20 289:6 304:14 311:19 358:7
broadest 293:9
broadly 40:5 213:15 217:8 327:16 342:12
broken 18:11 62:20 184:3 324:7
Brothers 69:20 70:5
brought 59:11 225:11
Brown 3:19
Browning 1:12
brush 37:20
budget 70:17 334:14
budgets 26:13 70:16
build 57:13 176:3 332:2 336:8,17
building 251:16
built 150:7 191:7 273:19
bulk 22:17 80:8
bullet 200:13
bunch 199:2 227:9 348:15
burden 8:9 15:12 40:8 87:3 88:21 91:19 95:19 101:1,21 144:2 145:1,14 146:1,18 147:5,8 188:9 193:12 226:9
burdening 172:10
burdens 54:3 100:6,8
burdensome 112:5,16 123:13,16,17 151:12
buried 56:10
business 22:6,8 27:2 82:8 88:5 91:20 93:13,20,22 98:10 102:11 107:19 116:18 144:16 146:14

151:22 161:17,18 169:21 195:8,10,16 196:2 211:8 220:4 236:3 247:1,3,12,13 260:20 272:20 276:13 309:7 316:5,14,20 318:3 321:14 335:3 348:1 352:1 364:16
businesses 47:9 193:18 202:21 242:2 323:12 336:8,18
button 11:17 121:13
buy 26:10 98:15 192:11
buying 98:7
buys 74:20
buzz 164:15
byproduct 266:12
BYU 177:21

C

CA 1:14 366:20
cache 347:8
Cady 2:8 107:8 115:16,17 117:2,4 308:3,8 314:1,2
cafe 212:9
calculate 120:18
calculated 41:8
calendars 339:12
California 13:7 125:19 296:19 309:10
California-Berkeley 4:10
camcorder 71:5
can't 171:1 174:18 190:10 193:1,19 200:18 217:21 218:15 219:12 241:21 242:1,2 245:15,20 246:7,10 248:14 251:8 260:2 261:13 296:12 298:10 299:3 303:9 344:14
Canada 193:2
cancer 74:1 337:10
candidates 153:18
capability 199:1
capable 121:19 184:16 186:19
capacious 31:22
capacity 261:9
Capitol 262:4
capping 240:14
captcha 21:19
captchas 20:9
cards 111:3
care 42:17 88:9 102:18 189:20 209:2 235:2 273:4
career 316:5
careful 264:13 272:21 287:19 334:17
carefully 47:20 264:10
Carl 2:10 215:19
carries 331:3
cascading 331:9
case 8:8 48:17 64:9,20 70:2 112:2 129:9 131:3 143:11 153:11 157:16 159:3,22 164:19 169:14 214:4 216:18 220:11 225:2,4 233:3,15 236:5,21 246:10,13,22 252:16 253:5,21 259:17 261:10,12,14 262:1,3,5,7,8,10,17 265:15 270:9 275:21 276:1 282:9,14,17,18 283:2 284:18 286:16 287:1,21 292:14 293:11 296:12 300:13 301:20 302:17 321:8 325:19 327:17 339:14 361:21
cases 37:6 42:22 102:21 163:2,5,7 169:15,19 170:1 173:18 175:14 186:21 213:11 216:19 220:10 238:20 246:17,19 247:6 261:21 266:12,17 275:16 280:20 283:19 288:14 289:15 327:17 342:6 354:5,7
cassettes 316:12
casts 345:1
casual 209:1
cat 97:19 329:6 338:7,8
catalog 55:16 124:5,7 125:11
catch 151:13 212:6
catching 131:21
categorically 232:21 233:18
category 29:11 37:22 43:20 74:13 100:13 289:5 341:3
Cathy 2:20 108:2 215:9
caught 73:7 153:16
cause 148:21 149:14
causes 8:14 267:1 363:2
causing 101:15
caution 285:14 305:2
cavalierly 75:17
CCIA 45:20
CD 337:7
CDA 274:12
CDs 316:12
CEG 109:4
censor 149:14,15
censored 151:7 155:4
censorship 148:17 151:3 152:9,22
center 2:3 3:2,4 108:14 215:7 216:12 221:20 308:17,20
centerpiece 221:16
central 146:2
cents 162:14
century 91:13 290:18 321:4,6 340:19
CEO 12:5 13:15 214:12
certain 34:6

40:11,12 50:20 51:2 52:12 116:3 117:1 169:17 176:14 177:5 181:4 200:16 238:20 241:15,16 259:3 266:1 278:16 300:21 332:9 356:2

certainly 29:6 33:5 62:10 64:19 65:9 66:16 88:15 90:12 99:5 103:10 113:11 115:12,14 161:20 164:1,17 169:16 178:20 188:5 209:21 223:13 228:14 229:3 234:18 235:4 267:18 269:16 288:1 289:3,16 321:4 332:14 353:15 360:4,11

certainty 297:8

CERTIFICATE 366:1 367:1

certified 299:9

certify 366:3 367:3

cetera 24:14 172:21 175:16

chair 214:19

challenge 33:7 119:22 121:8 123:16

challenged 282:7

challenges 16:22 34:15 109:22 110:6

challenging 112:16

chance 9:4 73:1 89:17,22 199:9 268:6 280:21,22 356:9

change 8:21 17:14 21:22 141:18 149:17 164:10 177:6 218:13 269:19 304:8

changed 14:19 154:8 159:6 242:14 349:8

changes 15:4 18:19 34:20 49:15 61:9,13 183:7 242:13 334:18

changing 239:18

channel 130:12 135:8

channels 132:20 135:11 136:15 137:3 210:14 313:4,8

characteristic 43:18

characteristics 43:16 59:2,6 113:7 137:6,12 200:16

characterization 205:14

characterize 180:17

charged 139:15 218:19

charity 98:11

Charles 4:2 12:18

Charlesworth 1:19 6:5,14 12:8 20:13 22:3 38:5 39:17,22 40:17 49:2,20 50:2,5 52:5 53:7,10,14 58:13 61:6 75:18 77:2,20 78:11 90:2,6 91:4 97:22 98:21 99:15 106:3 109:13 115:16 116:21 117:3,9 118:18 119:7,17 121:22 122:5,20 123:3,5,11 125:12 127:2 128:6,9,11,14 129:16 130:4 132:5 133:22 139:10,20 140:12,19,22 141:3,17,21 142:2,17,20 143:8 144:17 147:11 148:10 149:3 156:15 159:7 160:15 163:15 165:4,10 176:12 181:7 182:7 184:12 186:10 187:18 188:21 189:2 191:10 192:15 194:9 196:18 197:21 198:3 203:3 204:22 205:5,8 207:3,8,12 208:5 211:15 224:12 225:12 228:3,7 240:20 256:19 258:5 270:21 289:10,18 298:15 299:1,7,16,21 300:5,12 306:3 307:8,15,22 309:19 310:22 312:14 314:1,12 315:5 316:15,21 317:15,18 319:4,6,8,10,14 320:1 321:17 322:2 325:11 327:1 328:7,13 330:1 333:7 335:11 336:20 338:5 340:3 342:7,19 343:1,9 344:7,12,17 345:3 346:6 348:9 349:4 350:1,14 352:2 354:13 356:6 358:9 361:2 362:4,6,14 363:12 364:3,5 365:10

chart 124:8,16 315:7

charts 192:16

chased 186:7

chastised 349:15

chat 323:4

cheap 315:19 362:20

check 173:18 242:18

checking 122:17

checklist 222:10

checks 59:21 149:1

Chief 13:13

children 219:12

chip 285:11

chipped 337:12

choice 18:15 140:5 171:4 204:15 276:4,5 279:12,18,19 345:7

choose 160:13 180:11 199:15 205:7,17 206:4 278:12 279:13,14 302:11 329:15

choosing 329:15

chosen 228:10,12,14 313:12,13

Chris 3:21 108:20
chronically 135:22
chunk 34:10
church 335:16
cigarettes 114:5
Circuit 1:11 7:13,14 225:5 233:3 243:6 361:21
circuits 220:10 243:4,7
circumstance 206:11 207:10 242:21 250:17
circumstance" 304:22
circumstances 217:4 229:20 232:2 244:22 277:10 281:19 282:4 283:18 288:12 295:16 299:17 300:14 303:8 359:13
circumstances." 304:12
circumstances" 295:6 296:22
CIS 170:5
cited 341:15 344:12,21
Cities 332:13
citing 132:11 346:1
citizen 194:21 318:4
citizens 92:12 298:14 324:1,14
citizenship 324:8 325:7
civic 298:13
civil 274:7
CLAGGET 57:2 212:15
Claggett 1:20 6:2,8,9 11:16,22 14:10 17:4 18:20 19:12 23:3,13 25:11 27:21 29:19 33:19 35:16 37:10,14 38:4 40:18 41:5,13 43:15 44:10 47:4,15 48:13,22 53:15 54:22 56:19 58:14 60:5 62:6,8 63:14,17 65:6 66:7 69:9 73:8 78:12 81:3,8,22 82:3 83:12,17 84:6,15,19,22 85:14 86:7 89:6,9 93:1 95:10 96:10 99:16 101:22 102:6 103:18 104:10 105:15,20 113:1 114:19 124:21 125:9 137:5 138:12 144:21 146:20 149:8 152:4 154:5 155:17 156:14 161:12 166:10 167:7 169:7 170:2 171:13 174:20 177:16 216:13 219:16 220:7 222:18 226:16 233:20 238:1 239:3 241:2 243:1 245:16,21 246:3,5 247:20 249:9 251:7 253:3 254:14 258:17 261:6 263:14 265:8,12 266:9 268:17 269:9 270:19 273:12,15 275:6 277:13 278:20 281:9 283:3 284:9 285:10 286:13 288:5 289:19,22 290:4 292:3 294:1 295:1 301:6 304:1 305:9 322:12 356:7
claim 61:14 63:2 131:14 134:4 140:11 141:1 143:9,10 166:19 223:6 235:16 318:14,22 319:17 322:9 354:3
claimed 148:20 257:4,11
claiming 114:8 190:16 232:14
claims 9:15 59:12 66:20 77:4,21 113:19 133:15 160:4 163:10 173:16 181:8 313:20 318:14,17
clarified 256:2 275:18
clarify 121:22 248:1 253:6 265:13
clarity 287:20
class 81:11
classic 32:21 74:10 100:13 111:18 135:15 156:22 171:3 280:5
Classic." 74:9
Classic" 32:6
classical 124:10
Classics 98:6
cleanse 80:10
clear 8:10 45:3,8 48:10 116:3 158:14,15,18 175:10 182:16 184:14 203:10 205:18 207:19 220:19 225:3 231:9 248:6 255:9,14,20 262:13 304:21,22 321:2,18 324:15 360:7 361:22
clearer 221:12
clearest 245:14
clearly 46:21 48:1 54:13 76:2 114:16 158:14,19 159:19 162:22 163:12,13 184:7 186:15 187:20 203:16 206:6,15,22 228:10,11 237:17 282:9 303:12
click 121:13
client 28:7 109:12 164:4 191:12 265:19 266:8 271:11
clients 117:22 295:9
client's 92:7
Clinic 2:11 308:11
clips 72:18 130:20 169:11
close 7:18 57:14 66:2 95:2 167:4 177:22 183:15 249:8 301:7,8

closely 106:13
closer 12:9 127:10
cloud 78:18 322:19
cluster 287:5,7
clustered 227:9
Coalition 3:16 4:4 214:13,21 309:12 338:14
cocaine 335:17,19,21 336:2,4
code 72:4 138:18
codify 327:17
Coleman 2:9 107:11 117:9,10 118:22 119:10 215:21 253:4,5 294:2,3
collaboration 203:2
collaborative 213:14
collapse 251:19
collapsed 236:17
collapses 236:7
collateral 34:21
colleague 30:4 33:21 48:5 134:1 236:14 238:3 332:21
colleagues 44:14 185:8 323:6
collected 35:9 45:20
collections 111:14
collectively 286:10
collectivization 316:8
college 288:16 361:12
college-age 179:8
color 363:18
Columbia 247:9
combat 64:12 113:14 178:12 189:18
combating 49:17
combination 37:4 261:18,22
combined 102:21
comes 18:7 19:7 21:20 33:8 42:9 126:10 137:13 144:15 181:14 239:15 240:2 241:14 320:3,4,6
comfort 31:1
comfortable 181:3
coming 6:17,20 47:7,8 59:4 63:21 65:2 66:2 85:11 89:10 113:8 119:14 125:5 144:1 150:1 176:11 271:22 298:7 305:16
commensurate 133:16
comment 81:10,20 86:11 98:1 107:2 151:17 153:6 179:14 211:19 246:9 290:10 305:16 360:11 363:14
commentary 46:17 129:6 130:14
commenters 188:3
commenting 86:10
comments 9:13,15 28:3 45:20 51:5 55:4 57:14,15,16 61:3 67:8 87:6 90:9 91:8 98:4 105:6,7 110:11 192:17 201:15 208:7 258:22 263:21 265:10 282:7 305:15 307:9,12 330:5,8 332:21 334:10 338:20 341:16 344:22 354:16 362:16,19
commerce 38:19 45:6,18 248:11
commercial 114:5 118:3 253:22 280:16 294:12 300:8 339:7,11
commercialized 130:22
commercially 129:8 176:5 343:10
committed 86:13
Committee 214:20
common 133:17 250:10 251:1 278:16 294:16 327:11 360:20
communicate 51:11 77:17 191:2 326:9
communication 153:19
communications 347:8
communities 59:22 136:13
community 100:16 108:22 114:10 161:10 177:19 290:15
Community” 13:1
compact 25:9 179:10
companies 7:4 44:3 62:1 87:1,4 88:15 89:2 94:6 95:8 115:18 123:17 132:19 133:19 138:19 146:16 173:15 176:2 240:7 284:1 293:9 304:18 305:2,6 312:2 318:22 321:10,12 324:10,11 330:17 332:9 340:5
company 11:21 56:6 63:2,11 120:4 134:18 151:15,20 156:18 284:2 286:7 293:4 305:1 330:20 333:21
company’s 267:6
company's 116:18
comparison 343:22
compelled 211:22
compelling 28:21 107:2
compensated 242:3
compensation 95:6
compete 196:7 328:3
competence 299:12,14
competent 295:22
competing 51:1 328:5 339:19
competition 43:8 327:5
competitive 336:18

competitor 37:7 135:1 170:21 331:1,2
competitors 330:13
complain 149:15,16
complained 149:18
complaining 135:18 172:8
complaint 150:19
complaints 67:1 272:16 341:19
completely 23:22 36:10,20 50:22 65:16 70:16 99:6 174:6 272:15
complex 141:14
compliance 142:7 176:11
compliance-oriented 304:19 305:1,3
compliant 140:14
complicated 9:5 146:21 172:5 198:21
complied 56:9
complies 119:9 139:16 141:4
comply 40:22 141:19,22 205:17 211:1 293:21 353:1
complying 122:14 151:19 171:20
component 20:20,22 21:13 22:1,2
components 254:8,11
comport 221:8
composers 216:2
comprehensive 39:16
compromise 127:11 146:9
compulsory 331:8
computer 82:22 185:11 231:5 272:8,10 273:7 287:14 288:21
computers 37:12
concentrate 234:20
concept 59:1 217:6 259:15
concern 15:6 36:20 54:5 67:14 83:14
concerned 86:1 92:6 112:17 118:8 119:4 145:1 155:21 318:5 360:8
concerning 43:11
concerns 8:6 27:3 37:17 60:14 84:8 85:18,22 152:16 181:1 212:19 218:22 345:4
concert 337:14
conclude 75:13
concludes 54:13
conclusion 15:6 54:17 278:10
condition 220:6 267:8 269:18,19
conduct 266:6,7 323:19 327:14
conductivity 342:10
conduit 284:16
conference 312:20
confers 355:5
confident 179:18 180:1 181:2 205:21 207:1
configuration 21:20
configure 21:19
confined 348:13
confirm 168:1
confirmed 167:21
conflict 120:11
conflicting 339:18
conform 19:10
confused 315:22
confusion 243:22 254:19 255:12
Congress 29:10 64:9 88:16 156:8 157:6,9 159:15 163:15 164:8 173:9 203:2 205:15 206:6 213:7 221:20 222:2,13 227:6 228:10 229:4 230:18 239:8 250:5,10 251:16 276:4 279:11 281:7 283:7,14 294:17 302:16 304:5
Congress' 253:10
Congressional 64:18 330:7
Congress's 30:22
connect 51:12
connecting 303:10
connection 143:1
connections 77:10
consciously 359:8
consensus 284:11 285:12 332:16
consenting 138:4
consequence 34:21 76:18
consequences 76:9 177:3 334:13
consequently 139:5 144:13
consider 9:7 37:15,16 115:8 219:10 226:12 267:10
consideration 325:17
considered 117:8 118:1 225:6
consistent 221:9,13 330:9
consistently 217:7
constant 21:22
constantly 174:13 345:8 351:4
constituencies 310:1
constitutes 364:22
constituting 269:13
Constitution 123:19 127:1,4
constrain 275:5
constrained 252:4,5 275:3
construction 293:16
constructs 252:22
construed 213:11,12,15
construing 216:17
consumers 236:4 333:5
consuming 329:9,14,19
consumption

341:6
contact 69:22 70:7
contacts 48:18
contain 100:11
contained 142:8
containing 158:15
contemned 359:6
contemporary 326:7
contend 357:11
content 3:16 13:4 14:21 15:17 16:6,21 18:18 22:21 41:3,15 42:7,13 46:9 49:10 53:1 54:9 55:3,7,9 57:11,19,20 59:17 60:9,13,17,19 61:1 65:13 66:13 70:4 72:14 84:13 85:5,8 86:21 87:3,10,17,18,21 88:2,19,22 91:3,21 92:1,15,20 93:13,16,18 95:12 97:17 100:14 102:8 108:10,19 116:12,14 117:5 118:10,19,21 121:21 129:14 131:1,10 132:1,9,13,16 135:15 136:8,16,18 138:13 139:18 140:7 141:9 147:18 148:3,8,20,22 149:12,15,16,18,22 150:3,11,12,16 151:7 152:18,21 153:5,13 154:6,8,18 155:4 156:13 157:4 158:15,21,22 160:13 161:17,19 162:5,7 165:12 167:5,10,13,17 169:16 171:11 172:20 174:8,11,12,21 175:6,9,12 179:3,5 180:11,13 182:14,16 183:1 184:7 185:13,22 186:14 187:15 188:16 189:17 193:12 194:5 196:1,6,9,11 197:7,13,17,19 198:6,8,9,20 199:3,14,18 200:1,3,6,7,10,15,17 201:1,3,4,9 202:13 206:4,18 210:10,13 214:20 217:2,20 218:5,7,8,21 219:2,6,9,10,11,12 220:5 221:1,5,21 235:10,14,18 240:3,9 241:17 242:9 247:1,16 252:8 254:2,4,5,8 261:1 265:19,20 266:3 268:12 276:12 280:2,5 292:13 294:7 302:6 303:20 310:7,16 314:3,19 318:8 319:11 320:12 326:1,4,15 327:6,7,10 329:1,10,14,20 332:4 333:12,14,17 334:4,11 338:1 340:8 341:5 342:11,20 343:10,14,16,18,19 344:9 345:10,11,16 346:17,18 347:18,19,20 348:4,6,17,21 352:12 360:13,15
contention 195:17
contested 318:16
context 101:5 154:15 168:5 181:13,19 187:10 188:11,20 247:15 257:22 270:13 280:1,19 287:22 288:9 290:11 291:9 297:1 299:3 302:19 323:14 353:16
contexts 201:12 288:10,15 359:6,9
continually 336:13,14 354:2
continue 9:19 90:19 103:14 184:18 286:5
continued 103:11 213:13
continues 103:17
continuing 212:20 286:8 290:2,6
contract 243:16,17 268:11
contractual 175:1
contrary 112:13 201:19
contrast 274:10
contribute 161:9
contributes 195:14
contributing 353:22
contributory 255:2 352:5 362:1
control 92:20 232:12 233:1,11 253:14 294:10 326:19 327:20
controlled 102:22
convenient 19:19
conversation 71:22 182:22 289:6 292:7 310:12 312:16 322:13
conversations 85:15 183:10
cool 364:19
cooperated 261:1
cooperating 328:4
cooperation 80:13 146:3 147:7 261:2 266:18 267:10 268:16 297:22
cooperative 139:9 144:12 221:19
cop 73:6
Copia 3:11 309:4
copies 16:5,13,18 20:1 21:7 24:21,22 70:11 71:8 80:10,17 114:12 188:15 223:13 347:9
copy 71:11 168:22 190:15,18 191:4 269:4 299:10 346:22 347:10 348:18
copyright 1:2,17

3:7 4:7 6:6,11,14,18,21 9:10 13:16 15:13 19:10,21,22 20:11 28:13 29:2,17 30:11 36:19,22 37:5 39:12 42:8,10 44:6 45:2 46:4,18 47:22 48:1 57:7,14 58:16 61:20 63:22 64:11,14 65:1 67:4 68:9,12 69:1,15 92:8 100:19 101:6,9 108:16 109:4,10 115:2 117:14 119:16 120:4 122:9 127:5 131:3 133:8 135:2 138:21 148:21 150:20 157:5 161:1 163:11 173:16 191:12 192:4 200:5 205:20 206:19 210:11 215:1 216:5 217:17 220:10 222:5,13,19,22 223:4,11 226:10 227:10,12,16 231:11 234:13 237:14 249:13,14 251:12 253:1 254:21 255:5,22 257:2,8 264:21 269:16 270:12 277:4,21 279:22 281:1,3 285:14 295:18,19 296:7,11 319:17 321:5,15,20 328:3,5 334:22 355:6 362:1 365:4

copyrightable 158:15

copyrighted 15:17 16:5 178:13 224:17 228:19,21 257:1,4,5 258:7 347:18,19,20 351:21

copyright-related 113:15

copyrights 6:10 28:18 128:1 148:6 222:15

core 163:6 184:18

core-scale 185:6

corporate 13:19 163:8 215:13

Corporation 3:15

corporations 7:5 37:21 47:8 92:20

correct 36:2 59:9 91:13 123:2 141:6 167:12 174:21 235:7 258:12 303:17 319:12 321:22 343:10

corrected 153:3

correcting 173:8

correctly 180:16 220:15 222:14 249:17 260:16 273:18 279:4 342:21

Cory 48:5

Corynne 3:13 13:9 64:4 74:15 215:3 234:22

Corynne's 56:21

cost 24:6,7 27:13 135:9,12 137:2 143:19 161:11 292:19 336:22 337:15

costing 120:16

costly 18:16 112:16

costs 83:4 136:20 146:6 208:8

cotton 315:19

could've 228:14

couldn't 221:12 271:1 315:1 352:11

counsel 6:14,18 11:20 12:2,19 13:20,22 107:7,9 108:7 109:3 111:6 214:1,10 215:13,18 245:20 246:7 295:9 366:8,11 367:7

count 287:7 295:10

counter 62:16 76:13 154:22 164:12 171:16 179:19 183:12,16 204:4 278:6,9 292:9

counter-appeal 320:9

counter-claim 319:16

countered 278:17

counter-identification 292:16

counter-notice 18:10 30:12 48:14 62:15,20 63:1 66:22 67:11 76:5 82:1 117:12 118:13,20 119:2 139:13 149:4 164:5,21 166:6 172:20 190:3,11,15 204:4,16 205:11 302:12 319:15

counter-notices 18:11 77:6 120:5 164:3 173:4,8 203:5 278:12

counter-notification 52:13 66:16 75:20 106:19 133:1 145:19 154:7,9,19 157:12,19 161:3 164:10,11,18 184:3 205:2

counter-notifications 5:11 105:13 158:4 184:1

counter-notifiers 203:7

counting 287:4

countries 170:9,12 172:17 343:5

country 52:21 53:5 179:8 346:3

counts 287:21 325:14

couple 7:17 9:21 19:1 41:18 61:11 81:14 120:1 168:16 184:22 190:2 208:15 225:14 234:3 246:17 267:2 286:18 319:14 322:14 337:13 341:17

course 18:7 21:8,13,14 24:2,10 26:16 33:17 38:19 40:7 49:13 51:13 81:13 85:7 111:16 112:9

138:5 180:19 197:7 204:9 224:4 231:17 268:21 279:6 339:15 352:21

court 7:18 10:19 46:8 77:4 88:21 94:14 106:9 155:22 160:21 163:8 180:7 190:17 191:1 193:17 246:8 259:17 270:9 277:20 282:13,19 296:2 306:11 359:2,22

court's 265:17

courthouse 1:12 306:8 350:2

courts 29:6 30:10 62:3 193:10,11 216:17,21 217:6 219:20 222:3 236:15 239:6,8 240:18 241:6 245:3,11,13 248:13 249:18 250:13 252:2,3,5,6 253:16 255:11,15 256:8,12 259:3,7 263:10 275:15,20 277:11 281:16,20 282:15 283:6 284:14 297:8 302:4 349:1,10

courts' 217:9

cover 78:19 261:13

covered 257:6 333:10 349:12 360:6

covers 55:16 244:9 286:21

Cox 282:18 299:22 300:2,15 301:20

crawl 20:21 201:5

CRB 331:4

create 55:10 127:21 135:17,20 147:8 197:15 208:3 246:10,13 247:2 267:14 280:13 314:21 333:16 338:18 340:2

created 88:13 111:15 114:13 127:18 128:2 197:20 220:5 266:15 303:17,19 304:14 314:21 320:17 329:20

creates 133:12 160:14 218:22 224:11 282:20 304:19 335:4 336:15 355:6,22

creating 27:10,12 74:7 97:21 141:9 146:16 197:16 247:14 315:3 329:1 340:21 353:7 361:13

creation 24:6 27:8 55:9 92:13,20 93:17,19 341:5

creative 12:7 13:4 25:5 27:11 75:16 97:12 102:8 133:4 136:13 211:6 241:22 340:14 341:13 342:20 356:2

CreativeFuture 4:13 12:6 96:13,17

creatives 97:10,18

creativity 27:15 96:19 123:20,22 124:6,20 125:1 126:22 127:13 197:9 249:8 293:10 328:16 329:6 353:22

creator 49:6 55:3 96:5 165:12 166:17 190:6 328:18 333:13 334:8 343:3

creators 3:16 23:19 50:7 51:6,8 55:5 56:1 63:6 64:15 67:14,15,17 68:17,18 69:2 74:4 75:11 78:5 95:16 108:22 132:13,18 135:8,11 137:3 147:9 157:5 167:17 189:17 193:12 194:6 197:10 200:4 214:20 242:2 245:20 246:6 248:11 285:21 286:2 306:19 329:1 333:14 334:19 335:7 338:2 340:6,11 341:2,3,7,12 344:3 345:6 346:4 363:21

Credit 196:14

creep 33:14

crime 59:21

criminal 131:7 320:18

cringe 64:8

crippling 351:6

criteria 176:14 198:9,14 258:8,11

critic 170:21

critical 26:19 76:9 323:16 342:14 346:2

critically 283:13

criticism 157:17

criticize 163:9

criticizing 78:7

critique 129:12 130:13

crosshairs 165:1

cross-section 30:19

Crosstalk 6:4 105:19 106:2 127:7 140:16 281:14

crowd 73:21

Crowell 2:10 107:13 215:19 251:8,9 254:17 265:12,13

Crowell's 263:7

cultural 57:21 96:19 318:7

culture 71:15 97:21 127:19,21 263:10 310:6

curated 182:18

curious 205:12

current 61:9 92:8 100:6 101:1 171:21 259:6 311:9 314:6 332:17

currently 94:2 116:6 131:13 143:6 156:7 157:20 269:6 316:16

Cusey 2:11 14:1 81:7,8,9 82:2,4 83:16 84:5,11,18,21

85:2 86:4 308:10 314:13,14
Cuss 81:6
customer 12:4 21:4
customers 22:9 194:8 219:14
cut 186:10 193:7 296:15,17,20 297:19 303:11 305:18 318:6
cyberlocker 87:20
cyberlockers 22:14 202:13

D

daily 22:20 201:16 329:4
dais 328:20
damage 34:21 101:15
damages 101:8,11 133:7,13,15 136:7 137:21 138:1,6 139:21 141:11,18,22 142:22 143:13 144:5 145:3,9 146:5 166:20 171:17 219:7 313:17 347:11 351:7 360:21
Dan 2:9 107:11 215:21
dance 172:16
dancing 46:15 154:14 237:5
dangerous 286:8
Daphne 3:4 108:12 187:11 308:17
data 22:10 80:6 346:10 362:17 363:7
database 31:15 210:3 242:16,20
date 20:1
Dave 2:22 13:21 126:12 308:16
David 256:15
day 16:15,18 27:9 46:20 57:20 71:10,12 111:11 120:16 174:12 189:18 193:6 211:22 241:19 243:12,17 260:19 305:21 312:2 329:20 335:18,22
days 120:3,4 154:11,13,15,16, 21 190:18 240:15,16,21 241:19 272:10
day-to-day 307:4
de 320:14
Dead 107:18 308:13 315:14
Deadpool 167:14,21 169:1
deal 32:15 34:2 63:12 88:7,8 90:7 101:3 127:5 129:15 131:6 135:14 137:20 140:10 141:12,14 143:22 152:16 157:7 191:21 211:9 219:3 249:14 254:2 296:21 298:6 301:4 334:15 364:7,18
dealing 34:14,22 60:1 136:2 140:8 144:2 254:9 259:4 359:3 364:14
deals 176:5 336:11
death 152:6 291:20
debate 141:1 318:7 321:3
debates 295:14 318:5
debuted 71:9,10
decade 126:19,22 143:14
decades 126:21
decide 50:22 145:4 147:1 171:14 180:19 182:4 196:15 296:1 298:19 320:5,10
decided 28:17 82:18 118:1 131:14 260:3 359:2
decides 295:21
deciding 161:2,3
decimated 92:16,18 311:4,6
decision 77:22 151:15 159:10,14 160:3 162:12 182:6 205:10 208:1 225:4 233:15 299:22
decision-maker 159:22 161:21
decision-making 182:2
decisions 161:5 173:20 181:6 217:15,16 221:7 257:21 340:16
declining 132:13
decrease 136:10,17 346:11 364:13
decreases 137:2
decreasing 344:5
dedicated 15:14 22:15 104:1 354:2
deep 290:17
deepening 21:9
deeply 74:16 75:12,16 76:6 187:5 189:21 315:2
deescalate 137:20
defamation 36:21 43:7
default 357:8,10
defeat 297:11
defect 41:11 42:14
defects 53:21,22 138:14 152:13 153:2
defend 358:6
defended 313:19
defending 133:14 159:2
defense 2:20 165:3 205:3 321:7
defenses 321:1
defer 245:13
deference 243:4
deficiencies 75:11
deficiency 134:17 135:2
deficient 133:21 134:1,2,3,13,22 136:21,22 137:8,11 138:10 142:12 143:3,4,6 306:4
define 304:6
defined 216:16 348:20

defines 295:19
defining 177:9 216:18
definite 21:10 230:9,12
definitely 43:1 111:17 121:2,6 122:7 170:14 200:11 208:15 211:11 235:18 280:1 291:17 314:20
definition 177:1 269:4 275:7,8,17 277:15 294:4
definitive 278:13
degree 125:20 186:18
delay 150:14
delete 141:9
deleted 148:22 149:17 150:13
Delgado 2:13 107:14 119:17,18 122:3,7 123:2
deliberate 270:22 276:4
deliberately 269:17
deliberation 247:7
delist 352:7
deliver 333:17
delivering 103:12
demand 71:10 348:2
demanding 272:3
demonstrate 324:10
deniability 321:13
denial-of 301:4
denial-of-service 300:22
denying 363:21
department 6:19 38:19 69:22 272:8
depend 81:12 200:16 277:16
depending 66:21 174:7 293:4
depends 25:21 77:16 84:11 138:16 199:2 291:14 355:3
depth 185:18
derivative 253:22 254:9 339:4
Deron 2:13 107:14
describe 203:9
described 42:6 235:22
describing 150:19 228:4
description 191:16
designated 178:3
designed 23:11,21 64:13 68:22 80:9 102:22 223:20 356:14
desire 37:7
despite 100:13,20
destroy 193:16 194:2
destroyed 25:10 82:22
destruction 193:21
detail 217:15 236:11
detect 249:13
detection 35:4 272:1
deter 136:7 150:8 156:12
determination 42:2 158:6 222:4
determinations 222:12 300:16
determine 72:17,19 138:20 140:10 145:16 218:16 278:18 286:6 300:21
determined 255:7
determining 60:22 222:4 295:8
deterrent 72:22 156:12 274:17
deterrents 178:16
detrimental 133:4 300:8
devalued 96:21
devastate 116:17
devastating 24:18 25:3 92:10
develop 38:14 137:9 175:11,18 201:13 236:6 351:12
developed 30:17 174:18 178:11 189:13
developer 139:1
developing 112:14
development 177:7
deviates 134:10
devices 179:4 347:21
Devlin 3:2 215:6 308:19
Devon 4:15 12:3 68:21 109:11 191:14
devote 135:14 136:2
devoted 103:21 104:3
devoting 135:7
dialogue 9:7,18 128:15 333:1,4 362:21
dial-up 259:5
dichotomy 103:2 171:22 260:6
Dick 114:11
didn't 225:5 228:16 250:5 252:18 270:11 271:14 302:18 304:6,13 314:17 315:21 351:15 356:9
died 337:13
differed 41:19
difference 43:7 47:11 55:22 120:20 168:11 231:13,15,17 284:13 330:19 365:9
differences 8:18 95:14
different 9:9 18:21 19:11,13 20:5,9 21:4 30:2 36:10,11,16,17,20 37:15,16 47:7 64:22 95:14 111:13 112:20,21 113:13 122:19 125:5 148:9 152:18 154:18 161:14 174:6 177:7 179:11 184:15 188:16,17 225:2 228:20 252:10 276:12 280:20

288:9 304:9 307:2 333:9 345:22 356:20,21 363:3
differentiating 20:21
differently 37:16 115:9 134:6 172:4 178:7 179:11 347:4 354:22 355:1
difficult 39:4 40:11 67:20 80:16 87:6,9 97:6,13 98:6 137:17 138:22 139:1 143:20 171:15 176:9 177:14 178:20 188:12 190:4 193:11 222:7 292:15 333:19 334:7 354:8 356:3 357:5,21
difficulty 42:13
Digimarc 4:15 12:3 17:6 26:12 35:14 109:12 191:15 198:15 208:11
digital 2:20 17:7 25:5,6 27:17,20 91:20 111:7 136:8 208:14 210:1,6 242:14,19 269:3 310:6,8 324:1,7,14 325:7 338:13 347:8
digitally 210:9
digits 342:1
diligent 140:1
diminishing 16:9 135:10
direct 12:12 24:6,7 69:15 94:18 108:12 170:4 219:8 243:20 255:1 327:12,21 330:12 361:19
directed 43:12 60:13 158:8,9,18
direction 110:19,22 339:1 366:5
Directive 325:20
directly 70:9 162:5 226:11 328:5 357:15
director 6:10 13:18 70:9 108:1,16 109:8,10 132:7 214:9 215:4,7,16 216:11 308:22 309:8
directory 215:1 361:10,11
disabled 257:13
disagree 47:5,13 205:14 236:13 266:13 295:4 320:19
disagreement 188:5
disagreements 8:13 364:22
disappear 75:3 171:1 317:14
disappeared 149:19
disappears 281:6
disappointing 74:17
discourage 143:4,5 162:20
discourages 147:6
discouraging 123:22 147:11,13 240:4 315:2
discovered 16:17 55:20 116:2
discreet 21:1
discretion 276:21 277:9
discriminating 162:19
discrimination 18:12
discuss 71:21 106:8 300:2 356:9
discussed 114:22 124:22 160:5 189:10 264:3
discusses 198:15
discussing 74:3 293:2
discussion 34:11 57:7 76:13 83:20 116:11 163:17 176:22 179:14 180:4 185:7 203:5 229:9 234:5 238:2 247:17 263:19 285:6 300:18 324:4,19,20,22 325:3,8,16 326:13 363:9
discussions 56:22 58:12 85:15 170:13 262:14 324:2 325:10 362:22
disdain 62:3
disincentive 314:21
Disney 4:18 11:21 15:13 16:12 32:14 70:22
disparate 171:3
disparity 330:16 336:15
dispatched 265:15
dispel 270:16
disproportionate 325:1
dispute 30:9,21 42:8 44:8 77:3 163:18 181:8,20 218:15 319:11 320:2
disputed 159:18,20 340:13
disputes 139:6 218:10 297:7
disrupts 146:8
disseminated 14:21
distinct 210:2
distinction 186:2 264:12 325:19 326:14 360:9 361:7
distinguish 230:19 280:19
distort 177:2
distorting 233:7
distortions 363:19
distribute 338:18 340:8
distributed 165:19,20 187:19 349:9
distributing 360:15
distribution 93:13,22 95:5 166:14 178:13 210:7 294:12 313:8 327:9 347:22 348:6 360:13

distribution.” 313:4
distributor 119:20 165:12 166:18
distributors 69:21 121:19 340:7
District 282:18
diverse 31:7 34:9 283:22 284:6
diversity 19:8 22:11,18,21 38:1,3 39:3 110:4 124:14 125:7 126:5 127:20 174:2 283:13 310:14,15 340:12
diverted 55:10
divide 216:5
divides 158:12
dividing 340:10
division 98:7 107:19
DMCA 7:3 8:7,16 14:18 15:3,4 19:3,17,21 23:21 25:16 28:8,11,14,22 29:3,8,9,13 32:20 34:1 55:12 57:9 64:10 69:19 72:6 74:10 79:15,17,18,19,2 1 80:12,21 86:20 87:13 88:1,13 94:2,11,22 95:3,7,15 98:3 100:13 111:18,19 112:1,8 113:18 117:13,15 119:9 121:10 123:21 124:13 129:17,22 131:8 133:7,12 139:17 140:20 145:5,12 146:2 148:15 152:9,22 154:2 155:19 156:2,22 157:14,21 162:9,11,17 170:8 172:13 178:18 184:18 185:1 197:14 200:7 202:15,17,20,22 203:14 205:15 212:20 213:4,10,12,14 214:3 216:15,20,21 217:1,7,10 220:14 221:20 232:11,12,14,16, 21 233:1,19 234:7,8 236:8 240:5 241:13,20 242:5 248:3,4 261:10,14,20 262:18,19 263:4,13 275:11 276:7,9 281:16 285:21 290:8 297:17,20 302:9,10,20 303:17 304:13 312:19 313:10,14 319:2 320:11,13 321:14,21 326:13,17 327:15 333:17,22 334:11 336:4,9 341:18 345:16 346:2 350:8,19,20 351:11,14,15 352:8,16,18,20 353:1,11,13 354:9,10,21 355:4,5,21 356:13,15 357:21 359:5 361:8 362:2 364:2,6
DMCA’s 213:5 251:11
docket 46:20
Docs 24:14
Doctorow 48:5
doctrine 150:18
document 126:18
documentary 130:15 186:6
documents 24:13 321:5
Doda 2:15 215:17 265:8,9 266:10,11 309:18 358:8,11,16,17 361:2
Doda’s 273:17
doesn’t 186:7 187:16 191:4 200:8 206:2 220:3 224:6,20 227:12 228:3 231:4,14 254:10 255:16 256:10 270:5 299:8 303:11 322:15 332:4 348:21 355:15 364:1
dog 252:16,17
dollar 336:8,18
dollars 72:10 135:17 162:13 192:10 194:7 286:10 331:10
domain 114:9,13
Don 309:5
don’t 173:13 175:21 181:21 183:8 185:5 186:12 188:9,13,18 190:16 194:16 198:7 200:18 201:1,2,3,5 205:1,22 206:1,8,10,17 207:9,14 208:1 211:9 218:7 219:2 231:2,5 232:6,13 235:3 237:9 238:12,17 243:5,6 244:21 246:15 248:9 251:3 253:15 255:6 260:15,17,18 262:21 264:19 267:9 268:12 269:15 270:18 272:5,6 295:11 297:16,19 298:17,18 300:9,22 303:1 305:7 308:7 316:10 320:19 325:2 326:5,9 328:21 329:10 336:17 339:2,9 340:12 346:10 349:14 350:18 354:13,21 356:3 357:14 358:5 361:4
DONALD 3:19
done 56:8,9 60:9 118:16 155:14 164:17 200:10 201:22 206:9 209:13 213:12 223:4,14,15 236:16 253:21 268:4 269:5 337:16 350:20 357:8 363:5
doors 7:18
doubt 67:9 148:6
down.” 119:6
download 71:14 72:4,5 102:17 103:7 120:10,19

192:13 201:5 311:15
downloaded 72:2 231:3
downloading 329:16,17 347:19
downloads 72:8 316:13,17 347:21
down-release 117:17
downward 88:9
dozen 318:17
draconian 284:20
dramatically 273:8
drastic 240:18
drastically 14:19 269:8
draw 28:2 177:15
drawn 325:19 349:14
drill 9:14 33:11
drive 57:14 201:8,20 259:13
driven 345:6
driver 317:11
driver's 317:8
driving 27:11
Dropbox 168:10 201:7
dropped 317:2,4
dropping 123:6 241:22
drummer 337:3
dual 344:6
due 150:21
duplicated 336:12,14
duplicates 67:6
Durie 2:21 108:6
during 10:10 124:22 164:14 259:5
duties 250:12
duty 141:19 238:4,7,11 249:22 250:1,4,19
DVD 71:7
dwelling 155:10
Dylan 194:14
dynamic 162:8

E

earlier 43:5 54:12 67:16 68:1 86:11 130:11 134:2 137:8 147:20 148:14 179:14 211:19 212:18 216:14 221:18 234:3,5,6,22 235:8 236:21 248:2 250:14 279:4 292:6,7 303:16 311:1 318:8 321:2,16 332:22 346:20,22 348:12 362:19 363:15,20
early 165:17 182:2 209:10 240:15,16,21 330:4
earn 69:16 70:10 92:7,10 94:20 195:19
earned 337:6
earnings 311:3
Earth 80:10
easier 67:7 91:16 169:14 181:10 222:5
easily 56:17 103:16 116:12 352:12
East 2:16 107:17 123:8 194:15 308:12 315:5 337:21 362:4 364:14
Eastern 282:17
easy 49:18 50:2 169:19 188:15
eat 212:5
eats 121:6
eBook 27:13
echo 55:4 56:21 74:15 189:11 332:21
echoed 81:13
E-Commerce 2:3 216:12 325:20
economic 312:18 313:2 330:11
economically 164:21
economy 24:3 51:15 335:9 346:3
ecosystem 26:20 34:9 55:6 109:22 146:19 177:21 239:10 323:13 333:6
ed 177:19
edge 163:1,2,4,5
edit 57:17
edited 118:5
edition 27:17
editor 26:2
educate 179:6
educating 68:17
education 47:18 137:10 153:4 164:6 178:10 279:22 281:3
educational 115:3 179:15 180:2 286:20 310:17
EFF 365:1
effect 75:15 92:9 188:11 226:21 245:12 290:13 291:8 319:2 320:14 331:3 335:4
effective 64:21 66:5 115:21 173:18 209:12 234:14 242:12 356:19 362:18 363:8
effectively 20:7 35:3 53:4 79:20 115:6 154:10 176:8 178:12 212:21 239:10 242:11 293:8 361:1
effectiveness 14:14 16:3
effects 57:21 129:22
efficacy 8:6
efficiencies 15:20 17:22 340:22
efficiency 75:14 103:12
efficient 16:4,7 182:1 234:13
effort 44:15 67:19 90:6 140:10 143:22 190:8 201:14 315:3 320:12
efforts 17:1 136:18 202:4 203:8 267:17

egregious 60:2 61:3 196:9
eight 197:1 220:11,14,17 266:13 349:20,21
either 18:15 44:2 57:18 59:3 85:16 88:6 93:21 118:10 140:6 146:12 171:6 180:10 206:15 208:18 211:9 213:15 217:2 236:2 237:11 238:18,22 261:21 291:2 315:16 338:18 345:7 354:2 359:7 360:3
elder 273:4
election 153:19
electronic 3:13 13:10 124:4 215:4 348:2
electronically 296:20
element 23:11 66:17
elephant 191:22 194:18
eligibility 166:19 198:14 275:11
eligible 198:7 262:11
eliminate 230:21
eliminated 87:16
eliminating 164:13
Elizabeth 4:12 108:9 309:15
Ellen 4:3,5 109:1 194:15 214:9 309:13
Ellerd 2:17 107:20 123:3,4 127:3,4,8,16 128:18 129:21 130:9 308:14 317:15,16,19 319:5,7,9,13,18 320:4 322:1,3
eloquent 248:14
else 46:5 67:8 99:4 121:12 148:16 208:4 245:2 260:21 263:20 264:4 301:13 314:19 318:4 358:12
else's 298:8,9
Elsevier 2:15 215:18 309:18 357:7
email 19:18 20:3 46:6,10 76:3 191:2 209:1
embedded 210:6
emergency 154:19
emerging 78:18
emphasis 254:7
emphasize 74:15 200:14 235:6 282:1
emphasizes 221:10
empirical 54:20 58:18,19 264:18
employed 366:8,11 367:8
employee 366:10
employees 241:18 286:22
employment 340:21
enable 335:1
enabled 57:13
enabler 120:10
enables 154:3 355:22
enacted 157:10 213:7
encounter 179:17
encourage 64:10 123:19 146:3 159:4,6 162:18,19,20 164:18 232:3 294:7
encouraged 127:1 160:12 163:14 178:17 363:5
encouragement 313:15
encourages 143:17 147:7 154:3 251:5 355:22
encouraging 142:15 197:9 203:1 232:18 233:4 314:9
encrypt 201:8
encrypted 201:9
encyclopedia 100:11
enforce 115:21 190:17 303:20
enforced 354:22 359:10
enforcement 4:7 18:6 21:15 24:1 27:5,7 33:7 39:7 45:10,11 55:8 58:19 61:19 109:4 136:17 191:12,13 235:3 248:5 324:22
enforcing 222:15 314:4
engage 18:7 21:18 185:17 249:1 268:11 318:6 322:15 325:9 326:15
engaged 137:16 232:17,18 233:5 253:12 339:9 355:16 357:11
engine 2:18 45:5 108:1 120:9 132:7 197:7 215:16 351:5 359:13 361:12,18,20 362:7,9 363:4
engineering 80:6 174:19
engineers 324:13
engines 351:9,14,16 353:16 358:20
Engstrom 2:18 107:22 132:5,6 134:8 137:13 138:15 139:19 140:3,15,17,21 141:2,6,20 142:1,3,19 143:5,10 145:22 147:3,13 148:12 150:5 151:8 195:21 215:15 292:4,5
enhancing 340:22 344:4
enjoining 155:14
enormous 15:12 38:3 44:15 87:2 101:21 138:5 140:8 313:14
enormously 87:7
ensure 17:1 103:7 261:19
ensuring 293:20
entails 233:1

enter 21:18 72:3
enterprise 198:22 316:5 351:6
enterprise-based 198:14
enterprise-level 23:9
entertainment 2:11 4:12 108:11 308:11 309:6,16 342:17 345:18
entire 23:2 24:7 26:15,19,20 88:21,22 146:19 160:10 162:4 164:14 207:14 234:6 236:8 255:22 280:13 297:11 323:12
entirely 203:9 278:17 312:6
entirety 72:20
entities 347:15 357:4
entitled 150:1 155:15 206:6 212:17 262:18 298:14
entity 19:9 68:9 160:9 227:14 325:15 326:1
entrench 176:8
entrenched 9:8
entry 341:1
enumeration 227:13
environment 14:19 15:5 57:22 213:2 236:1 249:7 306:22
environments 274:11
envision 210:9
envisioned 163:17 266:19
envisions 258:14
equally 92:17
equation 64:2 160:18
equivalence 53:13
equivalent 25:1 72:9 73:2
era 259:5
Eric 2:8 107:8 308:3,8
eroded 70:16
erosion 25:5
err 305:1
erroneous 172:9
error 52:12,19 53:2 240:18
errors 35:22 52:10,15 74:22
escalate 77:18
Escape 262:4
ESL 3:22 13:1 28:7
especially 45:20 50:7 83:5 95:16 157:8,15 163:2 242:9
essays 130:19
essentially 86:3 130:14 150:6 194:4 196:11 197:16 204:3 235:2 236:7,16 294:5 336:12 348:14
establish 352:21
established 318:3
establishing 360:20
et 24:14 172:20 175:15
Europe 176:22 325:20
evaluate 90:11
Evan 2:18 107:22 215:15
event 47:1 221:15
events 7:10
eventually 27:13 38:11 88:7
everybody 31:9 48:21 72:8 93:16 315:19 317:17,20 332:17 333:5
everyday 276:9
everyone 11:8 33:4,17 67:8 89:21 91:14 99:18 104:11,20 106:3 109:14 111:4 123:14 128:16 132:14 187:8 213:18 264:19 280:2 301:13 305:10,14 306:3,10 307:17 308:5 310:19 358:12
everything 26:6 66:4 111:14 121:12 128:19 144:15 179:6 196:2 245:12 249:4 306:5,6 333:3 342:13
everywhere 364:12
evidence 58:18,20 124:17 147:16 150:10 152:8,11,21 153:9 193:16,18,19,21 194:1,2 197:15,20 231:21 241:1 278:13 300:14 356:4
evident 164:1 229:21
exact 67:5 122:18 265:6 274:18 320:15 349:21
exactly 142:22 156:21 179:1 181:20 257:3 303:2 349:22
examined 40:1
example 24:19 28:5 36:13 48:5 73:13 79:9 94:17 113:16 114:3,9 117:11,21 120:1 134:9,18 135:15 138:17 141:8 145:20 154:9 159:11 163:8 167:14 168:8 175:22 186:3 199:21 200:17 208:19 218:1,2 219:7 225:14 228:15 232:22 238:16 242:16 259:16 261:2 269:5 271:5 277:17 285:17 299:18 302:12 336:6 351:1
examples 112:3 186:5 201:17 227:7 268:3 269:6 294:13 299:20 300:4
except 294:8 318:18
exception 60:4 328:17 360:22
exceptions 283:12
excerpts 175:15

excessive 145:9
exchange 353:6
exchanged 290:20
excited 324:8,10 363:9
excitedly 25:7
exclude 233:7 326:10
excluded 232:21 233:19
exclusive 231:12 339:20,21
exclusively 76:19 83:21 167:9 348:20
excuse 151:5 220:9 222:19 301:18 314:6,13
executing 156:10
executioner 159:17 161:8
executive 108:1 132:6 215:15 216:11 308:21
executives 163:9
exemption 61:14
exist 51:17 110:14 116:5 200:9 206:2 241:21 255:3 304:13 325:2 332:21 334:2,7 341:11 342:4 345:15 357:16 361:8
existed 79:15
existence 49:17 290:16
existing 22:13 64:12 138:21 269:7 313:4 352:19
exists 23:17 75:9 87:11 91:18 189:17 205:17 303:12
exiting 306:9
expand 31:6 204:1 342:15
expanding 348:4
expansive 27:17 275:4
expect 9:16 225:9
expected 164:2 173:9 326:7
expeditious 220:22 221:4,19 226:13 230:13
expeditiously 227:19 229:3 245:5 353:9
expelling 287:10 290:15
expensive 87:7 94:15 192:12 193:11 305:4
experience 33:2 49:16 75:4 84:7 123:21 156:18 167:17 170:12,17 174:22 189:9 241:4 319:1 357:9
experienced 79:4
experiences 38:18
experiment 55:13 240:8,14
experimenting 240:16
expert 193:22
expertise 160:10 181:5
expired 164:16
expiring 281:4
explain 22:5 90:11 165:14
explained 62:13 230:18
explains 231:8
explicit 258:16
exploded 45:17 130:16 345:19
exploitation 339:11
explored 134:1
export 340:18 342:8
exported 342:9,20 343:13
expose 82:16
exposed 145:9
exposing 204:13
exposure 266:21
expound 113:3,6
express 148:18
expressed 152:2
expression 43:13 45:5,18 95:4
extend 40:2 348:21
extended 259:16
extensions 128:1
extensively 28:8
extent 8:11 10:9 66:21,22 68:19 90:18 183:5,12 184:8 200:7 235:15 252:14 346:11,16 347:3,9 350:11 357:2
external 102:13
extra 148:17 353:7
extrajudicial 75:2 297:12
extraordinarily 45:6,15 222:7 277:10 350:22
extraordinary 46:4,11 75:1
extreme 62:3 359:12
extremely 18:16 19:22 21:6 209:10 334:17
eye 250:6,9
eyes 78:17 312:16 322:19

F

fabric 96:19
face 164:1 204:8 207:19 330:22 334:13
Facebook 168:18,20 200:21 201:16 298:4 323:3 334:5
faced 64:14
faces 292:12
facially 204:12
facie 163:11
facilitate 164:5,9 293:17
facilitates 154:3 356:1
facing 193:6 314:3
fact 16:17 19:8 28:16 41:22 68:21 83:18 90:22 112:4 118:3 122:15 144:14 145:6 149:9 151:14 164:20 182:21 191:18 193:22 208:16 209:4 210:21 239:19 255:15 256:10

257:17 259:4 263:22 266:20 269:14 270:4 272:3,20 273:9 278:13 282:7 294:18,22 312:22 314:2 316:11 328:5 329:17 331:18 332:16 351:9

facto 320:14

factor 235:11 245:12 267:11

factors 151:11 199:2 211:3 222:11

facts 9:14 165:15 166:8,15 217:4 244:22 250:16 260:18,20 261:4 284:7

fact-specific 252:5

faculty 286:22

fail 23:22 174:12

failing 65:16 66:5 140:7 143:19 144:5 146:6 172:22 293:13

failure 76:14 262:3,7

failures 313:1

fair 21:8 36:22 39:17 42:20 43:9,10 44:1 47:21 53:2 55:7 56:8,11 57:11 58:9 60:22 61:15,16 72:18 74:16 112:1 117:8 118:1,2,8 119:4 128:2,21 129:2,4,6,8,12,1 3 130:7 132:3,4 134:4,5 141:3 144:7,19 145:10,16 147:1 151:10,11 158:14,18 159:11,20 161:22 162:3,12 163:3,6,7,8,13 164:19 175:15 179:16,19 180:2 182:22 190:16 191:3 194:19 203:21 206:15,17 211:16 218:16 222:10 245:11 297:16 321:7 363:21 364:22

fairly 139:6 196:15 211:20 242:7 306:22 349:11

fair-use 181:2 204:2 242:21 318:13,14 319:2 320:22 321:19

faith 171:8,20 234:10 360:9

Fake 130:16

fall 68:15,16 100:13 210:5 253:15 305:7

fallen 195:8

falls 111:17

false 133:5,17,21,22 134:13,22 135:18 136:21 138:7,10 141:16 142:15 144:2 146:8 147:6 170:19,22 171:18 175:20 187:17 194:20 198:2 338:8 364:2

familiar 129:18

famous 337:3

fan 264:9

fans 51:11 311:15,17

fantasies 363:15

fantastic 26:2 239:13

fantasy 354:12 363:15

farrago 197:4

fascinated 71:20

fast 4:5 212:8

father-in-law 96:5

favor 8:16 110:18

favorable 176:6

FCC 294:14

fear 123:17 219:6 274:17 303:5

feasible 27:18 55:17 202:5

features 27:18 326:6

federal 18:14,17 77:4 160:21 180:6 190:22 220:12,17 266:13 349:20 359:1,17,22 361:4

fee 336:15

feed 127:18 352:10

feeding 175:6

feel 23:20 24:1 27:4 62:14 71:17 86:18 88:6 170:9 171:18 173:22 181:3,4 182:5 211:22 252:3,5 288:11

feeling 67:2 81:17 249:4

Feerst 2:19 13:19 73:9,10 76:1 77:7 78:2 215:13 273:14,15,16

fees 143:15 203:18

feet 350:7

fell 118:13

Fellow 6:16

felt 82:15 83:1,6 118:16

Fenwick 2:7 216:4 308:1

Fertig 1:21 6:15

fewer 34:15 90:22

field 271:12 310:18

fight 3:9 13:14 57:5,12 63:7 76:22 131:15 193:9 196:21 318:21

Fighters 126:12

fighting 292:14

fights 230:21

figure 44:22 68:10 169:14 173:15 181:14 190:7,11 199:1 250:20 274:14 277:9

figuring 223:5

file 16:14 21:3,13 42:16 48:13 63:1 67:10,22 69:19 81:20 82:5,18 99:3 139:12 164:3 192:2 201:7 272:9 296:19

filed 51:5 63:2 79:10 87:5,9 90:9 118:20 201:15

files 16:8 149:4 165:18 167:22 174:7 195:13 210:4

file-sharing 22:14 60:10 192:7
filing 33:6 77:6 87:19 184:22 188:7 285:21
fill 46:10 225:9 354:21
fills 186:17
film 2:8 16:13,16 53:11 69:12,16 70:8,11,17,18,19 71:9,14 72:1 107:9 116:16 125:3 187:20,22 190:15 191:4 194:13 235:14 308:3,9 312:2
filmmaker 53:10 69:12 96:15 109:2 186:6
filmmakers 71:21 109:5
films 4:5 50:8 69:19 70:2,16,20,22 72:3,14 98:2 130:19 169:10
filter 101:20 177:12
filtering 32:18 33:1 110:11 112:12 167:20 168:6,10,11 176:4 199:8 200:15 201:11,18 209:11,20 210:20
final 40:19 83:3 105:2 155:18 179:13 282:14 305:20
finally 7:12 28:12 75:4 219:4 303:5
finance 50:8 53:11
financer 98:18
financial 83:5 91:19 98:8 147:8 232:12 253:8,9,14 294:10,21 314:22 327:21 351:6
financially 55:17 366:12 367:9
finding 42:13 121:15,16 167:15 191:17 234:19 241:20
fine 61:22 65:2,4 66:4 72:9 73:2 132:3 141:15
finely 185:15
fine-tune 169:22
fingerprint 200:18
fingerprinting 201:10 210:2,3
fingerprints 188:17 242:15,19
finish 202:11 301:10,14
finished 98:16
fire 291:15
Firefox 108:22
firm 317:21
first 9:21 11:7,10 14:13 28:2 30:16 42:21 44:13,18 70:6 86:11 89:13 92:1 93:5,15 101:7 119:21 123:14 124:3 126:13 130:2,10 136:4 150:18 155:3,12 169:15 173:6 184:19 187:6 189:7 190:7 195:5 206:12 209:10 213:16 216:14 217:18 245:19 254:17,18 259:14 279:16 286:19 290:9,21,22 295:4 298:20 311:2 318:22 322:5,7,9 333:12 351:18
fit 81:2 275:2
fits 360:17
fittingly 14:8
five 89:14 94:20 98:19 195:4 243:15 272:10 313:20 317:13 332:10
fix 77:12 91:17 332:19
fixed 47:2
flag 122:13 131:2 217:6,9 219:14,21 220:16,21 221:10 226:17 229:10,17 230:4,7,11 231:21 236:7,11,17 238:5,19 239:1,18 249:16,19 250:1,16 251:19 252:14 256:14 259:10 260:21 261:12,17 262:2,9,21 263:17 273:19 274:17 275:4 326:18 327:20
flag” 217:3
flagged 219:11
flagging 121:1
flagrant 219:18 280:16
flagrantly 277:3
flat 118:13 197:11 256:8
Flava 361:20,21
flaws 35:5,6,9 36:18
flexibility 277:8 281:17 283:22 292:22 293:7 360:5
flexible 276:2 278:16 281:7
flight 323:1
floating 186:13
floor 274:3
Floor64 151:17
flourish 31:3
flourishing 46:1
flowers 170:10,11 315:14
fluidity 22:1
focus 9:12 14:13 41:2 53:18 60:15 79:20 110:4 165:13 167:9 169:11 185:10 208:7 211:14 213:10 216:19 217:18 302:4 323:20 330:8 348:8
focused 83:21 94:4 152:6,11 210:19 362:22
focuses 17:9 106:18
focusing 117:4 154:6 166:17 183:16 185:9 217:14 294:4 330:6
folks 73:15

74:5,17 75:10 76:7,19 77:12 78:5,7 80:2 202:14 363:7
follow-up 22:3 35:17 47:4 53:16 83:13 95:11 103:19 113:2 116:19 137:6 144:22 152:5 155:18 203:4 219:16 289:11
follow-ups 78:21
font 76:3
Foo 126:12
food 212:8
foolish 143:21 276:19
footnote 151:16
footnoted 153:7
Forbes 192:9
force 77:1 185:12 328:2
forced 316:7 355:13
forefront 184:10 196:22
forego 207:2
foregoing 366:3
foremost 190:7
forfeit 137:15
forget 157:2
forgot 307:16
form 25:6 27:20 29:4 46:10 73:12 122:6 141:10 268:2 355:8
formally 6:22
format 9:3
formed 158:8,13,14
forms 18:1
19:6,8,13 20:4 64:12
forth 172:15 175:3 289:4 326:4
forum 291:13
forward 116:8 193:3 323:11 348:7 349:16
forwards 239:20
foster 45:4
fosters 355:22
foundation 3:13 4:2 12:19 13:10 100:9 215:5 326:8
foundations 252:1
founder 151:18
fourth 138:21 245:12
fox 4:12 48:7,9 108:11 165:12 285:15 309:15
foxes 294:18 350:11
frame 301:9
framework 187:5 281:20 314:11
framing 333:14
Francisco 1:14 108:6 216:4
Frankenstein 114:11
frankly 68:8 196:20 344:19 363:10
fraudulent 170:20 184:20 189:14
Fred 4:14 109:9
Fred's 365:10
free 7:10 25:8 45:5 52:21 57:10 59:18 61:4
92:2,4,5 95:4 173:15 189:19 249:7 294:11,14 312:1,6,12 315:19 317:13 321:9
freely 152:2 249:2
Freest 73:9
freeway 73:3
frequently 110:10 288:1
friend 26:1 131:18,19
friends 71:19
frightened 81:20
fringe 236:3
front 185:6 237:10 243:21 253:13 312:16
Frontier 3:13 13:10 215:4
frustrated 81:17
frustrating 70:1
frustration 131:6
frustrations 110:6
fulfilled 347:12
fulfilling 44:21
full 10:22 21:6 57:18 58:7 72:14 82:5 117:2 129:3 171:7 187:21 190:18 191:4 241:19 320:20 338:17 364:21 365:1,2
full-length 49:10 116:12 117:1,4 167:5,10,13 168:22 169:10 175:9,12 182:14,16 184:7 185:9 186:14 187:19 188:16
190:14 222:21
fully 105:7 261:13 282:13 359:2
fulsome 346:9
function 239:10 306:22
functionality 353:20
functionally 290:14
functioning 148:15 157:7
functions 347:6,7,14,16 348:5 349:12,18
fund 23:20
fundamental 8:13,21 45:13,14 293:17 345:15 352:15
fundamentally 276:19
funding 195:2
funds 135:19
Fung 247:10 262:1
furthered 217:17
furthering 217:18
futility 116:3
future 3:9 13:14 31:8 57:12 64:12 116:8 157:2 211:21 281:2
fuzzy 281:19

G

Gabe 108:18
GABRIEL 3:15
gain 250:1 251:3 313:10
gaining 251:5
Gallagher 366:19

game 79:8 153:20 177:6 332:9,10
gamed 153:20
games 79:8
gamesmanship 150:9
gamut 276:10
Gang 3:19
gap 151:6
gaps 225:9
gasp 129:3
gate 64:4
gathered 42:5
gathering 339:7
gauge 307:3
GDP 340:19 344:16
Gellis 2:20 108:2 148:10,11 149:6,13 153:6 155:2 156:5 215:9 289:20,21,22 290:1,6
general 6:14 7:7 12:2 13:22 106:21 111:16 121:9 181:15 188:3 214:1 219:19 220:14 226:5 230:20 231:15 232:1 236:19 238:10,17 249:22 259:12 262:14 277:7 279:15 288:6 289:3 360:4
generalities 249:20
generalize 174:9
generalized 219:18 221:4 233:8
generally 29:12 39:19 94:11 96:8 101:15 111:9 174:1 175:8 185:11 200:1 236:15 258:2 275:20 283:6
generated 7:7 58:7 199:22 280:5 331:20
generating 188:15
generation 96:18 97:4 179:10,12 329:14
generic 22:13
generous 349:11
generously 7:13
genre 130:13
genuine 298:13
genuinely 280:7
gen-X 329:17
George 2:5,12 14:2,3 215:8 216:7 308:11
gets 46:21 54:14 149:16 181:16 185:5 187:4 190:20 299:9 320:3 329:21 332:4
getting 25:14 70:7 71:1 73:13 75:2 76:10 77:14 81:18 94:21 97:7 136:3 185:22 221:21 226:16 234:1 251:10 254:18 263:18 273:11 275:20 279:8 298:5 301:7 315:18,22 318:13 348:11 357:4
Girl 4:5
GitHub 138:17 140:9
given 20:6 23:9 55:19 59:15 61:7 68:1 86:20 104:9 109:18 123:13,14 134:21 229:1 238:22 268:3 278:7 279:11 292:11 321:8 350:20
gives 156:20 261:2 274:22 291:3 325:18 362:3
giving 260:10 276:20 281:1 302:4 322:9
glad 7:8 31:8 41:17
glean 43:18
global 108:22 111:8 207:5 215:17 341:6 342:16,22 343:2
globally 56:15 342:15
Globes 93:10 96:16 340:7
goal 80:3,4 293:9 298:2
goals 31:1 88:16 297:6
Golden 93:10 96:16 340:7
gone 124:18 193:15 301:8 364:16
goodness 45:15
Goodrich 4:16
goods 339:3,5 341:9
Google 4:14 24:14 26:16 36:5,7,8,10,14 37:7 51:20,21 57:6 72:3 91:10 109:10,19 120:9 168:8,17,19 170:6 174:10 176:10 194:21,22 195:4,5 199:12 201:20 268:9 276:18 281:3 310:12,18 315:16 338:3 351:4,17 358:2 362:9 365:6,7
Google's 194:22 195:21
Google+ 200:21
Google-level 310:20,21
Googles 352:22
gotten 76:19 131:8 236:15 239:6 240:19 241:6 248:13 255:15 256:12 263:8 275:17 281:17,21 283:6 284:14 301:8 351:17 362:2
government 23:18 68:9 69:8 111:15 214:10 267:16 272:16
Government's 364:8
governments 323:12
graduate 2:17 107:21 128:18 286:22 318:2
grandma 273:3,4
grant 327:15
granted 354:3

gratified 284:10
gratuitous 133:12
Gratz 2:21 108:5 156:15,16 160:1,20 162:13 164:9
Graywolf 26:2
great 7:2 20:6 26:5 41:16 44:10 54:3,22 102:18 132:16 140:10 141:7 147:8 174:2 176:4 195:7 237:5 241:14 246:4 292:20 299:12 305:9 314:6 340:18 348:10
greater 58:18 143:3 147:4 163:22 164:9,18 170:12 351:2
greatly 20:5 177:2 353:22
Green 2:22 13:21 78:13,14 308:16 322:12,13 325:11 362:14,15 363:12 364:18
greenlight 98:14
grievance 44:7
grist 110:20
Grohl 126:12
Grooveshark 202:19 262:5 332:11 363:17
gross 196:13
ground 351:17 356:5
grounds 326:10
group 2:4 4:7,12 13:5 14:7 18:7 38:14 57:12 65:22 66:3 108:11 109:4 131:12 165:6 191:12,13 307:20 309:16 317:20 323:4 337:2 338:17
groups 31:12 39:10 40:2,11,13 74:10 129:1 131:12
grow 88:14,15 240:15 344:5
growing 343:19 344:2,3
growth 45:4 297:21 303:17 340:12 341:12 342:16 343:17 345:17
guarding 285:15 294:18
guess 18:22 25:12 37:3,14,17 47:5 53:12,15 65:3 75:13 77:16 83:18 84:1 85:1,16 96:2 103:20 113:8 114:20 152:4 154:5,18 155:20 156:3 161:13,22 162:8 169:8 181:22 183:16 196:19 213:17 219:16 231:20 232:1 283:9 284:20 288:5 317:19 355:3
guidance 267:17 275:18 301:19 302:5,7
guilty 336:1
guns 63:3
Gunterr 361:21
guy 125:17 186:3,6 209:2
guys 90:9 92:3 172:14 318:11,12

H

habit 106:16 113:5
hacked 82:22
hacking 82:22
hadn't 348:12
half 38:13 89:4 90:16 134:22 199:21 234:7,8,12 235:4 306:13 317:2,5 318:17 321:4 331:17
halfway 295:3,4
Hammer 97:11
hampering 283:8
hand 12:13 32:9 40:9 48:10,11 59:14 74:11 85:20,21 143:6 228:22 268:1 273:6 346:10 354:1
handed 291:20
handful 24:9 36:9
handgun 59:21
handle 56:5 101:1 193:1 334:13 335:6
handled 135:4 193:15
hands 141:12 286:6 322:10
happen 48:17 62:12 86:17 139:9 142:10 154:4 155:6 157:21 231:4 283:15,16 340:17
happened 86:16 88:4,20 96:20 97:15 114:6,8 124:2 129:22 190:13 194:3 291:19 347:13
happens 47:2 154:1 168:19 181:15 206:19 231:5 288:22 311:8 355:11
happy 30:17 116:20 178:21 191:5 198:11 204:11 300:3,17 311:4 344:20
harassed 85:10
harassment 274:12
harbor 32:18 151:19 158:6,22 166:19 180:12 205:16 206:1,5,9,10 207:2,4,10,15 232:8,15 237:1 253:15 254:20,22 255:4,8 262:19 267:9,12 288:2 293:14,20 294:9 305:7 310:8 311:9 326:1,2,3,11,21 331:20 332:2 334:6 336:5 348:19 349:3 350:20 351:1 352:4 353:19 354:3,4 355:10,15 358:3 360:21
harbors 51:18 101:13 202:20 207:16 217:2 251:1,4 254:6

276:9 282:5 306:17 327:4 328:15,16 330:10,12,14 331:7 333:15,18,19 334:2,16,18 335:4 347:5,13 348:4 363:19

harbor's 293:21

Harbors 5:17 306:1,16

hard 30:13 31:15 37:1,8 44:22 72:17,19 77:7 131:17 138:20 171:11 172:1 174:9 187:13 220:2 306:7 339:3,5

harder 51:19 169:15,22

hardly 192:1

hardships 64:14

harm 291:6 293:16 325:4

harmful 154:14

harsh 27:5

Hartline 3:2 215:6 249:10,11 251:9 308:19 327:1,2

Hartline's 360:10

hash 167:22 168:5,10 201:20,22 225:17 242:11,13

hashes 188:17

hashing 223:10

hasn't 247:5 271:3

hat's 248:15

hate 64:3

haven't 204:20 206:9 218:4 224:2 234:15 247:15 301:12 318:15 328:17 330:4 332:7 333:10 347:14 354:7

haven't 80:22 83:14,20 89:13,17 99:22 105:6

having 22:15 58:5 63:18 75:5 88:18 95:19 97:6 100:16 109:16 115:8 118:11 136:20 142:13 144:4 145:15 146:5 152:16 155:14 158:5 162:5 182:21 183:6,10 189:8 191:11 194:11 196:12 221:5 249:2 276:16 293:18 294:9 297:12 298:5 303:6 310:16 324:3,4,5,21,22 325:3,8 353:8

hazard 362:12

HD 70:3 71:11

he's 174:11 233:16

head 188:2

headed 92:14

heads 324:12,18

headshots 163:9

health 25:2

hear 7:2,22 31:8 95:13 96:6 97:1 99:8 106:10 117:10 127:8 132:12 163:21 171:22 319:6,10 356:22 362:15

heard 6:5 42:11 59:2 62:9 65:8,11,12 67:19 68:1,21 81:19 83:10,14 92:2,15 97:4,5,10,11 99:7 100:5 109:19 110:2 130:5,10 156:21 158:3 159:8,17 170:18 174:2 175:2 198:5 200:13 212:18 234:5,15 238:2 267:20 268:9 279:4 283:18 297:4 303:14 321:1 323:21 324:16 328:17 332:1,17 345:5 347:15 348:12 350:5,8 353:11

hearing 50:6 52:6 86:15 91:15 110:6 130:11 172:21 175:8 240:22 246:16 306:18 343:11

hearings 59:11

hearken 292:7

heart 146:2 199:10

heartened 282:19

heated 153:18

heavier 157:14

heavily 210:19

heavy 8:9

Heck 63:21

held 262:17 322:17 362:7

hell 193:10

Hello 315:9

Helm 337:2

help 9:6,11,19 28:8 33:6 61:10 66:20 69:5,6,7 101:19 110:12 113:8 122:6,8 172:13 180:7 181:8 182:2 194:5 316:9 337:12 364:7 365:4

helped 29:7 57:12 313:11,14

helpful 30:2 47:18 54:21 77:9 113:10 115:11,13,15

helping 7:15 56:1 88:14 194:6 203:8

helps 249:6

henhouse 285:15 294:19

here's 218:2 225:14 237:15,16 315:7,13

hereby 366:3 367:3

here's 72:11 91:17

hereto 366:12

hey 121:20 191:3 209:1

Hi 100:4 107:14 132:6 248:1

hiding 294:20

high 18:19 40:8 136:20 139:7 141:9 142:2 143:18 144:5 146:6 173:7

higher 177:19 178:10

highlight 9:11 133:2

highlighted 50:14 212:22 213:2,3

highlights 134:10
highly 34:9
high-quality 346:18
Hilary 312:20
hiring 23:20
historical 83:6
historically 83:9
history 45:4 79:7,8 205:19 221:9,12 227:7 230:18 231:8 233:10 239:14 243:9,10 249:11 250:5 304:5
hit 73:2 131:10 177:4,8 314:22
hobby 323:5
hold 69:22 151:4
holder 19:10 161:1 270:15 271:17 295:19
holders 20:11 117:14 157:5 269:17 273:1 295:17 296:11,22 301:3 362:1
holding 268:15
holds 19:18
home 280:13 340:14 342:17
Homeland 48:7,8 165:15,18
homogenous 128:2
honor 279:13
hook 351:21
hope 9:6 30:2 31:8 77:14 173:10 268:6 310:13 326:11
hoped 38:13
hopeful 283:15
hopes 33:14 38:10
hoping 63:20
hospitable 274:15
host 100:14 102:16 111:12 121:16 168:7,14 222:8 276:11 341:8
hosted 24:14 179:5 326:1
hosting 7:13 16:15 161:19 179:3 314:18 333:21
hosts 334:10
hotel 323:2
Hotfile 202:19 262:7
hour 129:6 189:5 271:19,20
hours 73:17 120:17 122:1,15 241:19 322:22
house 111:19 285:17,22 337:15
housed 31:14,16
how's 246:1
hubs 327:9 360:13
huge 8:14 22:19 27:9 134:15 193:12 291:8 310:5,13,15
human 20:22 21:18 23:10 35:13,18,19,20 39:4 43:2,19 54:16 74:11 102:21 111:21 112:12 113:12,13 115:1 336:22 337:15
human-based 41:21
humans 36:1 37:9,13 102:22 103:1,2
hundred 24:22 70:4 263:12 343:5
hundreds 18:2 178:1 192:21 269:20 270:3,4 272:17 311:15
hung 230:9
hunt 90:19
hurt 83:7
hurts 144:15
hypothetical 185:14

I

I'd 180:16 185:13,16 187:3 217:15 245:8 254:16 259:1 311:4 315:6 330:7 356:21
I'll 128:18 213:17 217:11 242:22 246:1 249:8 256:13 264:6 266:9 271:5 300:19 301:14 318:20 340:4 341:4
I'm 169:13 176:21 177:18 179:9 180:15 181:12 186:10 187:2 188:2,6 191:5 197:21 198:11 205:11 211:17 213:16,22 214:18,19,22 215:3,9,13,21 216:3 226:18 236:13 237:3 240:22 242:11 243:21 247:18 251:7 256:16,17,19 258:19 261:8 262:17 263:14 264:9 265:5 270:1 298:15 300:1,3,10,17 301:6 305:17 307:10,15,19,20 308:21 309:3,5 315:22 318:1,3,4,21 323:5,9 324:8,9 328:14,18 329:11,12,13 333:8,12 334:9 343:15,16 344:20 355:19 356:6 359:3,16
I've 170:9 172:16 173:1 175:8 191:2 193:15 214:3 235:22 242:21 303:14 313:19 316:12 318:8,10,17,18 321:1,10 324:16 328:11 332:17 333:22 347:4
Ian 2:3 216:10
iceberg 241:12
I'd 28:2,4 30:17 44:18 68:6 153:22 165:13 290:10 292:6
ID 60:19 131:1,10 132:1 135:15 169:16 174:11,12,21 175:6 196:9,11 197:7,13,17,19 198:6,9 199:14,18 200:1,3,6,7,10,1 5 210:11 240:9 268:12 318:8

319:11 320:12

idea 18:11 77:20 110:11 185:11 186:13 203:13 209:19 231:1 249:14 260:22 276:16,19 291:1 306:10 329:5 348:19 351:18 353:11 355:17,21

Ideally 173:13

identical 223:12

identification 11:12 55:8 228:1,13,18 229:5 230:1

identifications 292:10

identified 41:6 116:10 167:18 222:20 244:2,8,13 258:6 275:10 333:2,3

identify 10:19 11:8 15:5 19:2 74:10 116:12 117:5 135:5 137:1 172:3 175:12 217:19,21 223:20 224:6,16 225:7 226:3,10 256:3 258:2 270:14 355:8

identifying 14:16 16:5 42:7 186:19 222:15 224:21 225:1 242:8 270:1

identities 112:2 113:3

identity 82:6

IDs 129:15 210:11

IFTA 115:17,22 116:6,9 314:2

IFTA's 314:5

IFTA's 116:13

ignore 250:8,22

ignores 283:13

ii 256:5 264:12,14

iii 256:6 257:9 264:12 265:3

ilk 210:12

I'll 11:14 68:13 69:16,17 73:1 78:17 89:16 95:2 100:1 106:20 107:3 138:9 265:7 281:11 285:3

illegal 314:8 329:17 359:3 360:13 362:10

illegality 249:6

illegally 69:18 71:14 72:2,4 85:1 99:14 329:16

illegitimate 236:2 350:13

illustrate 130:4

illustrations 242:10

I'm 6:9 11:7,19,20 12:1,3,5,8,16,18 13:3,6,9,13,17,1 9,21 14:1,2 15:8 26:7,11 31:8 41:17 48:2 51:7,19,20,21 52:7,18 53:12 54:10 56:12,21 58:14 59:10 60:3 69:11 72:17 75:18 77:18 86:10 89:12 90:3 91:11,21,22 92:6 93:2 96:3,4 97:3,16,22 98:10 99:17,20,21 102:1,7 106:9,14,22 107:17,20,22 108:2,5,9,10,12, 15 109:1,3,7,9,11 110:5,21 111:6 116:19 123:8,9,12,13 124:2 129:4 130:9 132:6 133:9 140:12,17 142:22 145:8,9,11,22 146:1 147:3 152:10 156:17 159:19 162:10,11 164:4 168:18 169:4 284:10 288:13 289:4,10,14 290:4

Image 36:8 334:3

images 100:12 241:16 242:13,15 334:3

imagine 92:12 187:13

imagined 343:6

imbalance 251:2

imbalances 292:8

imitates 129:3

immediate 6:13

immediately 24:11 131:19 166:6 320:18

immune 163:20 339:10 347:11

immunity 327:16

impact 5:17 16:2 17:3 24:18 27:15 42:17 133:2 139:22 228:8 306:1,16,17,19,2 0 309:21 310:4 311:2 312:18 323:16 330:10,18 339:17 363:16,22

impacted 71:4 90:10 98:2 357:20

impacting 70:10 146:13 324:17

impacts 263:2 316:22 325:6

implement 52:1 110:15 169:17 238:12 262:3,8 274:4 279:14 293:5,13

implementation 262:6

implemented 59:22 178:11 201:18 279:17 293:3

implementer 275:3

implementers 209:10

implementing 110:11

implicate 322:15

implicated 322:21

implicit 207:5

importance 79:2 152:19 248:18

important 9:18 31:11,19 33:5,22 34:5,7,19 36:4 41:18 42:14 44:19 51:1 59:16 70:21 75:17 79:12 93:13,17 97:20 110:4 157:1 158:10 182:9,20 183:11 221:14 227:21

228:4 232:9 235:5 248:22 254:11 262:12,20 263:5 264:11 275:11 277:11 289:7 292:21 295:5 296:13 298:4 302:5 310:15,18 311:7 313:22 333:19

Importantly 35:11

importing 326:12

impose 146:1 227:1

imposes 15:12 27:15 146:6

impossibility 259:19

impossible 18:5 50:10 143:11 191:8 221:3 311:18 312:9 351:22

impractical 276:19

improper 40:22 41:7,8 47:6 54:4,7 59:3 152:12,17 327:18

improperly 145:21 158:13

improve 33:15 35:10 68:11 247:3

improved 15:20 34:6 153:3

improvements 209:21

imputed 274:21

inability 28:11 78:4 311:21

inadequate 259:6

inaudible 107:11,13,21 114:15 127:15 128:4,13,21 151:15

Inc 3:19 4:7

incentive 147:18 148:3 217:19 247:12,14 266:16,17,20 267:2,9 268:5 272:21 273:19 274:21,22 320:8 340:2

incentives 117:14

incentivized 127:18 247:2

incentivizes 251:2

incidence 297:22 351:3

incidences 289:16

incident 165:15

incidental 47:1

incidents 46:14

include 45:12 169:11 224:20 227:12 228:14 341:14 342:13

included 31:4 166:1

includes 45:12 170:11 224:22 289:4 343:9 344:22 345:21

including 18:21 45:18 75:16 85:6 106:13 120:8 199:2 214:4 307:4 324:3 325:7,22 363:4

income 24:7,17 63:7 317:1,4

inconsiderable 355:5

inconsistent 224:10

incorporate 66:10,13 258:21 314:10

incorrect 218:17

increase 22:19 132:16 148:7 297:8 346:12

increased 136:9,17 337:8

increases 137:2 138:1,2

increasing 135:9,12 144:4

increasingly 16:4 22:9 184:14

incredible 17:15 19:7 22:11 94:17 146:17 343:6

incredibly 93:17 139:7 146:6 184:4

incumbent 130:1

incur 138:5

indeed 353:21

independent 2:8,13 12:16 51:10 69:12 70:20,22 107:9,15 109:2,5 116:10 119:19 123:9,15 124:9 164:19 182:2 191:13 194:12 241:5,9,10,18 242:6 243:8 308:3,8,12 316:6 317:3 333:12 334:8 341:2,7,8 343:3

independently 74:7 151:5

independents 99:6

126:10

in-depth 31:4

indexes 326:1

indexing 182:18

indicate 339:2

indicated 342:2

indication 271:12 292:16

indicative 360:12

indictment 131:3 331:21

indie 98:1,15 195:10 197:6

individual 7:4 16:8 18:8 23:5,7,19 25:14,18 33:12 38:7 47:9 49:6,8 64:15 67:17 68:18 69:2 82:6 84:3,16,18 85:22 95:16 97:9 118:15 139:14 179:4 208:1 216:1 261:9 285:20 286:2 289:15 297:15 324:17

individually 37:22

individuals 27:7 37:21 44:3 50:8 67:10 346:3

inducement 232:4,13

induces 232:5

inducing 232:17 233:17

industries 12:7 340:15 341:1,13 342:17,18 343:17 344:22 345:2,17,18

industry 2:5 3:10 8:17 14:5 17:10

26:15 64:1 79:5,9 90:15 92:17 115:20 125:3,4 199:22 200:1 211:6 216:9 254:1 309:2 312:4,21 331:3

ineffective 16:9 18:17

inefficiencies 17:12 18:4 208:8

inefficiency 19:7

ineligible 198:6

inexpensive 160:6

inference 37:3

infinitely 276:12

inflate 269:17 273:9

inflating 271:4

inflation 270:22

inflict 292:1 325:4,5

influence 194:22

influenced 126:11 255:11

inform 75:19

informal 281:3

information 37:12 38:18 39:8,14 42:2 76:4 82:11 85:5,9,17,20 121:21 151:9 226:1 227:17 257:8,10,14 258:3 265:4 268:20,22 290:20 339:8 361:9

informational 46:17

infringe 61:20 100:18 147:19 148:4 232:19 233:4 291:10,11

infringe.” 291:11

infringed 79:6,8 83:7 86:21 151:1 191:18 228:21 229:1 257:5 260:11 277:20 291:8

infringement 16:22 17:20 19:1 33:9 34:4 35:1 40:10 42:19 45:2 50:20 56:4,11 92:9 101:14 104:1,5 117:7 138:22 141:15 146:4 147:12,13 175:19 193:7 205:22 206:10 207:17 208:2 220:1 222:6 223:4,21 224:2 226:3,8 227:20 229:3 231:1,3,22 232:5,6,7,20 234:11,14,21 237:2 238:8 241:12,13 250:7,17,22 251:12 253:2 254:21 255:1,2,5 257:10 259:19,20 260:7,9 261:3 263:9 270:8 272:4,6 273:2 278:3,11 289:1 291:16,19 292:10,17 296:5,7 297:11,22 298:12 299:10,15 300:7,15 301:22 320:4 334:22 338:21 341:18 342:5 343:20 344:5 347:10 352:18,21 355:16 359:1 361:20 362:1

infringement’s 193:20

infringements 15:16 32:16 88:18 103:5 122:15 157:6 168:3,4 184:8 192:3 224:22 227:10 241:20 250:8 286:4 292:11 295:8 299:11

infringements.” 249:14

infringer 85:4 193:10,13 194:1,5 255:7 261:18 262:4,6,8,9 266:4 269:14 275:8,10,15,22 276:3,17 277:1,15,18 278:2 279:6,22 280:19 282:12,15 284:14 286:7 288:3 291:4 293:2,13,18 295:21,22 296:1,10 297:9 299:9 301:20 302:9,14,18,19 303:1 352:6

infringer” 304:21

infringers 17:16 82:10,12 121:5 191:17 193:8 207:21 233:14,18 255:9 263:15 278:14 282:3 283:2 287:22 290:11 296:4,11 327:13,21 336:6 360:18,19

infringers.” 295:18

infringing 5:7 11:5,12 14:16 15:19 16:5,8,13 21:7 41:15 42:11 49:10 87:3 88:6 91:2 101:11 120:5 140:7 148:6 158:9 164:20 167:22 189:17 192:6 194:8 206:4 217:2,4 218:5 219:19 221:7 222:5,16,20 224:19 225:8 228:2,13,15 229:21 231:9 232:3 236:22 237:19,22 240:3 241:17 244:15,19,22 250:3 252:13 253:19 254:5 256:4 257:11,12 259:12 266:6 274:2 283:20 285:18,19,20 286:7,11 327:12 336:7 344:10 351:3,10,20 353:8 354:18 364:10,11 365:5

initial 94:9 162:1 263:16 276:20

initially 15:2 29:9 86:16 213:7 247:8 304:15

initiated 118:5

injunction 155:16 357:22 358:1,4 359:5

injunctions 356:16 358:8 359:6,9

injunctive 268:7 357:13
innocent 234:9 272:15 280:21 336:5
innocently 280:12
innovation 4:9 94:17 95:4 109:8 309:9 335:1,5,8 353:22
innovative 313:11 340:15
innovators 176:10
inside 170:7,19 325:2
insight 362:17
inspect 273:7
inspire 126:15
instance 15:17,22 16:11 119:16 155:3 226:7 279:16 281:12
instances 35:21 117:6 131:2 153:12 181:4 223:2,21 224:2,9,19 225:8,10,16 226:3,10 227:20 228:2,22 229:3 238:21 246:14 247:5 259:19 260:7,9 268:8 301:22 321:19
instead 144:1 158:9 199:19 204:3 217:14 229:18 230:20 239:20 251:4 266:20 283:21
institute 3:11 309:4 338:3
instituted 297:10
institution 178:17 179:16 180:3
institutions 286:20
instructive 73:13
insurance 25:2
integrate 20:16
intellectual 3:3 23:17 79:3 364:9
intended 64:10,22 65:20 66:17 156:8 157:8 164:8 206:7 221:21 234:12 247:8 336:5 338:22 347:6 360:8
intent 44:5 45:11 217:7 247:7 330:7 336:17
intentional 14:11
intentionally 47:13
intentions 246:18
interact 348:22
interaction 298:13
interest 7:6 56:22 57:6 108:4 120:12 127:16 155:9 215:12 262:19 272:17 334:19
interested 7:3 10:2 30:5 109:15 110:5,14 152:7 179:16 213:20 217:11 306:6,18 323:5 366:12 367:9
interesting 36:6 39:14 54:15 83:13 119:7 124:1 126:9 146:21 161:13 163:16 171:22 176:21 177:9,20 275:21 290:12
interests 26:17,18,22 51:1 65:21,22 66:13 159:1 215:11 300:8 323:7
interject 144:10
intermediaries 117:20 136:8 173:13 174:18 176:10 291:21 306:19 325:17
intermediary 108:13 119:1 170:5 326:11,15
internal 102:14,15
internally 22:11
international 6:11 136:5 214:15
internet 2:2 3:4 4:3 14:22 21:3 24:8 45:5,17 49:10 57:11,22 66:14 71:6,18 72:15 75:3 87:8 99:14 107:7 108:14 111:7,9,17 112:15 116:12 157:3 192:5 214:10 240:6,16,21 244:7 248:8,9,10 249:7 251:15 253:2 271:11 274:8 284:6,19 285:4 287:15 288:8 290:18,19 296:9 297:19,21 298:1,5 299:2 303:7,12,18,21 304:7,9 307:5,13 308:18 309:13 310:4,16 313:8 318:1 326:9 329:5,8 338:7 340:11,20 342:9,15,17 344:22 345:2,17,19 348:16 361:13
internet's 340:11
internet-only 329:20
interpret 230:7 256:9
interpretation 56:14 217:9 229:9 252:2 265:17,21 282:9
interpretations 29:8 213:4,5,10 330:6
interpreted 88:2 216:19 217:6,8 249:17 251:18 260:16 263:22 275:15 311:9 328:1 354:22
interpreting 233:11
interrelate 290:21
interrupt 129:16 149:3 159:7
interruption 301:4
intervening 271:21
intervention 20:16 23:18
interview 38:6,14 44:4
interviews 31:5 35:8 316:4
intimidated 76:7
intimidation 76:17
introduce 106:18 188:13
introduction 5:3

106:6 342:3
invasive 62:14
invest 90:10 240:7
invested 17:1 56:7,8 81:11 174:10
investigate 250:4,19
investigating 204:1
investigation 252:9
investigative 74:19
investment 90:7 136:8,10
investments 98:1
investors 136:3,6,7
invite 78:20
invited 8:3 57:17
involve 46:16
involved 287:5 322:6 336:2
involvement 273:2
involves 174:22
involving 153:18 270:9
IP 79:12 215:8 270:14 271:22 308:20
Ira 4:7 109:3
irrelevant 331:16
Isbell 1:22 6:17 62:7,9 229:8,16,20 231:20 297:3 307:7 308:5 315:8
isn’t 183:13 196:21 202:17 206:18 210:22 233:7 235:16 241:10 245:22 299:17 310:13 324:7 332:15 336:2 352:8 361:22
isn't 8:22 29:18 30:14 36:13 46:22 50:14 52:9 57:5 64:20 65:13 71:4 99:6 131:3 155:1 288:11
isolation 35:12
ISP 54:3 65:10 81:1 116:14 145:14 161:13,15 162:9 217:1 219:21 227:1 232:1,5,8 271:16 277:16 278:21 291:13 303:9 316:10 324:11 362:16
ISPs 14:17 37:15 79:11 80:14 95:16 121:15 123:18 145:2 192:9,22 193:2,3,5 194:6 298:17 299:17 303:1 314:7 333:5 363:4
issue 15:5 16:1 19:2 21:5,9 23:8 49:4 66:19 77:1 78:3 86:4 91:12 96:17 110:10,19 118:17 127:14 132:21 134:5,10 135:5 140:3,4 142:17 156:4 174:8 180:7 190:3 226:20 227:21 228:19 239:7 246:22 252:15 253:17 254:3 263:18,21 264:5 265:15 266:7 267:13 275:9 294:15 329:19 356:14 357:20 362:7
issued 18:12 138:7 282:14
issues 8:11 9:6,12 19:4 37:18 41:1 42:5 43:9 58:20 64:2 85:19 108:4,8 109:15 112:17 135:14 141:14 151:8 181:18 240:5 246:8 253:7 254:12 289:8 323:16
issuing 105:5
it.” 272:10
it’ll 234:4 302:3,5 311:17
it’s 171:11,21 172:1,5 174:8,12 175:9,10 177:10,13,14 179:3 180:5,8,18 182:5,9,20 184:13 185:11 186:1,12 187:4,5,13 188:15 189:4 190:13,19 191:4,18,21,22 192:1 193:12 194:20 198:16,21,22 200:12,13,20 201:2,6 202:3,5,8 203:12 205:4,5,16,18 206:13,15,17,18 207:1 208:19 209:5,13,14,15 210:14,15 211:2,11,13 219:18,20 220:2 221:13,14,15 222:10 223:1,10 227:15,21,22 229:17 232:9 233:12 234:14,19 235:4,11,18 236:9 237:8 238:16 239:7 240:11 241:1,12,14 242:14,21 243:16 244:3,6,7,21 245:1,10,13,14 246:3 249:21 250:9 256:14,15 259:21 261:21 262:13 267:17,18 294:14,15 296:13 298:11,13 300:5 301:2 302:3 304:21 306:14 308:6,7 311:6,7 314:5 315:2,12,19,21 316:7,8 317:6,7,10,12,13,14,22 319:18 320:7,8,10,15,17 321:3,13 322:4 324:21 329:15,16 331:5,15,16 332:13 333:18 336:14 337:22 338:8,9 346:18 347:17,18,19,21 351:22 353:11,14 356:4 357:7 358:18 359:2 360:7,14 363:17,19 364:1
it'd 253:12
item 231:3
items 55:17 221:6
it's 12:6 14:17 17:6 18:19

21:11,22 22:18 23:8,11 24:6,14 25:2,20 27:14,18 30:2,8,13 31:15 32:21 33:5 34:19 35:20 36:3,6 37:1 41:17,18 42:15 44:19,22 45:2,6,15,16 46:6,14 50:10,11,12,16 51:18 53:3 57:7,18 58:9 59:20 60:1,11,12,13 61:4 63:13 64:8,20 65:2,3,4,16,17 66:5 68:2 72:9,13,17,18,21 73:13 76:6 77:7,17,18 79:13,15 80:5 81:7 85:3,12 86:22 87:10,14 88:2 89:4,15 90:15 91:9,16 94:15 95:17,20,21 96:3,9,13 97:19 98:5 106:14 110:4 113:5 114:6 115:1,3,6 116:7 120:22 121:3,19 123:15,17 124:6,13,18,19 126:22 127:5,11 130:9 131:19 134:8,12,14,15,20,21 135:1 136:1,3 138:8,15,18,19,22 139:1,2 140:15 141:3 142:6,8,10 145:10,16 146:18,20,21 147:2,3 150:13,17 151:11,14 154:10 155:5,14,15 157:1,4,13,14 158:11 162:5,8 164:1,21 165:9 248:18 253:1 257:18 258:10 259:3 264:14 269:2 275:11 276:2 278:1 279:2,18 280:15 281:6 283:21 285:19,20 286:1 287:11,15 289:6,13 291:15 292:14,15,21

iTunes 72:14 120:19 316:18

I've 6:5 24:13 26:3 68:16 70:15 75:4 86:22 97:19 102:11 106:10 123:13 130:18 168:18,20

J

jacket 276:17

Jacqueline 1:19 6:13

jail 27:6 61:21

James 1:12

Jamie 46:19

Jay 3:22 12:21

jazz 124:10 317:3

Jeff 3:9 13:13 195:6 214:12 309:11

JEFFREY 4:4

Jennifer 4:10 13:6 29:22

jeopardize 251:4

job 45:21 237:5 239:13 253:21 296:18

jobs 242:1 340:22

Joe 30:5 73:20 108:5

John 73:19

joined 7:8

Jonathan 4:9 109:7 309:8

Jordan 2:4 14:6 307:19,20

JOSEPH 2:21

Joshua 3:8 308:21

journalist 74:20 189:20

judge 149:16 159:17 161:7 225:3,18 233:14

judges 220:12,15,17 266:13 349:20

judgment 35:15 43:2 282:14 299:10 318:19 359:1

judgment-proof 357:12

judgments 130:7 299:11 357:9,10

judicial 148:17,22 149:5 155:15 302:11 353:8

jump 11:9

jurisdiction 322:8

jurisdictions 203:21 204:2

jury 159:17 161:7 282:17

Justin 126:3

K

Karaganis 30:5

Karen's 228:5

Karyn 1:20 6:9 84:19 165:15

Karynn 367:3,15

Karyn's 6:7

Keith 3:7 13:15

Keller 3:4 108:12 170:3,4 172:1 175:17 176:20 308:17 325:12,13

Kennedys 107:18 308:13

Kennedys' 315:15

key 15:5 19:2 54:5 59:2,6 64:12 113:7 137:6,12 275:21

keyword 114:2

kick 145:19 224:4 335:17,19,21

kicked 176:15 298:3,5 358:15

kicking 298:1

Kickstarter 134:18 142:5

kids 179:8 323:3 361:12

killed 124:11

killing 124:6,13,19 312:13

Kimberley 1:22 6:17

Kindle 94:18 219:8

kinds 27:18 34:15 43:12 45:17 46:17 111:12 174:3,4 183:6 222:12 241:10 276:12 325:9 335:6

knew 73:5

knock 331:2

knocked 37:7

knowledge 197:15,20 216:20,22 217:2,3,7,9 219:15,18,22 220:13,15,16,17, 20,21,22 221:4,10,14,22 222:8 224:4 229:10,11,12,15, 17 230:4,7,11 231:15,16,18,19, 21,22 232:1,7,10 233:7 234:1 235:20 236:7,12,17,19 238:14,22 239:1,11,18 244:11,13,16,18 245:5 249:16,19 250:2,16 251:3,5,20 252:8,14 256:14 259:10,15 260:4,21 262:2 263:17 265:20,22 266:21 268:13 269:21 270:5,7 273:19,21 274:17,21 275:5 282:21 290:20 326:18 327:20 366:7

known 109:4 303:10 348:1 364:11

Knupp 12:22

Krakauer 73:19

Kramer 3:6 13:17 69:10,11 97:4,11

Kupferschmid 3:7 13:15 63:15,16,18 65:18 66:15

L

Lab 4:9 109:8 309:9

label 28:10,19 55:4 119:19,22 120:2 218:2 296:7 311:18

label's 311:21

labels 28:6 91:10 119:21 121:9 195:10 197:6 218:11,13 312:9 343:12

labor-intensive 191:16,19

lack 44:6 75:1 78:1,6,8 115:20 127:20 132:13 133:16 143:16 156:6 250:1 275:7

Lakeshore 3:12 13:12

Lamel 3:8 308:21 328:8,9,14

landscape 128:3 133:4

language 19:17 57:16 58:6 224:13 228:14,17 230:2 238:6 243:18 253:18 256:7 281:18,20 289:4

large 7:5 18:1 19:9,13 23:12 26:11,15 31:5,9 33:4,8 34:3,9,17 36:18 37:20 47:8 64:14,15 68:22 69:3 77:13 80:14,20 87:11 92:19 100:14 109:6 117:21 118:15 132:18 136:7 155:8 200:7 208:20 265:16 268:1 270:16 276:11 323:19 334:14 335:6 344:13

largely 156:17 157:7 263:10 281:16 341:21

larger 25:4 56:5 110:8 128:22 176:18 247:2

large-scale 32:15 42:16 75:5

largest 87:1

Lasso 131:12

last 14:8 35:17 70:16 71:9 79:9 88:12 102:2 106:21 110:22 114:22 124:17 126:21 167:4 183:14,22 189:6 194:14 195:9 208:6 237:3 256:13 269:11 273:17 290:2,7 301:14,16 304:1 306:15 307:6,7 322:22 323:2 324:3,16 327:19 352:16 361:16 364:4

late 104:13 189:4

later 130:12 271:19,20 293:15 304:9 319:1

Latin 124:10,12

Laughter 338:11

launch 75:8

launching 75:6

law 2:3,10,12 3:4,17 4:11 13:8 14:1 24:1 37:5 44:6 46:5 47:11,12 56:9 64:21 65:19 66:5 101:6 108:13 115:3 129:9 130:2 139:2 143:11 149:10 155:6 157:10 176:7,11 180:10 202:6 214:18 216:11,18 225:2 236:5 246:10,13 253:6,20,21 254:18,20 261:11,12,14 265:18 270:10 275:21 276:1 277:4 281:1 283:11,12 293:11,20 294:14 304:20 305:6 308:11 314:6 315:11 317:21 321:8 325:19 327:11,17 331:21 339:14 345:20 346:5 351:12 360:20 362:3,13

lawful 41:3,9 46:1,22 49:18 50:5 53:1,5,17,20 54:6,8,15 57:11 60:13,16 95:5 112:22 138:13 152:18,21 153:5 160:13 171:10 174:13 206:22 207:1 342:3 344:2

lawfully 95:9

Lawrence 46:18

laws 73:3 127:5 187:14 319:2

lawsuit 18:15,17 138:4 193:14

204:13 358:22
lawsuits 33:6 40:7 101:16 133:14 202:14 268:14 313:18,20 354:6 357:3
lawyer 82:7 96:14 108:2 119:2 215:9 309:6
lawyers 6:6 46:18 95:8 111:19 280:6
lay 350:7
layer 313:15,21
lead 88:17 183:6 184:21 187:16 219:14 298:6 310:2 327:4 328:1
leader 208:13
leads 15:6 23:14 88:9 325:20 341:2
lean 12:11 106:16
leaning 106:15 246:20
learn 363:6
learned 81:12
least 9:14 10:14 27:20 62:21 65:21 71:13 89:14 111:4 120:22 159:15 164:8 168:6 169:19 182:11 183:5 191:7 192:20 195:1 198:5 208:6 236:3 246:17 271:12,15 273:20 296:8 313:19 352:10,12 354:15,19
leave 7:20 99:22 141:13 144:2 203:20 204:5,9,15 205:11 256:17 285:5
leaves 158:2 173:11
leaving 204:14 306:7
lectures 46:17
led 44:8 216:16
legal 5:14 12:18 14:4 15:14 69:22 76:17 94:12 102:12 103:14 109:10 147:4,18 160:10,14 181:5 184:17 185:1 203:8,18 212:13,18 213:4,5,10,11 214:7 215:4 216:8 223:8,19 235:22 240:12 243:9,10 245:20 246:7 248:7 285:5 295:12 322:8 327:18 334:13,14,15 335:7 343:15,17,19 344:2,9 345:16 349:15 357:16,17 361:17
legalese 121:12
legally 56:17 72:13 239:12 330:15
legislation 284:21
legislative 9:1 45:4 61:13 205:19 221:9,11 227:7 230:17 231:7 233:9 239:14 243:8,10 249:11 250:5 304:4
legit 319:7
legitimate 49:18 56:16 72:12,17 140:11,13 147:22 148:2 151:7 152:16 155:13 158:5 162:7 168:14 169:3 196:1,3,6 211:7,8 235:1,5,9,12,13, 17,21 247:13 291:7 292:15 322:10 323:19 325:6 335:2 346:15,17,19 347:9 348:5 350:21 353:20 358:1
legitimately 148:8 151:19 153:3 162:2,3
lend 139:3
length 117:2 169:17 175:3 187:22 198:20
lengths 73:4
Lenz 153:11 321:2
less 64:20,21 131:5 136:19 139:9 140:1 147:18 148:3 192:14 195:15,18 259:2 322:21
lesser 336:15
Lessig 46:18
lesson 114:14
let’s 169:19,20 222:20 257:22 265:2 330:22 340:1 356:1 361:6
let's 78:22 140:8 165:8 269:13 280:13 287:5
letter 119:1 218:1
letting 250:9 276:20
level 21:18 52:12,19 58:10 60:15 115:14 150:8 152:18 175:10,13 176:13 210:2 252:7 266:2 310:18 311:19
leverages 332:5
Levon 337:2,6,19
liability 45:2 95:1 101:7 108:13 133:11 136:10 139:14 141:11 143:12 145:5 159:3 163:21 170:5 181:10 197:16 206:1,11 207:11,13 208:3 219:15 251:13,15,18,21 252:7,13,19 253:1 254:12,13 255:2 266:8,21 274:22 275:1 292:12 339:10 347:11 360:20 361:17
liable 133:12 244:5 255:4 272:5 351:9
liberty 288:14 289:15
libraries 111:15 338:17
library 111:8
license 75:5 176:3,17 253:12 331:8 332:7 348:3
licensed 75:9

151:10 223:1 327:11 345:10

licensee 253:12

licensees 117:15

licenses 197:5 218:16 331:4

licensing 88:10 108:16 196:10 197:7,22 215:1 219:3 254:10 294:7,15 306:20 338:13 339:17 348:6

licensor 209:22

life 131:9 161:9 291:14

lifeblood 79:13

light 230:7 308:6,7

lightning 306:14

likely 139:9 145:4 334:7

likewise 16:7

Lila 2:2 107:6 307:13

Lilly 328:21

limelight 68:8

limit 10:3 136:9 320:12

limitation 45:3 145:5 166:19 184:21 255:6,8

limitations 27:15 36:21 47:22 133:11 136:10 149:22 283:12

limited 29:12 39:22 90:15 143:13 181:9 187:8 207:16 340:1 348:20 358:4,7

limiting 61:22 298:13 335:4

limits 74:3 117:6 147:9 188:11 198:6

line 55:17 98:13 130:6 177:15 196:12 237:6 284:11 292:21 349:5,14

lines 114:22

link 21:2 76:4 328:22 351:19 352:8 354:18 361:18

linking 22:12 200:19 361:22 365:7

links 16:8 71:13 72:5 120:5,9 165:22 167:15 168:17 200:22 304:15 314:18 351:3,4,10 352:9 355:8,9,11 362:10

Lisa 97:11

list 212:1 224:13,15,16,19, 21,22 225:16 226:21 227:3,11 228:11,17 237:4,7,12,15,16 ,18,20 238:15 239:1 256:21 257:7 258:7,13,14,15 260:4 263:18,21 264:2,5,16,22 265:1,2 364:10

list," 255:21 256:1

list." 257:17

list" 256:5,7

listen 9:9 126:7

listened 318:10

listeners 126:19 311:17

listing 201:7

lists 226:18 327:22 361:13

literally 311:13 331:9

literary 26:19

litigate 95:8

litigation 14:4 108:8,11 214:4 215:17 216:4,8,17 246:13 305:4

little 12:9 17:18 21:1 27:20 30:1 38:21 40:15 47:21 52:22 72:18 89:1,11 91:19 94:20 98:1 104:13,18 106:16 113:4,6 114:22 126:14 127:10 134:2 139:11 158:3 159:9 173:21 175:2 186:11 189:5 190:1,12,20 198:12 209:18 226:17 243:20 245:3 279:10 284:13 302:1 305:16,18 306:9,14 308:6 325:13 333:13 347:4 350:6

live 20:2 52:20 92:19,21,22 263:10 323:8,10

livelihood 63:8 93:19 162:4

living 92:7 97:8,14 333:16 337:11 343:4 344:5 356:3

LLP 2:7,21 108:6

local 335:16

locate 257:15,20 258:4 265:5 268:20 269:6 316:3

located 356:13

location 230:1,22 265:6 304:13 361:9

locator 268:22

locator," 258:1

logging 169:1

logistical 104:14

logistics 7:16,17 9:20

Lohmann 4:14 109:9 196:19,20 198:2,10 203:12 205:4,6,13 207:7,9,18 209:8

long 98:10 146:9 154:16 163:19 191:15 202:22 209:9 222:10 232:6 237:1 267:4,7 293:6 306:5 337:5

longer 28:17 168:21 199:13 294:14

longest 328:10

long-form 73:11,15

long-term 298:2

lopsided 146:5

lose 24:21 218:13,14 277:5 278:19

losing 49:14 116:1 207:14 251:1

loss 299:2

lost 71:1 247:6 251:20 331:10 339:20

lot 19:20,21 24:5,12 26:17 33:5 42:15,18 43:5,8 44:5 50:6,22 51:5,19 52:6 54:16 57:8 58:1 59:21 63:9 67:7,9 74:22 75:14 81:13 83:14 90:21 92:2 93:6 97:1 100:5 104:7 110:11 121:11,12 128:14 130:5 132:8,12 150:9 157:15 163:1,2,10 166:21 167:17 168:13 170:9,12,17 172:14 174:16 177:2 179:14 180:3 183:18 187:6 188:5 191:8 199:3,4,7,10 202:8 238:1 243:9 246:14 254:2 255:14 274:8 276:8 286:21 287:3 288:20 292:5,6,22 293:16 307:1 310:9 313:11 325:19 329:2 331:12 332:4,20 337:12 346:15,19 350:5,8 353:11 354:16 364:16

lots 45:22 51:6,9,15 52:3 162:17 177:11 195:17 247:5 248:10

love 39:15 243:10 287:20

low 148:1 173:7 267:21

lower 77:21 331:6,8

lowering 341:1

luck 94:21

lucky 77:10

Lumen 31:14

lunch 104:19 189:5 212:5,11

Lyon 3:9 13:13 56:20,21 57:3 59:9 60:18 61:11 62:20 66:8 195:6

M

magazine 75:6,8 336:7

magic 176:3 201:9

magically 202:7

main 31:21 38:2 49:4 221:15 222:1 249:15

mainly 69:12 109:16

mainstream 236:4

maintained 65:15,16

major 60:19 94:21 114:1,13 165:12,13,21 166:2,14,17,18 168:7 183:21 197:5 220:10 261:21 269:16 290:19 296:11

majority 34:10 62:21 178:2 182:15 184:6 199:18 281:13

maker 108:21

maker's 317:9

makers 108:22

MALE 128:4,8,10,12

malicious 137:1 172:9

malware 288:19

man 122:15 318:11 337:1

manage 12:4 14:7 18:5 109:11

manageable 32:8

managed 91:9 111:8

management 2:4 14:7 200:5 307:20

manager 307:21

managing 120:18 215:21

mandate 274:5 277:9

mandated 176:7

mandating 202:6

mandatory 205:16

manipulate 327:6

manner 112:21 226:14

manpower 103:20 135:14

manual 20:9,15,19 21:12 22:1 188:1 209:5

manually 142:5 361:13

manufacturer 339:3

margin 26:10

marginal 24:18

margins 293:14 355:19

mark 10:5,6

market 24:4 26:20 94:3 98:16 177:2 196:5 330:9,21 331:1 335:5 342:22 363:21

marketing 339:7

marketplace 23:18 245:13 335:2 336:10,11,16 348:7 363:20

markets 341:6 342:16 343:2

Marks 3:10 309:1 330:1,2 363:13,14

marshals 361:4

Marvel's 16:14

masked 233:5

Masnick 3:11 136:14 309:3 333:7,8 341:14 343:20

Masnick's 338:3

Masnick's 132:15

Mason 2:12 14:2 215:8 308:11

mass 16:9 357:11

massive 101:8 103:4 254:19 268:1 358:22

masters 107:19

match 200:18

matching 61:15 114:2 200:2 201:18,21,22

material 5:7 11:5,12 80:8 101:12 112:21 135:3 142:9 158:7,9,15 164:15,20 178:13 222:17,20 224:7 226:12,15 229:5,12,14,16

230:14 232:3 237:22 243:22 244:2,6,9,11,14, 18,19 247:12 250:15,19,20 253:20 257:11 258:4 265:5 268:20 269:7 271:2 272:1 336:13 351:10,20 353:9

material." 257:15,20

material" 257:18

materially 353:14

materials 111:12

math 125:19

matter 91:15 136:21 170:14 174:6 177:10,13 180:9 193:22 231:11,22 236:18,19 270:10 271:14 287:12 298:7 311:7 312:5,8 314:17 316:11 321:3 325:22 326:22 329:17 343:4

mattered 314:19

matters 236:18

may 1:8 9:3 16:4,6 20:2 32:4 34:5 64:17 66:20 98:2 112:21 125:6 149:19 150:3,4 153:14 157:16 160:4,5,9 164:16 175:15 184:2 212:9 235:16 237:22 238:20 258:12 269:19 272:15 274:21 278:12 280:22 291:12 298:4 301:22 332:19 334:18,19 350:5 351:13,19 355:17 356:1 359:7 363:2,3

maybe 23:1,13 28:13 42:16 48:18 68:8 69:2 73:14 78:9 89:14 119:8,15 124:11 134:5 139:12 145:7 154:9 167:9 174:21 176:12,13 182:17,18 184:15 186:15 188:6 195:19 243:19 253:10 255:19 267:10 268:4 270:3 273:3 280:15 321:16 345:7 349:6 355:1

may've 260:11 273:1

McNelis 3:12 13:11 55:1,2 91:9

McSherry 3:13 13:9 44:11,12 47:14,17 48:16 49:12 50:1,4,16 52:20 53:9,12 54:10 66:9 148:13 195:6 215:3 234:22 247:21 248:1

McSherry's 195:16

MD5 223:10 242:11

mean 25:2 26:9,14 27:9 36:19 38:12 49:3,11,12 52:10 53:4 60:5 64:3 65:14,18 71:4 72:11 73:2 77:7 78:2 81:20 95:19 98:6 109:18 116:22 118:19 121:17 122:8 123:14 129:17,20 130:5 133:13,17 134:2,6 137:13,14 138:9,10,15,16 139:22 140:2,13,19 141:7,19 142:18 147:14 149:4 159:8,9,11,12,16 161:14 166:20 170:19 172:1 174:5 175:10,17 178:20 181:11,12 186:11,17,18 188:2 194:13 198:12 201:15 207:9 224:18 225:18,22 226:22 227:1,3 228:4 237:4,8,13 238:9 239:21 244:17,20 245:2 256:22 260:5 264:15,17 265:6 270:5,17 279:1 285:4 287:11,18 288:6,16,20 293:3,6 296:9 298:3 302:2 310:20 315:7 320:2 323:3,12 329:11 343:11 344:19 346:15 348:3 349:5 350:15 352:3,12 354:14 355:15 357:1 360:4 361:18 363:16 364:17

meaning 32:7 256:20

meaningful 143:16 157:13 333:4

means 24:21 26:5 30:12 53:2 65:4 66:4 91:13 115:21 160:11 164:6 176:16 179:1 244:2 257:1 260:17 261:12 264:19 267:2 273:10 278:2 298:7,8,10 302:2 314:4 324:4 346:21 354:17

meant 180:17 205:19 221:11,14,15 227:11,15 231:8 232:16 243:15,16 302:16 339:2

measure 22:5 31:1 121:1 159:5 201:21

measures 32:16 72:7 135:21 139:3 197:1 266:16 267:4,5,8,15,22 268:9,12 324:9 363:10

mechanism 44:8 179:22 225:17 226:11 353:8

mechanisms 33:1 182:1 223:11 240:5,9,17 242:8

media 43:12 262:5 338:13

mediate 218:10

mediating 118:17

medical 337:11

medium 2:19 13:20 56:6 73:11,16 74:2,8,20 75:7

119:20 166:13 215:14 274:6,10
medium-size 115:18
medium-sized 119:19
meet 149:11 208:17 258:8,11 263:9 335:15
meetings 38:20
meets 252:14 285:14 363:11
member 15:18 87:4 107:18 116:18 284:5 285:4
members 114:9 115:17,22 116:7 234:6 314:2
membership 39:13
mention 74:2 268:8
mentioned 14:13 18:20,22 33:21 43:5,20 62:12 113:3 161:15 183:20 186:14 192:1 197:22 198:18 203:13 211:18 250:14 251:19 299:22 321:15 332:7 356:10,11 360:12 362:19
mere 284:16
Meredith 7:14
merely 182:4 188:10 255:5 270:13 275:2 321:1
merit 278:4 291:18
message 84:12
116:2
messages 153:20 334:4
messy 171:10
metadata 219:1
method 210:9 247:1 297:7
methodological 38:12
methodology 30:18 344:18
methods 32:19 131:20 298:11
metric 80:15
metrics 80:7 303:3 362:17
mic 12:9,13 63:19 106:14 107:12,13 127:15 128:5 211:21 245:22 315:8
MICHAEL 3:11
Michelle 328:22
microphone 308:6
microphones 11:18
Microsoft 2:22 13:22 79:3,22 80:10,18 93:9 308:16 322:18 325:7
mics 12:10
middle 30:21 38:17 71:22 81:10 95:17 173:20
Midgley 3:14 108:15 177:17,18 181:11 214:22 286:14,15 288:13
289:11,14 290:12 296:14
Mike 132:15 136:14 174:11 309:3
mill 110:21
millennial 329:13,19
Miller 3:15 108:18 182:7,8 189:12
million 15:19 59:11 70:17 71:3 73:16 79:10 98:18 102:15 111:11 124:13 134:14 156:19 167:4 174:11 183:22 195:12,19 203:18 331:13,19,20 337:18 340:22
millions 15:16 51:8 52:8,17 100:11 135:16 192:22 270:3,4 272:18 286:10 329:3 341:8
mind 17:12 21:5 29:17 45:14 77:17 94:18 145:10 159:15 184:11 203:2 205:15 250:11 267:3 277:7 281:8 306:12 313:16
minded 68:6
mindful 21:7 289:1
minds 320:18
mine 26:1 106:16 222:22 258:22 259:1
minimal 292:13
minimize 323:16
minimizing 137:21
minimum 291:18
minor 83:20
minute 186:16 254:17 306:13 346:17
minutes 6:3 10:3 27:9 78:19 89:14,18,20 94:20 105:16 182:11 192:14 261:13,16 311:13 330:4
mirrors 166:3
misidentification 153:2
misidentifications 138:14 152:14
misidentify 134:3
misrepresentations 158:16
misrepresented 83:8
Miss 289:19
mistake 43:14 294:4
mistaken 112:2 113:3 114:2
mistakes 33:14 113:12,13,21
mis-targeting 174:13
mister 273:13
misunderstanding 113:16 128:21 255:10 319:19
misuse 300:6
Mitchell 12:22
mitigate 61:10
mitigated 353:14

355:2
mixed 22:15
Mm-hmm 39:21 41:4,12 317:18
mob's 315:17
mobile 347:20
Moby 114:11
mode 156:22 210:16
model 211:8 272:20 321:14
models 88:5 98:8 335:3
moderation 63:21
moderator 306:4
Modern 2:9 215:22
modified 269:8
modus 233:6
mom-and-pop 126:14
moment 116:2 318:15 322:17,20 328:13
moments 212:16
monetization 199:20
monetize 132:2 198:19 199:5 272:18 322:4
monetized 175:4
monetizing 118:9 200:2
money 38:10 45:22 46:2 49:14 56:8 90:18,20,21 98:9,11,12 103:21 120:13,16 133:13 174:19 192:10 194:7 195:18 272:12,13 314:20 315:12,17,18 317:5,9 322:5 329:3 337:12,19 360:21 362:12
monitor 100:17 224:1 226:7 238:4,7,11,18 248:21 249:22
monitoring 238:12 249:4 260:19
monopoly 338:2
month 25:1 73:17 122:10
months 25:2 68:16 194:3 195:10 281:5 304:8 312:12 335:22
monumental 267:18
moral 362:12
morning 6:8 11:19 12:1 28:13 58:5 92:3 156:16 267:20 268:3,10 292:8
mortgage 25:1
mostly 171:6 317:3
mother-in-law 25:6
motion 4:6 115:18 183:21 192:13 201:17 214:7 296:6
motivated 153:15
motto 91:14
move 28:3 29:5 32:16 90:3 165:5 218:12 275:7 316:10,11 321:18 324:2 354:14
moved 52:17 264:6 265:3
movie 3:6 70:13 71:22 98:18,19 99:10 131:4 190:18 191:13 343:11
movies 71:20 72:13 96:15 98:8,14,15 102:17 124:3 147:22 192:12 194:13 197:5 235:10,17 320:21 341:13
moving 9:8 323:13
Mozilla 3:21 108:21
MPAA 15:18
mugs 339:11
multi 38:19 106:22
multibillion 336:8,18
multiple 15:15 16:17 190:13 257:5 287:5 299:10,11
murder 60:3
Murphy 3:16 214:19 245:17,18 246:1,4,6
museums 338:17
mush 153:14
music 2:9,14 3:22 13:1 28:4,6,7 73:12 87:5 92:11 97:5 107:16 118:4 121:18 123:15 124:2,5,7,10,12 125:3,7,15 126:10,18,20 130:20 131:22 195:8,10 196:2 200:1 215:22 219:1 254:1,5 309:7 311:3,15 313:3,6 315:9,12 316:10,11,13,16, 22 320:20 331:3 336:11 341:9,13 342:3 344:1
musical 128:3
musician 2:16 123:9 198:5 308:12
musicians 125:17 214:21 245:19 313:4,7 317:2,3,4
myriad 80:14
myself 23:19 70:14 82:16 91:7 130:18 194:15 284:4 285:6 308:15 333:13 334:8
myth 338:7

N

naively 9:6
Napster 90:15,17 246:21 262:10 329:18
narrative 189:12
narratives 127:22
narrowly 213:15 217:8 348:20
Nashville 96:6
nasty 74:17
National 13:1
nature 213:14 276:14,22 318:4
navigate 137:17
NBC 3:20 102:8

103:21
NBCU 102:12
NBCUniversal 13:5
nearly 14:17 284:1
necessarily 60:10 159:12 180:6 232:21 233:16 244:12 267:7 270:17 278:10 280:6 298:12 300:7 301:1 329:10 333:10
necessary 9:18 18:6 90:20 130:21 282:21
negotiate 117:16 118:12
negotiations 342:14
neighbor 186:13
neither 257:16 366:8 367:7
net 69:17 345:1
Netcom 327:17
Netflix 341:21
NetNames 192:5
network 178:14 244:15,19 273:3 287:10,14 288:21,22 289:3,16 295:17 296:16 300:19,20,22 347:8
networks 60:10 151:18 287:2 314:8 315:16,17
neutral 159:12 160:1,3,22 161:16,21 360:7
Nevertheless 111:19
news 82:14 83:5 91:18 199:16 336:6
newsworthy 76:20 150:15
nexus 294:22
nice 45:21 76:3 287:1 303:2
nicely 234:4
Nielsen 125:14
night 323:2
nights 322:14
Nimmer 256:15
nine 319:3
nine-step 121:15
nine-tenths 180:9
Ninety-eight 200:5
Ninth 1:11 7:12,14
Nirvana 126:12
non 12:19 206:18
non-adoption 267:11
noncommercial 310:17
non-compliant 211:1
non-copyrighted 142:9
non-DMCA 181:19
none 198:1 236:18 265:18 266:6 273:10 312:1
non-infringing 203:16 353:21
non-OSP 266:1
non-payment 298:17
nonprofit 180:2
non-profit 26:3 100:10 108:21 111:7 112:5 132:7
Noormohamed 3:17 214:17
nor 116:7 366:8,12 367:7,8
normally 128:14 149:13,15
notable 30:8
Notary 366:1,20
note 201:19 245:8 290:9 334:9
noted 35:19 213:4 364:12
notes 251:11
not-for-profit 286:19
nothing 46:6 55:11 97:18 150:8 193:8 251:3 270:14 349:2
notice 5:7 11:5,13 15:11,21 17:2,7,8 18:2 23:21 28:22 32:2 36:19 37:20 48:3,6 52:1 54:4 62:15,17 67:3,22 75:21 81:21 83:19 84:1,12 85:6,8 99:3,5,10,13 100:19 105:5 111:20,21 114:5 116:4 117:18 118:5 121:11 131:8 133:5,10 135:4 139:16 140:5,14 141:13 142:8 143:3,19 144:6 146:7 150:12 152:12 157:14,17,21,22 158:7 161:2 162:2 164:12 166:20,21 169:6 172:19 179:19,20 185:3 187:21 190:10,14 204:7,12 206:3,5,8,21 208:1,2 221:2 222:22 223:3 224:6,16 225:13 226:1 227:13,15,17 230:5 236:9 237:14 238:18 241:13 244:3 245:6,7,9,14 252:18,19 255:17 256:3 257:2 258:9,11,16 260:11 265:15,20 270:6 271:2,16,18 272:12,21 273:5 278:8 279:5 287:4 302:12 314:11 315:10 320:11 321:21 324:6 332:3
notice-and 14:14 87:13 98:22 275:13 355:18
notice-and-stay-down 29:1
notice-and-takedown 5:6,10 11:4,11 25:16 57:9 60:8 64:6,9 67:18 83:22 103:22 104:4 105:12 106:20 170:7 208:11 213:1 221:18 223:20 259:14 279:2,3 297:14 309:21 353:4 363:18

notice-by-notice 207:4
noticed 70:3 87:21 88:3 167:4 168:8,9,10,13,16
notices 14:16 15:16,18 16:3,7,12 21:17 22:20 24:10 30:10 31:14,15 32:8,14,22 33:11 34:13 35:18,19,20,22 36:5,7,8,13,17 37:2,18,19 40:22 41:7,8,10 42:1,15 43:3,11,17,19,22 47:6 50:13 52:9,18 53:20 54:7,14 55:12,14,15,21 56:3,4 59:3 60:7,12,16 62:11 74:11 76:14 77:13 79:10 82:21 84:10 87:20 88:8 91:22 94:6 100:15,21,22 101:18 102:10,16 103:12 104:8 109:17,20 112:8 114:12 115:11 133:1,17,20 134:12,14,15,16,19,20,21 135:18,21 136:21 137:8,11 138:9 141:16,19 142:6,11,15 143:4,6,18,22 144:1,2 146:8,13 147:7 152:12,17 158:12,13,18 162:20,21,22 167:11 171:5,9,18 172:9 173:8 177:22 178:2,4,8,21 179:3 182:15 183:3 184:21 188:1 191:20 192:22 193:2,3,5 194:20 200:9 204:5 206:14,16,20 208:22 212:22 223:12 237:2 241:21 252:12 254:3 255:13,16 263:8 265:16,18 266:5 269:12,18,20 270:3,4,6,7,11,12,13 271:20,21 272:3,4,11,18,19,22 273:9,10 277:16 278:5,6,17 279:9,12,14 280:9 282:20 287:3,5,7 295:7,11 303:4 311:19 312:10 314:7 333:22 334:11 353:1
notices." 178:18
noticing 35:4 167:6
notification 138:7 155:1 171:17 257:7 278:9
notifications 183:13,17
notified 116:14 278:7
notifiers 164:13
notify 75:19
notion 79:12 146:3 189:21 196:5 243:22 270:16 354:9 364:6
notions 251:12,14,17,21 252:22 253:19
notorious 166:3
notoriously 219:1
notwithstanding 94:10 211:3
November 312:17
Now's 328:13
nowadays 193:18
now-common 314:10
Nowhere 46:6
nuanced 139:2
nullity 227:2
numeral 245:4

O

O'Connor 214:14 243:2,3 264:7,8
O'Reilly 312:19
object 269:3
objective 231:18
objectively 285:19
obligation 223:22 226:6,22 230:9,20 237:17 238:17 246:21 260:14 282:2 283:1
obligations 231:6 325:5
observation 304:4,17
obsolete 200:8
obtain 80:17
obtaining 245:4
obviates 303:13
obviating 146:10
obvious 218:22 250:7,8 285:19,20
obviously 19:16 31:10 53:22 54:2 63:18 93:10,12 124:18 137:14 152:17 161:13,15,16 162:22 163:1,12 165:11 182:12 183:15 196:22 211:16 250:3 288:14 293:6
occasions 204:19
occur 163:18 181:19 303:13 310:9
occurred 79:16
occurring 158:16 226:4 228:16 231:10,13 314:8
occurs 200:6 231:3 285:16
o'clock 104:17,18 105:10 306:11
O'CONNOR 3:18
odd 275:2 279:10
offenders 121:2
offer 203:17,19 204:17 307:9
offering 15:22
offerings 20:17
offers 28:13,14 204:20 240:11 358:4
office 1:2,17 6:10,12,15,16,18 9:11 19:22 57:15 67:4,7 68:9 108:16 160:5 178:3 192:4 215:1 217:17 364:9 365:4
officer 13:14 366:2
offline 46:5,9 63:5

offset 99:11

offshore 33:8 94:5 350:13 354:8 356:13 357:4,11 364:11

oftentimes 138:20 139:1

oh 10:6 57:3 62:8 108:9 113:5 123:4,11,12 193:1 260:8 280:14 289:19 298:20 307:10 315:9

okay 12:15 15:7 40:17 49:20 53:14 61:7 62:6,9 63:18 68:9,15 82:3 106:3,11 109:13 115:16 123:3 127:9 128:9 137:5 139:10 141:10 145:7 148:10 162:10 165:4 177:16 188:21 203:3 205:8 212:17 244:4 265:12 298:4 299:4,7 300:12 307:10 309:19 318:20 322:2,12 328:7 329:3 330:1 346:6 349:5 358:9 361:3 362:4 365:5

old 20:1 71:20 125:10 294:20

on." 273:8

on-demand 330:18

OneDrive 168:9

one-minute 10:5

onerous 190:4 197:12

ones 24:4 31:16 32:14 122:11,12 162:17 202:18 280:11,12 300:1 324:16 333:2

oneself 294:9

one-size-fits 276:2

one-size-fits-all 267:18 293:3

online 14:18 15:5 16:6,10,20,22 25:16 30:11,19 31:2,22 32:6,12 33:16,18 34:3,10 35:7 38:16 42:11 43:13 45:2 64:13 104:1,4 108:4 115:22 116:2,16 117:18 138:18 146:4 148:19 152:3 153:19 157:18 161:9 162:15 183:11 189:17 190:19 197:8 201:17 213:2 215:11 216:6 222:6 234:14 257:6 274:7 283:16 285:17 290:16 291:20 293:10 294:5,19 306:20 310:14 314:3,15 322:16,22 323:1,13,19 329:2 333:17 342:3,5 354:18

onslaught 32:22

onto 241:11 244:7

onus 210:4

ooh 316:8 317:12

opaque 63:13

open 6:7 7:10 8:1 98:15 138:18 211:21 239:17 260:19 271:11

opened 39:19

opening 5:3 240:18 341:6 344:14

operandi 233:6

operate 32:9,10 35:12 100:10 178:9 284:8 331:19 342:16 351:18

operates 32:3 156:18

operating 15:14 135:9 171:20 182:12 197:17 357:10 363:17

operation 19:11 102:19 126:15 217:10 351:5

operations 12:4 102:13,14,15 104:7 109:12 276:10,14

operator 177:4

operators 174:4

opinion 15:3 43:8 119:8,11,15 189:9 220:3 284:13

opinions 8:18 88:21 236:21 332:14 356:21

opportunities 313:9 350:22 363:6

opportunity 7:2 78:15 89:13,22 99:18 104:20 105:1,3 178:10 189:9 278:7 281:1 291:3 301:13 305:14 339:21

opposed 9:1 27:7 36:1 41:10 53:20 54:8 59:7 114:17 121:20 145:17 152:13 153:1 154:8 175:14

opposite 275:1 334:19 335:4

opt 199:18

option 94:14 175:21 205:7 212:10

options 9:2 335:3

opt-out 242:16,19

opts 203:19

order 58:11 157:17 197:13 227:14 235:21 239:11 338:1 348:18 353:10 359:4,22

orders 193:17

ordinarily 98:17

Oregon 215:20

organization 12:6 39:7 69:7 82:15,16,18 96:14 108:21 317:21

organizations 25:15 338:14,19

Organizing 214:20

original 329:1,20

originally 34:18 266:19

Orson 130:16

OSP 17:22 133:10 136:15 139:1,11,14 140:4,20 141:19 143:19 146:22 159:16,21 160:6,14 163:19 178:6 180:10,22 209:19 210:5

211:8 242:18 252:7,8,15 253:11 266:2 269:4 289:8 339:9

OSPs 17:11,19 20:5 64:1,7,11,15,16 65:1 74:4 100:8 132:8 133:3 135:19 136:20 137:2 138:1 139:8 141:12 144:5 145:3 146:1,6,11 147:5,8 157:4 159:9 160:11 162:18,19 163:22 164:4 180:4,17 181:21 182:3 194:20 208:9,21 209:4,16 210:12 214:3 217:21 218:9,17 219:4 234:7 242:6 275:12 283:8 286:17 310:21

others 20:8 37:6 58:21 59:8 65:12 110:3 148:13 198:16 213:2,3 239:12 240:9 280:6 283:19 332:22 359:3

otherwise 10:7 29:11 30:9 41:14 54:9 55:9 60:9 77:18 86:19 88:21 135:7 264:15 353:5,7 355:20 358:2 366:12 367:9

ought 278:19 326:16

ours 18:7 218:5

ourselves 14:9 44:21 56:10 101:7,20 106:18 144:10 178:22 179:19 197:17 243:11 288:1,2

outcome 366:13 367:9

outcomes 325:21

outlets 56:16 235:17

outline 319:20

outmoded 253:7

output 132:17

outselling 124:5,7 125:11

outside 66:19 77:4 108:7 111:6 132:4 162:9 190:22 202:16 212:2,8 302:11 305:7 322:7

outstrips 18:8

overall 11:12 14:14,22 125:1 154:22 213:2 341:12

overflow 7:21 8:2 105:17,22

overlooked 289:5

over-read 265:22

over-removal 172:9 173:18

over-removals 176:1

over-removes 175:20

overseas 356:17 364:1

overstate 333:19

overstated 343:8

overuse 128:1

overwhelmed 81:16

overwhelming 68:2 189:16

owed 333:4

owner 85:8 222:19,22 223:4 226:10 227:12,16 237:14 257:2,8 264:21 319:17 321:20 355:7 360:14

owner's 227:10

owners 15:13 16:21 29:2,17 30:11 46:4 64:11,14 65:1 88:19,22 193:9 222:5,13 234:13 249:13 254:3 261:1 302:6 303:20 315:13 328:3,5 333:5 338:1,2

owns 132:2 224:17 227:14

P

pace 17:14

packed 241:17

Pafe 131:12

page 5:5,9,13,16 21:19 76:2 130:3 258:6,8

pages 21:21 58:6 261:14

paid 69:16 299:6 330:17,20,21 331:13 354:20

panacea 37:9,12 200:13,19

Pandora 316:14,19 331:5

panel 9:20 20:7 29:15 31:20 40:20 81:2 106:18 109:16 115:1 132:22 137:8 147:20 170:15 178:9 183:19,20 195:5 196:21 197:2 198:4,11 210:18 212:5,7,17 213:9 234:22 248:2 259:14 290:2,7 291:6 301:16 306:8 324:3 330:9 352:16 356:9 357:19

panels 88:11 221:18 234:4,6 247:18

paper 32:7 162:16 273:11

parameters 110:17 175:5

Paramount 3:15 98:6 108:19 131:13 318:11,15

Paramounts 350:11

parents 343:7

parody 46:16 74:18

parodying 74:6 76:8 78:8 274:16

parsing 243:20 264:10

participant 23:14

participants 10:15 110:9 161:4

participate 10:16 291:14

participated 104:12 234:16

participating 14:12 116:11 290:16 305:10

participation

365:14
particular 7:14 9:11 28:7,18 70:6,8 72:1 74:12 100:5,7 110:2 149:10 150:16 156:3 179:10 207:16 221:5,6 223:21 224:6,20 225:3 226:3,19 227:8,10,20 228:1,16 229:2 232:11 237:19 243:12 246:9 253:20 258:6 270:2 275:9 277:10 279:14 284:22 287:21 310:10 348:8 356:14
particularized 229:6
particularly 14:15 33:8 43:11 63:1 116:15 130:12 153:12,17 155:8,9 202:8 254:2 280:4 291:5 292:18 300:3 306:18
parties 7:3 77:8 118:11,12 160:2 254:11 314:9 359:7,10 366:9,11 367:8
partly 236:9
partner 12:21 14:6 108:5 215:22
partners 169:21 199:18
party 119:15 131:11 159:12,14 161:16 181:5 265:15
pass 178:21
passage 79:17 324:6
passed 64:9 251:13
passive 294:6 325:17
passive-type 347:7
Passman 3:19 309:5 335:11,12
pass-through 178:5
past 8:13 15:21 86:12 120:1 143:14 362:19,20
pathways 147:9,17 148:2
patient 189:2
paucity 76:13
Paul 2:15 215:17 309:18
pause 356:1
pay 25:9 50:17 71:17 72:22 98:15 122:9 196:15 197:4 218:6 272:5 288:17 296:18 312:11 327:8 330:21 331:1,12 337:11 338:3
paying 55:10 133:14 197:10 200:3 317:8 344:3
payment 272:4 299:13
pay-per-view 71:11
PDFs 121:11
peak 271:6
peas 12:16
peer-to-peer 262:10 346:12 350:9
penalties 61:22 62:4 138:5 139:7 140:6 141:16 142:14 143:1,3,17 292:19
penalty 144:5 146:8
people 7:8 9:7 10:2 15:1 26:5 27:6,19 30:3 34:22 36:9,11,12 45:22 46:18 47:12 48:1 51:6,13,16 52:4 57:8,13,17,18 58:3,17 60:20 62:22 63:9,12 73:4,17 76:6 77:5,10 80:7,8 86:11,14 97:5,20 99:9 103:15 104:9 105:2,6,16,22 107:1 112:7 114:17 120:13 121:5 123:16 125:2 137:17 138:8 143:17 146:8 147:17 148:2,5,8,18 150:11 153:8,20,21 156:12 164:3 167:2 170:21 171:5 176:8 180:17 187:10 192:2 193:16 195:17 199:11 202:12 211:1,3,22 212:4,19 231:2 234:3,16 235:15 238:3 240:14 243:15 248:9 252:17 272:13 274:6 275:9 280:11 286:21 289:9,12 290:20 292:18 296:3,4 297:19 298:1 301:12 303:4 315:3 316:6,9 317:6,7 328:20,22 329:3,9,12 331:19 332:19 348:22 352:11 356:2,20 365:1,4
people's 38:20 61:3 63:4 73:22 95:14
per 7:18 16:18 122:9 178:1 272:4,6,12
perceive 138:6 188:12
percent 21:11 42:1,4 43:2 46:21 54:14 66:2,3 67:17 87:20 94:20 103:8 120:6 122:17 124:18 131:4 133:19,20 134:13 136:6 158:17 168:2,3,4,17 173:4,6,7 195:13,15,18 196:5 200:5,9 271:12,13,15 313:1 340:19 341:20,22 342:6 364:13
percentage 43:9 272:13 344:15
percentages 41:6
perfect 71:7 175:18 232:22 233:16 335:13 346:22 361:19
perfected 186:20

187:4
perfectly 65:17 132:3 163:12 184:16 204:11
performance 348:1
perhaps 9:6 44:7,9 52:13,19 110:7 245:22 269:12 351:2
perilous 351:6
period 16:11,16 58:7 87:14 116:17 164:13 195:11 199:13 287:6 305:16 306:13
Perkins 3:20 13:3 102:3,5,7 104:6
permanently 63:5
permission 314:17
permissioned 43:10
permit 257:14,19 265:4
persecuted 186:4
persist 184:18
person 49:11 55:11 70:1,13 80:16 82:20 85:3,4,7 102:2 112:6 118:18,19 123:14 132:2 170:18 182:5 199:1 227:14 252:18 274:3 277:19 280:15 304:2 330:3
person’s 191:2 333:3
personal 85:16 156:20 170:16
personally 72:6 96:4 120:16
145:16 270:15 333:20
personnel 21:4
person's 84:14
perspective 9:10 14:15 15:11 16:2 30:1 31:11 38:22 65:10 66:10,14 68:12 69:12 78:15 79:1,14 80:6,7,12,18 81:1 83:13 95:20,22 102:9 125:5 137:7 138:11 146:21 159:18 162:14 163:11 169:8 180:5 182:11 183:5,9 188:14 190:2 218:17,21 248:17 319:20 323:18 329:6 340:9 362:17
perspectives 9:9 78:16,20 95:15 333:9
pervasive 71:15 314:7
perverse 273:19
perversely 251:5
Peter 3:14 108:15 214:22
petition 67:7 153:10
ph 131:13 135:21
Phan 328:22
phase 211:19
photo 84:22
photograph 74:21 75:6 76:20
photographer 82:13 83:6
Photographic 338:12
photographs 82:14 83:7 242:10
photography 242:12
photos 323:3
piano 124:4
pick 198:17 266:11
picked 131:11 151:20
picture 4:6 48:2 183:21 192:13 214:7 296:6
pictures 3:15 108:19 115:19 247:9
piece 39:14 162:16 201:3 219:9 221:5 315:18 345:15
pieces 73:15 185:1 342:14
piracy 8:14,15 16:10 17:3,16 22:4,12,15 24:5,8,22 25:10,16 27:1,11,15 49:17 50:10,12 56:12,17 62:11 64:13 71:4 79:4,14,16,18 80:5 90:13,17 93:18 94:5,7 96:18 98:13 103:13,16 116:2 136:17,19 167:13 172:6 213:3 233:5 235:2 262:15 320:20 323:17 329:6,15 332:7 338:7,10 346:13 350:5,7 352:10 353:12 354:2,19
356:1 357:11 363:22
pirate 56:13 166:2,3,14 168:15,16 169:2 182:16 184:7 187:20 196:4 220:5 232:14 261:19 262:17 263:2 280:16 303:10 350:10 359:3,14 364:7 365:5
pirated 61:1 71:7 80:1,8,10,17 116:15 184:8 218:20 338:9 346:18,22 354:20
pizza 317:8,9,11,13
placard 9:22 99:22 102:1 104:21 213:21 217:11 251:8 270:20
placards 15:8
placed 345:11
places 212:8 237:21 361:14
plain 320:4
plainly 204:7
plaintiff 42:9
plaintiffs 95:8
plaintiffs’ 219:6
plan 177:7 316:2
planet 96:20
planning 358:17 360:2
plans 114:14 178:12
plantation 315:13
platform 78:18

97:2 112:14 197:9,10 199:3,13 220:5 332:2 334:9
platform-based 207:22
platforms 51:17,19,21 52:2 91:20 97:18 165:13 166:18 168:14 169:3 173:19 174:3,6 202:4 240:7 248:22 249:1 283:22 284:8 290:19 326:7 331:20 334:1 338:2 340:7,20 341:4,8,11,19,21 342:4,15 344:2 346:4
plausible 278:18 321:13
play 80:3 110:8 305:3 310:17 328:16
player 60:19 177:20 289:7
players 24:3 26:14 110:5 169:20 241:7 335:6
players' 307:4
playing 120:15 129:2 310:18
plays 21:13 135:13 177:13
please 9:22 10:10,18 11:17,18 70:11 99:22 191:5 213:21 315:8 334:17
plenty 186:5 202:2,3
plus 4:4 63:22 120:9 214:13 240:5 309:11 338:14
Plus" 32:12
podcasts 114:15 334:4
point 28:21 45:8 46:12 56:21 60:6 64:19 66:8 68:1 70:15,21 73:6 96:21 101:2,4,17 110:16 112:11 124:15 125:2 131:17 132:14 141:7 142:13 143:1,16 144:22 146:4 147:16 148:1,20 151:16,21 167:2,6 169:8 175:13 177:8,9 182:8 183:4 185:19 187:3,4 188:13 192:11 197:3 199:16,17 201:11 204:6 236:16 237:3 248:3,12 256:20 263:7 267:14 268:19 269:11 275:21 279:15,20 282:11 286:15,18 290:10,12 293:12 294:11 296:14 299:12 300:13 302:7 313:16 327:15 335:14 336:1,2,4,22 343:18 346:1 347:2 348:8,12 349:20 350:3 352:3,15 357:18,19 359:15 361:16
pointed 209:8 211:2
pointer 258:14
pointing 155:4 202:11 208:20
points 44:18 46:3 59:9 69:17 87:18 142:21 150:3 181:12 187:11 205:1 226:11 234:3 245:18 273:17 282:1 301:18 307:2 341:4
police 226:6 272:8,9 273:6 311:18 312:9
policies 17:19 59:22 169:17 274:4 289:3 293:2 303:1
policing 104:4
policy 6:10 34:20 76:2 108:21 183:7 217:16 262:4,6,8 263:9,11 269:14 275:15 276:2,17 277:1,18 278:16 279:6,22 281:7 288:3 289:13 291:4 293:13,15,18 295:15 296:3 297:9 319:1 322:9 362:20
political 46:16 150:10,12 153:12,18 154:6,8,15,18 155:8 179:15 183:10 186:8
politically 153:15
politician 76:21
Politics 214:20
pool 137:21
poor 190:20 219:1 253:21 292:11
pop 12:15 24:11
Popcorn 350:9
popped 187:22
pops 87:18 122:21
popular 111:10 112:13 125:6
portfolio 198:21
portion 225:4,7
portions 129:11
pose 106:20 145:13
posed 94:10
posited 237:14
position 17:10 116:13 119:14 142:4 143:20 144:8 145:15 146:11 158:3 160:7,8 161:13 176:7 182:4 185:10 186:21 222:12 248:21 291:21 306:4 314:5
positioned 209:16
positions 9:8
positives 175:20 187:17
Posner 233:14
possession 180:9
possibility 79:21 230:21
possible 56:2 68:19 79:15 200:2 209:3 259:21 345:19
possibly 61:21 155:11 241:9
post 63:10 73:20 85:16 120:7 334:3

posted 73:21 74:8 85:1,4,5,9 86:2 117:22 118:19 222:9 244:12 323:3
poster 118:20 119:2 161:2 163:18
posters 75:19 164:19 339:12
posting 73:15 161:18 202:13 253:14 323:5 329:2
posts 322:18
potential 41:2 62:17 83:18 119:12 146:9 156:1 176:13 207:13 219:15 226:7 254:13 284:21 292:12
potentially 22:22 30:12 54:4 78:3 101:11 139:7 141:14 142:4 149:19 150:22 154:12 162:4 171:16,17 204:13 213:6 249:4 273:20 274:18 284:22 326:22 332:6 351:21 356:19 364:17
powder 268:16
power 26:21 46:13 75:2 118:14 146:22 195:2,4 286:6 335:5
powerful 209:20
practical 180:9,13 223:8 226:20 227:2 228:8 264:1 275:3 283:10 284:7 287:11 298:7 311:7 312:5,8 320:14
practically 223:9 239:15
practice 92:5 108:3 116:1 130:8,10 175:22 215:10 216:10 272:16 332:1
practices 35:7 137:16 195:3 276:13 360:12
precise 348:5
precisely 80:3 225:6
preclude 20:10 211:10
predominantly 183:1
preemptively 100:18
preferable 112:12
preliminary 320:16
premise 172:5
preparation 131:15
prepared 367:4
pre-release 116:15,17
prescient 253:11
presence 230:10
present 34:12 43:22 78:15
presented 246:22 247:11
preserve 292:22 310:5 338:19
president 13:4 14:4 73:20 108:10,19 214:6,12 216:8 312:20
press 26:3
pressure 88:10 249:5 304:19 305:5
pressured 248:21
presumably 153:2 154:14 162:2
presumption 181:16
pretty 12:11 90:14 138:19 163:13 296:16
prevail 138:6 143:12
prevalent 130:8,9
prevent 17:19 91:16,19 92:15 94:7 144:1 193:21 303:9
prevented 27:12 219:4
preventing 91:22
previous 59:10 291:6 293:1
previously 87:21
price 18:8
priced 24:4 25:18
prima 163:11
primarily 17:8 23:3,11 64:7 65:10,12 115:17 167:10,13 191:13 208:8,12
primary 87:12 221:21 222:14
prime 341:22
Princeton 337:1
principal 11:20
principally 200:22
principle 52:11 247:4 277:7 322:5,6
principles 205:20 254:18,19
print 58:4
printed 273:11
prior 53:3 174:22 183:20 356:9
privacy 84:3 112:17 113:17 218:22
Privacy" 248:19
private 84:3 108:3 201:7 210:16 215:10 216:10 302:10
privatized 24:2
privileged 296:15
Prize 24:19 26:8
proactive 210:19 266:16
proactively 16:21 100:17 101:20
probably 18:16 21:11 36:11 37:6 50:19 79:5,16 89:14 91:15 94:4 110:20 115:10 132:3 143:21 147:22 149:21 162:2 181:22 182:3 184:5 186:20 198:11 211:20 235:18 247:17 258:22 267:21 276:7 286:10 293:5 327:12 329:7,11 344:19 349:10 357:2 365:7
problem 8:14,20 17:17 20:12 24:16 25:4 28:9,10 30:1,15 48:5,12 50:14 58:11 61:10

73:10 80:9 87:11 88:1,7 91:9,13,16,17,19 103:13 110:13 115:3 117:12 125:21 133:2,5,6 134:12,15 135:4 136:11 137:21 138:2 146:17 147:14 150:2,17 152:3 155:12 172:6,8,10 178:20 179:7 192:3 193:6 194:4 195:22 196:8,16 202:7 218:7 233:10 249:16 250:21 262:15,16 263:3,4 313:7 327:18 337:20 350:6,7,12,13 351:7 352:10 353:12,13 355:1 356:12 362:18 364:1

problematic 54:2 135:6 253:7

problems 36:16 63:19 86:14 94:1,3,4,11 95:18 111:22 117:13 135:20 136:3 142:4 146:10 155:8 156:6 184:15,20 246:11 290:8 303:14 323:21 324:15 332:16,18,20 333:2 350:19 354:11

procedural 41:11 42:6 53:21,22 138:14 152:13 153:1 172:18,22

procedurally 181:10 357:5

procedure 52:14 76:5 117:12 133:1 157:21

procedures 20:9

proceed 106:7

proceeding 6:7 366:3

proceedings 7:22 10:21,22 329:22 366:4,6

process 11:11 25:17 30:21 33:22 34:1,5 49:5 57:9 62:15 63:8,13 64:6 66:16,20,22 67:18 68:2 75:20 76:17 77:3,4,16,21 78:7,9 83:22 88:5 94:12 97:13 99:1,5 103:8,9,22 104:4 110:7 111:21 121:14,15 134:20 137:18 139:6,9,22 140:6 143:19 144:3,6,11,12 145:19 146:7 150:21 152:9 154:7,9 155:1 157:12,15,20 159:12 160:4,10 164:6,11 171:17 181:9 184:3,17 186:22 200:7 213:1,14 223:20 274:18 281:4 297:12 302:10,11 319:12 320:15,16 322:11 325:16

processes 48:4,11 170:8 188:8

Process— **Identification** 5:6 11:4

processing 15:21 16:7 144:14

Process—Service 5:10 105:12

prodding 267:16

produce 115:18

producer 121:17 194:13

producing 23:2

product 56:14 118:3

production 70:18

products 56:16 79:6 206:21 241:16

professional 27:7 36:1

professionals 73:19 81:13

professor 13:7 44:13 110:3 194:12 195:6 214:15

profit 12:20 127:13

profited 314:16

profiteering 332:8

profound 195:1 299:3

program 178:18 179:2 203:9,12 206:13

programs 112:10 115:19

progress 28:20 202:2,3

project 73:22 138:20,21

projects 138:19

proliferate 52:2

proliferation 51:9 132:9 134:12

promise 197:15

promote 91:21 232:20 354:19

promotes 232:5

promoting 293:10 328:16

prompted 185:6

prompts 150:9

prong 253:9,10

proper 249:18 252:18 322:8 324:5

properly 95:6 130:19 158:8,13 217:6,22 218:16 219:11 233:11 321:10

properties 31:6,10

property 3:3 23:17 79:3 364:9

prophylactic 135:20

proponents 110:16

proportion 134:15

proposal 175:7 186:11,12

proposed 8:18 119:10 156:3 184:22

proposition 221:13 351:10 353:14

propriety 77:22 78:1 139:16

Prose 3:6

protect 55:7 97:20 101:7 127:12 204:17 206:10 211:5 234:7 303:20 336:5

347:6
protected 236:22 325:15 327:3 334:15 353:18 358:5 364:21 365:2
protecting 53:1 129:5 160:13 239:16
protection 3:2 13:4 54:6 92:8 102:8 108:10,19 120:4 122:9 145:12 203:17 204:20 215:7 232:15,22 233:19 234:9 308:20 313:21 352:18
protections 112:19 150:21 172:18,22 240:11 261:19 293:19 334:6 354:10
protects 349:3
proven 62:4
provide 20:14 31:1 75:10 76:3 85:20 94:12 105:7 114:20 132:19 155:11 156:8,11 218:6,9 224:18 226:1 227:17 234:9,13 235:1 237:10,11,12 252:18 255:16 297:6 305:13,15 341:5 347:17 350:21
provided 80:21 210:12 218:4 219:9 239:2 313:9 330:12
provider 5:10 30:20 34:10 48:19,20 54:18 78:18 105:13 106:19 108:3 117:22 118:6,7,16,22 119:3 120:6 129:12,19 130:1,6 151:5 162:15 205:21 209:22 210:6 222:21 223:3 226:2,13 227:18,19 244:10 249:3 250:2 257:15,19 258:4 260:14 262:11 263:8,12 265:5 267:20 273:4 283:1 294:5 299:5,13,14 300:19 334:10 349:9 355:10
provider's 238:6 244:5 295:17
providers 16:6,20 30:11 31:2,22 32:6,12,13,21 33:16 35:8 38:17 42:12 54:11 117:19 120:12 158:2 201:12 205:16,17 215:11 216:6 222:11,16 223:9,17,22 234:10 248:20 249:13 250:6,22 251:3 261:1 266:19 276:20 277:8 278:18 279:17 294:19 302:6 305:5 306:21 310:14 313:16,19 327:16 347:9,16 353:6 355:14 360:7
provides 7:2 9:4 295:15 314:6 354:11
providing 68:20 135:8 157:13 168:15 235:4 269:4 335:2,5 353:4,19
provision 116:5 138:3 221:17 224:15,21 225:1,22 226:22 227:11,21 228:12,18 230:3,5,7,11,12, 13 232:12 233:12 236:9,10 237:7 238:15 248:20 255:17 261:17,18,22 264:6 274:13 279:16 285:1 301:2 311:9 356:15,17
provisions 23:21 29:8 64:10 65:20 119:9 142:7 213:6,11 216:15 224:4 231:14 232:10,11 233:8 238:15 297:15 326:18,19 330:7
proxies 279:11
proxy 278:6 292:11 295:7
public 1:5 7:7,10 30:9,14 33:18 51:1 56:22 57:6,7 85:21 97:3 108:4,20 111:16 114:9,13 127:16 171:3 194:21 215:11 335:10 336:3 348:1 366:1,20
publically 85:4
publicity 127:14
publicized 84:9
publish 53:8 94:19
published 26:4,11 27:16 134:19
publisher 25:22 26:1,12 94:22
publishers 13:2 22:7,13,17 23:2,4 26:21 28:6 57:5 75:11 94:19 114:14 128:22 208:13 209:9,12 218:12,14 338:16
publishing 2:9 3:22 17:9 26:4,15 28:4 93:11 94:18 107:19 215:22 219:8 247:1 364:10
Pulitzer 24:19 26:8
pull 12:9 274:20
pulled 167:21
punitive 72:7
purchase 176:16
pure 175:5 332:7
purge 87:8
purpose 44:21,22 45:3,13,14 64:5,18 88:14 136:22 229:1 233:6 234:7,8 248:3,4,6 249:12 268:13 277:2 293:18 297:11 365:6
purposes 153:1 161:17 180:13 276:21 278:15 282:12
pursuant 239:2

pursue 246:12
push 11:15,17 274:20 293:11 353:15
pushed 58:17
pushing 187:11
putative 150:3,4 254:3
put-back 149:20
puts 30:10 121:18 143:19 144:8 146:10 158:22 159:1 172:15 218:9 282:20 297:18 362:11
putting 45:21 77:8 82:7 102:18 137:22 161:10 164:22 226:8 286:5 324:12,13 336:13 339:5

Q

qualification 295:6
qualified 180:2
qualify 179:18 358:3
qualitative 30:16 31:18 39:16
quantifiable 195:1
quantitative 31:13 33:10
question 9:3 11:10 15:2 25:21 31:19 35:17 38:6 40:9,19 41:7,16 53:17 58:13 61:6 65:7 66:8 67:13 89:3 90:2 94:9 103:19 106:21 107:1 109:18 136:1 144:7,22 147:4 148:14 152:5,11 155:18 158:11 160:16,18 167:19,20 173:21 174:4 176:21 177:10,14 182:10 185:6 191:19 198:4 199:6 202:9 213:16,19 216:14 217:5 219:17 220:12,13 225:22 226:19 228:5 235:20 241:1,6 256:11 259:2 263:15,16 270:22 275:14 282:6 291:15 298:16 309:20 312:22 326:14,20 333:13 342:8 345:8 349:21 351:12 352:7,9 356:8 358:19,21 359:16
questionable 318:19
questions 8:6 11:2 40:14 42:20 43:22 73:12 78:20 81:2 116:19 166:16 184:20 256:6 318:22 322:9 326:17 345:4 349:13
quick 7:17 40:19 47:4 53:16 83:12 95:11 103:18 104:17 106:5 113:2 124:21 137:5 152:4 212:5 284:9 301:11,15 304:3 356:7
quickest 212:9
quickly 21:8 90:4 94:6 165:14 307:10,16,17 310:10 333:9 346:20 353:9 360:11
quiet 6:6
quintessential 361:9,10
quintessentially 361:15
quite 20:5 28:7,16 31:20 36:11 54:13,18 142:22 178:6 179:11,16 205:21 206:3 236:11 271:1 283:14 288:9 321:2
quote 246:15

R

Rachel 1:21 6:15
radical 15:4
radically 80:19
Raiders 71:1
raise 111:3 195:3 213:21 217:10
raised 15:7 66:9 86:5 112:18 165:16 181:1,13 182:10 212:19 282:12 345:4 358:14
raises 267:13
Ramer 3:19
rampant 16:22 255:10
ran 98:6
range 7:3 23:2 137:14 138:8,15 293:9 350:10,21 353:20
ranked 111:9
rapidly 304:8
rare 158:4
rate 173:3 331:2
rates 88:10 330:17 331:4,5,6,7
rather 86:13 94:5 117:16 118:10 119:11 217:15 254:8 266:14 267:20 311:11 314:8 330:8
ratio 20:14 173:7
rational 164:22 165:2
rationales 312:19
raw 336:13
Ray 2:16 107:17 123:7,8,12 125:8,10,14 127:15 194:15 308:12 315:5,6,9 316:18 317:1 337:21 362:4,5,7 364:14
Re:Create 3:8 308:22
reach 48:19,20 51:11 132:20 135:8,11 137:4 147:10,17 208:21 306:16
reached 48:8
react 265:10
reaction 129:5
reader 210:13,14
reading 73:17 74:5 180:15 297:16
reads 21:19 237:6
ready 251:10
real 9:4 17:3 33:7 34:20 47:1 57:6

91:12 136:11 142:14 262:15,16 285:16 319:2 320:10 323:20 324:15 336:21 362:22 364:7,17
realistic 277:4
realistically 173:17 326:5
reality 49:16 50:18 130:2 222:4
realized 28:13 88:16 96:17
reallocation 337:22
really 22:16,18 23:1,9 25:21 31:6 33:5 34:18,19 36:3 39:5,10,11 41:19 42:12 43:4 44:5,9,16,19 45:16 55:14 64:19 73:19 75:22 78:16,20 93:21 102:14 103:2 104:7 106:21 110:3 117:6 133:4 146:11 152:7 159:11 164:1,2 172:15 175:5 179:21 182:14,20 185:17 189:8,14 192:1 210:5,22 217:16 220:3 233:2,13 240:21 248:14 249:7 254:9 259:10 260:5,6 261:13 287:10 288:13 289:14 291:2 292:2 298:4,21 301:9 302:21 305:19 307:2,3 310:12 311:20 312:13 314:17 323:16 331:16 357:22 361:3 362:16 363:9 364:1
realm 52:17 241:22
real-world 60:2 364:18
reaping 315:4
reason 38:7,8 51:16 63:21 87:12 90:13 91:1 93:8 101:3,6 161:16 184:5,6 188:18 206:19 220:18 222:2 230:18 239:6 240:1,6 250:13 259:9 272:2 273:8 303:8 304:5 338:22 340:14 342:13 349:1 350:6
reasonable 68:6 131:20 281:7 326:10
reasonably 226:2 227:17 257:14,19 262:3,7 265:2,4
reasons 38:12 186:9 200:14 223:17 268:10 278:11 288:20 289:17
rebalance 190:1
Rebecca 2:11 14:1 308:10
recalibrate 189:16
recall 300:9
receive 60:20 100:14,19 101:18 109:19 111:10 133:10,20 134:19 140:5 142:6 146:7 147:21 157:16 162:6,17 177:21 178:2,3,21 190:15 206:22 223:12 333:21
received 9:13 24:19 58:1 59:11 86:6 114:12 119:2 166:5 178:8 334:11
receives 70:20 85:5
receiving 32:13 100:20 190:10 265:16 340:9
recent 24:20 179:17 275:16,21 282:16 343:21
recently 28:16 136:14 334:21
recess 212:11 305:22
recognition 8:22 176:15
recognize 26:18 36:21 95:17 203:21 204:7 232:10 268:15 278:10 329:11 360:5
recognized 277:12 283:8
recognizing 253:21 283:7
recommend 147:12
recommendations 40:12 183:7
record 30:14 55:4 83:7 87:1 90:21 92:17 106:7 107:4 114:10 119:18 124:8 173:1 192:15 218:2 235:8 248:6 265:14 286:18 296:6 312:3 321:18 328:10 329:21 337:7 343:12 366:6
recorded 311:3 337:3 366:4
recording 2:5 3:10 14:5,7 92:11 114:6 199:22 201:4 216:9 309:2 312:21 313:1 337:6
recordings 87:8 100:12
records 3:12 13:12 124:4 246:21 262:4
recover 293:14
red 120:22 217:6,9 219:14,21 220:16,21 221:10 226:17 229:9,17 230:4,7,11 231:21 236:7,11,17 238:5,19 239:1,18 246:5 249:16,19 250:1,15 251:19 252:14 256:14 259:10 260:21 261:12,17 262:2,9,21 263:17 273:19 274:17 275:4 308:6,7 326:18 327:20
redacted 311:5
redistribution 317:6

reduce 59:21 80:4 145:3 245:12 248:7 298:12 334:22
reduced 341:18 366:5
reduces 188:8
reducing 80:1 139:21 297:22
reductions 342:5
re-enabled 18:18
reference 246:16
referenced 67:16 90:8 343:21
references 98:3 310:11
referred 54:12 269:12
referring 60:6
reflect 192:16
reflected 276:1
reform 277:5 280:21
refresh 324:8
regard 189:12,13 209:22
regarding 8:6 15:16 16:12 128:12
regardless 231:10
regards 36:17
reggae 317:4
regime 14:15 60:8 61:9 133:7,8 142:22 146:5 160:19 168:6 169:11 171:21 178:10 221:19,20 229:2 279:3,5 313:17 325:2 351:13 353:4 355:6,19,21
regimes 52:1 352:19
Register 6:9
registered 19:20 276:6
registrants 20:2
regular 71:7
regularly 73:20 334:12 359:9
regulation 294:13
regulatory 178:10
rehearing 153:10
reject 100:21 206:5,20 208:2
rejected 210:15 225:6 349:1
rejecting 101:1
rejoin 301:16
relate 20:15
related 38:6 83:2 188:13 203:5 326:4 366:8 367:7
relates 228:12,18
relation 108:7
relations 12:4 109:12
relationship 98:22
relationships 27:3 175:1
relative 76:13 111:8 366:10
relatively 19:19 26:14 32:7 39:8 76:15 249:2,7 281:19 336:5
release 122:1,3,10 311:12,13 341:9 346:17
released 28:19 96:15 120:2 334:21 343:10
releases 71:2,7 311:21 312:3,10
relevance 79:2
relevant 202:18 255:4 298:21 325:17
reliance 202:15
relief 268:7 357:13 362:3
relies 210:3
relieve 182:3
rely 15:1 57:20 63:6 101:6,12,19 249:3 334:1
relying 155:9 276:9
remain 162:5 196:16
remainder 7:22 32:11
remaining 10:16
remains 8:16 87:17 254:19
remark 332:13 344:14
remarkable 313:5
remarkably 209:11
remarks 5:3 10:3
remedies 157:5 255:6,8
remedy 28:14 64:13 133:17 150:7 155:11 156:9 253:6
remember 10:10 34:19 40:7 285:7 295:5 344:14
remind 44:21 243:11
remote 24:15
removal 142:9 221:1,5 230:8,13 250:12
removals 171:10 173:5 174:17
remove 20:7 49:9 87:10 165:22 226:14 227:19 245:5 250:15
removed 84:13 172:20 229:6 257:13 266:3 351:3,15 353:9 355:9
removes 340:2 355:10
removing 250:18 335:3 351:4
renege 319:1
rent 72:13
rental 73:1
repeat 17:16,19 19:1 121:2 207:21 233:14,18 256:16 261:18 262:4,6,8,9 263:9,15 266:4 269:13 275:8,10,15,22 276:3,17 277:1,14,18 278:2 279:6,22 280:18 282:3 283:2 284:13 287:21 288:3 290:11 291:4 292:11 293:2,13,18 295:8,18 296:4,11 297:9 300:15 301:19 302:2,17,18 303:1 327:21
repeated 28:11

277:17
repeatedly 277:3
repercussion 312:8
replaced 341:21 345:8
reply 211:19
report 115:22 132:15 136:14 170:11 192:4 194:22 272:9
reporter 10:19
reporter's 106:9
reporting 218:9
reports 54:11 133:18 174:12
repository 138:18
reposted 16:16 149:12 223:13 321:21 345:8
reposting 103:11
represent 67:18 68:18 69:3 106:7 108:3 130:13 196:4 215:10 284:1 307:11 308:14 317:21
representative 69:3 224:13,15,16,18, 21,22 225:15 226:18,21 227:3,11 228:11,15,17 229:7 237:4,7,12,18,20 238:15 239:1 243:13 256:21 257:7 258:7,13,15 260:4 263:18,21 264:2,5,14,17,18 ,20 265:1 327:22
representatives 284:18
represented 194:17 214:3
representing 12:22 14:2 107:15 118:15 177:19 253:13 317:20
represents 87:1 109:5 132:8 185:3 340:6
request 84:13
requests 170:17 183:22
require 20:8 115:13 140:10,20 205:1 220:22 238:20 268:10 279:12 359:10
required 32:17 82:5 90:7 205:4,5 220:16,20 223:16 224:9 229:4 252:8,9 257:22 267:19 275:13 279:19 353:2
requirement 32:22 74:13 176:14 180:20 198:1 206:7 224:5 229:22 275:10,12 352:22 355:12
requirements 141:5 149:11 162:10 205:10,18 207:20 257:16 347:12
requires 178:11 204:6 222:7 225:22 226:14 230:13 231:21 277:19 297:1 304:20 305:6
requiring 233:8 291:17
reread 300:13
resaved 242:13
research 39:2,16 54:20 264:18 334:21
researchers 30:4
reserve 23:20
resides 89:1
residuals 69:16 70:10
resist 129:14
resized 242:14
resolution 9:5 30:9,21 77:3 181:9,20 319:12
resolutions 160:6
resolve 9:16 85:19 324:19
resolved 48:15 77:11 179:22 180:7
resolving 297:7
resorting 297:7
resource 78:6 79:19 258:1 268:21
resources 29:12 55:8 76:11,22 78:4,9 79:20 90:15 91:1 103:20 104:3 135:7 136:2 160:8 169:21 190:17 195:2 246:12 310:20 325:6
respect 43:16 60:16 157:8,9 172:18 212:20 230:16 242:9 263:7 266:1 300:20 332:14 351:14 359:21
respecting 159:2
respond 18:14 54:3 94:6 128:19 146:17 196:19 237:1 266:10 278:8 310:10 348:11 363:14
responding 162:21 178:18 179:2 191:20 217:11 274:16 314:7
response 5:10 86:6 105:13 106:19 109:17 162:16 220:22 221:1 223:8 313:2 346:9 347:1
responses 306:13
responsibilities 325:5
responsibility 29:6,10 55:6 68:14 139:15 160:12,17 222:14 223:1 226:9 227:16 238:6 283:21
responsible 132:9 223:9 305:4 324:14 326:16 353:12
rest 127:19
restaurants 323:1
restored 149:19 150:13,14
restraint 53:3
restricted 244:8
restroom 10:13
result 24:5 46:1 49:14 92:18

176:1 284:20 311:8 345:12 351:2,4
results 39:18 80:15 81:19 167:16 171:2 331:9 350:14
resume 358:15
retail 331:16
rethink 291:3
retracted 166:6
returning 249:21
returns 98:20,22
reveal 303:2
Revelation 2:4 14:7 307:20
revenue 55:11 71:3 92:10,17 99:12 162:6 177:5,13 195:15 247:14 315:10 337:22 364:13
revenues 195:8,11 199:21
review 9:19 32:8 35:13,14 40:21 54:17 63:10 74:11 102:21 103:5 111:20 112:6,12 115:14 118:4 129:10 142:6 219:5,8 324:8
reviewed 21:3 114:3
reviewing 139:15
rewriting 74:6 76:7
rewritten 294:17
rhetorical 241:1 294:4
Rhett 328:21
rhinoceros 191:22
RIAA 87:1,4 124:16
RIAAs 350:12
rid 87:7
ridiculous 320:17
rightfully 144:3
rights 24:2 39:6 61:4 74:21 84:4 86:3 92:9 97:20 113:17 115:22 137:15 151:4 181:2 193:9 211:5,6 218:12,13,14 260:13 295:19,20 303:21 314:4 320:22 321:19 333:4 339:20,21
Rightscorp 59:12 270:1,10 271:6 272:7,11,12,14
Rightscorp's 270:8
rightsholder 18:5,14 48:20 75:5 78:17,22 150:4,5 180:8 186:4 188:1 198:8 224:17 332:6 357:17 358:22
rightsholders 17:8,11 23:12 31:5,7,10 33:4 35:2,7 38:15 62:1 68:22 69:4 79:1 94:13 95:6 100:6 101:16 114:1 151:21 171:7,19 172:7 173:17 174:3 175:1 176:6 189:18 197:18 199:15,17 200:3 208:9 209:15 217:19 218:15 219:2 242:17 266:18 268:14 285:21 324:11,18 325:4 353:5
rightsholder's 18:9
Rightsholders 313:12
rigid 293:16
rigidity 293:7
rigorous 221:11
Riley 3:21 108:20 184:12,13 187:2 188:7
Ringer 6:16
rip 280:2
rise 17:15 22:4,11 213:3
rising 132:15 179:9
risk 34:20 138:1 145:6 146:12 160:14 161:5,10 180:20 204:10,11,21 305:8
risks 172:10
road 172:2 285:14 363:11
robbed 339:19
robots 58:2
robs 340:1
robust 297:14
rock 27:2
rogue 202:12 232:14 261:20 262:1,16,18 263:2,3 298:9 325:1 357:18 359:2 364:7
role 163:22 178:6 180:18,22 181:21 188:4,6 262:13 279:21 328:15
rolled 322:19
rolls 124:4
Roman 245:3
romanette 257:9
room 6:6 7:16,21 8:2 10:15 30:3 49:22 55:5 86:19 93:16 97:1 99:7 105:17 106:1,17,22 107:5 112:13 128:16 169:19 171:2,6,19 174:12 180:16 187:11 189:3 191:22 194:19 202:2 211:2,18 243:16 349:17 360:16 365:11
rooms 361:12
root 50:21
Rosen 312:20
Rosenthal 3:22 12:21 27:22 28:1 91:8
Roslof 4:2 12:18 100:3,4
rouge 350:10,13 354:1 356:12,20
roughly 6:15 104:3
round 183:19 265:10 284:12 285:7 301:10 306:14 322:21 324:5,17,21 325:9
roundtable 1:5 9:4 33:20 297:5 328:11
roundtables 6:21 7:1,7 8:7 9:11,17

65:9 125:1 167:9 305:14 332:12
routinely 117:5
royalties 337:7
royalty 94:21 311:5
rubber 363:11
rule 106:10 181:13 226:5 231:8
rules 7:19 61:19 159:5 163:20 177:6 282:8 293:8 359:17
rulings 252:5
run 96:13 98:8 107:18 119:18 204:10 211:16 276:10 280:22 293:12 306:5 326:3 351:22
running 94:14 104:12 165:5 274:17
runs 12:20
Russia 126:6 315:15
Russian 311:14 315:17 350:8
Ruth 4:13 12:5
Ryan 3:17 214:17

S

sacrifice 50:22
safe 5:17 32:17 51:18 101:13 151:19 158:6,22 166:19 180:12 202:20 205:16,22 206:1,5,8,10 207:2,3,10,15,16 217:1 232:8,14 237:1 251:1,4 253:15 254:6,20,21 255:3,8 262:19 267:8,12 276:9 282:4 288:2 293:14,20,21 294:9 295:10 305:7 306:1,16,17 310:8 311:9 325:22 326:2,3,11,21 327:4 328:15 330:10,12,14 331:7,19 332:2 333:15,18,19 334:2,6,16,18 335:3 336:4 347:5,13 348:4,19 349:2 350:20 351:1 352:4 353:19 354:3,4 355:10,15 358:3 360:21 363:18
salary 70:18 288:17
sale 25:10 49:21 312:11
Salem 114:4,5,7
sales 24:20,22 26:8,9
Samaritan 274:13
sample 36:4 38:14 264:20
sample-based 35:13
sampling 103:7
San 1:14 108:6 216:4
Sanbrailo 366:2
sanctioned 330:15
sanctions 92:9
sandbagged 273:21
sand-bagged 268:13
sat 318:10 330:3
satire 46:16
satisfied 220:6
saw 35:9 51:5 81:2 126:13 157:9 187:20 282:16 312:1 313:7 314:15,21 325:16
scalability 75:14 191:20 192:21
scalable 102:19 109:20 116:7 208:16
scale 20:10 33:8 34:3 35:1 40:10 79:4 80:15 103:12 117:14 192:10 199:13 209:6 240:7 284:7 340:12
scales 189:15
scaling 208:17
scanned 20:1
scanning 60:21
scared 144:3
scenario 237:13
scenarios 210:5
scene 123:15 124:12
scenes 20:8
schedule 305:17
Schofield 30:5
scholars 285:5
School 2:3,12 3:4,17 4:11 13:8 108:13
School's 216:12
Schrantz 4:3 214:9 239:4,5 283:4,5 285:3 309:13 340:3,4 342:12,22 343:2,15 344:11,15,18 345:14
scope 5:17 14:22 306:1,15 325:14 326:21 327:3 360:3
scour 219:9
scouring 24:7 218:20
scrap 156:2
screening 139:4
screwed 307:16
Scribd 201:17 209:9
scrutiny 148:22 149:5
scuttled 75:7
Sean 3:18 214:14
search 20:19 21:12 36:6,8,10,14 37:8 85:2 120:9 165:22 167:15,16 171:1,2 201:2 206:21 255:22 257:22 267:1 323:1 350:14 351:1,5,9,14,16 353:16 354:17 358:20 359:13 361:12,18,20 362:7,9 363:4
searchable 326:2 327:7
searched 121:10
searching 165:21
seats 105:21 212:15
Seattle 3:18 214:16

second 6:20 24:19 28:5 32:20 61:14 67:12 149:4 185:7 192:13 218:19 225:5 233:2 234:20 238:11 247:9 263:16 290:5 315:6 341:3 343:18
secondary 352:5
Secondly 61:18 341:11
seconds 10:7 61:15 343:4 358:13 361:3
section 1:3 6:21 9:19 17:13 30:6 31:20 32:17 41:1,3 44:17,20 45:9 46:3 47:3 54:1 60:7 64:5,17 97:6 101:2,3,4 108:7 115:21,22 116:3 157:2 194:4,6 226:5 244:2 248:6 249:12 255:5 278:21 282:2 284:15 285:1 288:12 295:19 296:21 297:6 309:21 314:5 340:16 342:4 349:12
sector 30:20 34:11,17 39:5,7 136:11,12
sectors 36:17
security 288:21 300:21
Sedlik 4:4 214:12 241:3,4 268:18,19 285:10,11 309:11 338:5,6,12
seeing 53:12 132:10 133:3 139:16 142:22 168:20 310:4
seek 224:1,8 232:19
seeking 142:8 261:3
seem 46:21 75:10 77:15 228:3 246:18 256:6
seemed 40:5 246:19
seems 17:17 76:15 91:11 120:11 155:21 184:4 199:10 218:17 220:4 264:21 284:10 319:18 320:11
seen 15:20 17:15 22:4,10,12 24:13 45:16 57:19 70:15 75:4 150:10 168:18 169:16 170:9 172:17 173:1 175:22 201:14 203:6 208:10,15 209:13 236:5 240:6 348:17,18
seep 326:21
sees 27:14 69:13 74:19 157:15
segregating 184:17
segue 234:4
Seidler 4:5 109:1 188:22 189:1,7
seize 193:18
selectivity 349:8
self 26:3
self-published 25:22
sell 50:9 56:15 70:11 115:18 286:8 316:16,22 341:9 348:3
sellers 285:17 286:5
selling 241:16 285:18 286:11 335:17,19,21 336:2,7 339:5
sells 71:12
senator 243:13
send 15:15 22:20 24:9 46:10 48:2 55:22 60:12 74:18 77:13 84:12 102:15 121:14 143:17 161:2,3 171:5,9 182:16 183:3 188:1 190:11 193:2 208:22 241:13 269:18 271:2,16,17 278:9,12 320:11
sender 83:15 84:4 85:17 115:2,4 141:13 162:1
senders 33:12,16 37:4,17,20 39:3 40:13 43:16 59:3,6 82:1,4 84:1 113:12,14 114:21 115:8 144:12 157:22 164:12
sending 15:21 36:13 41:20,21 82:21 84:9 102:10 103:6 137:7 138:9 141:16 142:14 143:3 146:8 165:21 167:10 190:7,14 272:17 340:9
sends 74:21
237:14
senior 6:17 14:3 26:2 107:9 216:7
sense 30:6,7 44:4,7 146:22 162:14 201:13 202:5 229:4 249:2 250:10 251:2 278:16 283:10 292:6 294:16 320:17 325:14 352:11
sensitive 12:11 106:14
sent 15:18 16:12 30:10 35:20,22 36:5,7,8 55:13 56:2 60:7 67:3,7 82:10 83:19 85:6,7 87:21 113:22 119:1 150:11 167:3,14 183:22 187:21 192:22 213:1 225:12 257:3 270:2,4,7,10 272:11 333:21
sentence 291:20
sentiment 112:13
separate 58:22 105:4 135:21 142:17 263:4 271:17 282:4 344:7 352:8
separately 41:8
separating 344:9
series 97:9,12 282:20
serious 185:3
seriously 58:11 59:19 60:4 111:20 227:22
seriousness 75:1
serve 9:17 269:20 334:19

served 66:1 119:1 315:15
server 120:7
servers 197:8 218:20
serves 262:13
service 16:6,20 17:9 21:4 23:9 30:11,19 31:2,22 32:1,6,12,13 33:16 34:10 35:7 38:16 42:12 48:19 54:11,18 106:19 108:3 117:19,21 118:6,7,16,22 119:3,13 120:6,12 129:12,19 130:1,6 151:4 158:2 162:15 192:12 205:16,17,21 209:22 215:11 216:6 222:11,16,18,21 223:3,9,17,22 224:20 225:9 226:2,13 227:18,19 228:16 233:17 234:9 238:5 244:5,10 248:20 249:3,12 250:2,6,21 251:2 257:15,19 258:4 260:13,22 262:11 263:7,12 265:5 266:18 267:19 276:20,22 277:8 278:18 279:17 282:21 287:15 294:5,19 295:17 299:5,13,14 301:4,5 302:6 305:5 306:21 310:14 311:16 313:15,19 322:16 327:16 331:1 342:9 347:9,16 353:6 355:9,13 358:1 360:7
services 20:14,15,21 21:21 23:4,20 25:15,17,19 26:11 51:11 52:11 68:20 116:9 117:5 192:11 200:22 201:7,17 202:16 218:21 222:6 223:15 235:1,5,21 276:8,10 279:6,7,8 280:4 296:9 298:9 313:9,11 322:22 325:6 330:18 331:5,6,12 335:2 336:12 344:3 349:3 350:21 353:18,19 354:1 359:11
serving 359:14
session 5:5,9,13,16 7:20 8:1,3 10:8,10,12,15,17 11:4,7,10,11 14:13 58:4 89:11 99:9 104:12 105:4,12 106:4 212:13 246:9 301:13 304:2 305:11,13,20 306:1,15 311:2 327:19
sessions 11:1 105:1 212:18
sets 76:2 331:4
settlements 133:15 272:19
seven 68:16 89:14 195:10 214:5
several 8:10 70:4 79:9 252:4 283:19 297:4 341:14
severe 325:5
severity 138:2
Shanalee 366:19
shape 29:4
share 55:6,7 56:8 70:13 102:9 104:2 137:12 189:9 288:6
sharecropper 315:20
shared 22:22 29:6,9 323:5
shares 48:7
sharing 42:16 192:3 200:22
sheer 18:22 81:17 212:22
Sheffner 4:6 214:6 233:21,22 238:1,9 258:21 260:5,17 281:10,11,15 285:13
sheltering 202:16,20
shielded 283:20,21
shift 151:2
shifted 8:16 88:22 95:19
shifting 21:16
shoehorn 359:19
shoes 187:19
shop 274:3
short 190:20 198:13 202:22 217:13 248:17 341:4
shorten 306:12
shorter 175:15 306:9
shortly 11:1
short-term 332:8
shots 362:20
shouldn't 173:14 188:2 204:8 218:19 219:4,14 296:15 310:13 322:7 323:10 332:19
showed 67:16 136:14 334:21 361:19
showing 58:10 59:20 87:6 192:16
shows 25:8 45:22 74:3 132:15 230:12
shrift 248:17
shrinking 90:16
shut 332:11
shutting 287:15
sic 12:16 107:19 112:3 117:17 127:10 131:22 139:2
sick 91:15
side,that 65:13
sides 8:11 52:10,19 58:17 64:2,22 65:21 66:11 77:5 93:7,9 118:14 134:5 211:4 216:5 302:5
Siegel 4:7 109:3 191:10,11 192:16,20 194:9
sign 105:2 197:12 198:1 212:1

219:3 242:21 358:10,14
signed 243:17
significant 16:1 20:11 55:22 150:15 311:11 330:11
Silberberg 12:22
silence 170:20,21 171:10
silver 200:13
similar 62:4 223:15
similarly 8:17 101:17 113:17
simple 85:2 121:13 260:6
simplified 94:12
simply 34:11 38:15 49:9 76:8 77:17 79:18 80:5 93:20 97:16 148:20 196:13 197:3 201:8 217:21 222:11 237:7 246:22 260:17 313:3 322:9 334:1 351:2
singer 337:2
Singh 328:21
single 16:14,15 19:10 21:2,13 122:1,3,10 174:1 189:18 193:4 196:2 227:13 257:6 287:4,6 342:1
sit 38:17 68:7 95:11 321:11
site 16:17,19 57:13 82:14 84:11 111:10 138:16,17 175:9 186:15 218:3 219:19 227:9 233:6,13 237:22 238:12,21 241:11 257:6 262:18 269:7 274:15 311:14 334:10,12 339:8 348:17 351:19 354:18 358:2 359:14 360:15 362:8 364:7
site.” 257:8
site’s 360:12
sites 22:11,12,18 24:13 56:13 69:18 72:12,15 84:12 85:3 86:6 94:5 100:10,17 101:12,14 102:16 147:21 165:21 166:2,7,14,15 168:8,15,16 169:2 176:16,18 182:17,18,19 183:2 196:1,3,4,6 200:20 202:9,12 209:8 232:14,16 235:9,13 241:16 254:4 261:20 262:1,16 263:2,3 267:21 268:1,4 280:5 283:20 312:6 314:15 320:20 327:5,11,12 328:2,4 332:8 334:6 342:11 350:8,9,13,15 351:3 353:17 354:1,6 356:16 357:10,18 358:5 359:8 360:6,10,14 362:10 364:15
sits 93:9
sitting 180:21
328:10,20
situated 289:8
situation 28:9 119:11 148:18 154:10 160:4 171:4 173:11 176:2 178:7 179:20 205:2 218:10 259:6 285:16 300:3 327:4 332:5
situations 40:10 43:1 62:16 117:18 150:10 181:18 266:1 328:2 361:1
six 15:18 183:14,21 281:5 304:8 335:22
size 15:13 90:16 198:8 293:4
sizeable 54:18
skeptical 67:20
skepticism 187:3
skew 239:17
skewed 213:6 360:1
skills 366:7
Sky 132:15
SkyDrive 201:8
Skyped 323:2
sleep 322:17
sleeping 322:18
slot 186:17
small 7:5 18:5 19:9 23:19 24:17,18 26:1,14 28:4,6,10 29:2,17 32:8 40:13 44:3 47:9 55:3 56:5 63:9 64:15,16 66:19 67:14,17 68:17 69:4,6 77:4,21 80:14 86:18,22 100:6,8,9,20 101:14,18 107:18 109:5 112:5 115:17 119:20 123:17 124:9 125:17 126:14 132:8,19 133:3 134:9,16,20 135:19 141:11 146:11 157:4,5,6 160:4 164:19 181:8 183:2 184:4 194:20 208:21 245:18 276:11 316:5,20 334:9 341:2
smaller 38:7,15 50:7 55:5 110:8 121:9 129:1 176:16 331:15
smallest 24:3 341:7
smart 340:16
smears 58:1
smile 362:15
smoked 76:10
snippet 117:7
so-called 110:13
social 25:8 43:12 179:10
society 3:5 59:18 108:14 119:16 308:18
soft 195:2,4
software 79:5,6,7,16 80:2,11,18 111:13 174:16 271:10
solely 64:6 88:13 248:4
solicit 232:19

solution 8:19 62:17 79:18 113:9 119:10 137:9 154:18 155:20 156:3 157:13 171:14,15 172:10 176:13 188:19 196:17 208:16

solutions 8:18 9:1 29:16 68:10 114:20 184:9 210:18,20 211:10,13 323:20

solve 80:9 86:14 103:13 201:10 202:7 324:14,19 362:18

solved 8:5 353:13 354:12

solving 254:12

somebody 72:19,22 74:19 75:6 142:5 148:16,20 150:2 155:4 186:7 235:8 250:14 252:17 255:4,7 256:10 261:2 270:2,11 271:10 291:7 295:21 296:10 297:18 298:3,7,8 314:19 362:12

somebody’s 299:9

somebody's 153:1

somehow 132:12 202:6 203:8 326:12,15 329:5 348:19 352:5

someone 27:10 59:16 69:14 77:9 99:4 138:7 147:20 149:4 161:8 187:19 211:1 258:5 261:9 282:11

something's 122:21

somewhat 9:8,14 20:20 203:4 284:19 289:7

somewhere 130:15 244:7 320:21

song 129:10,11 132:2 225:13,16 271:18 272:4 280:13 337:3,18

songs 218:3 265:2 271:9,14,18

songwriter 96:5 308:13

songwriters 97:5 216:1 218:11

son's 71:19

Sonsini 4:16 214:3 236:14 309:17

sooner 154:20

SOPA/PIPA 185:20

sophisticated 37:5 47:10 171:7 280:7 316:20

sophistication 44:6

sorry 10:7 12:8 36:7 73:9 81:8 90:3 97:22 102:1 108:9 113:5 123:4,11,12 127:8,9 140:13 186:10 197:22 211:17 251:7 256:16,19 273:15 289:10,19,22 290:4,6 305:11 307:10,15,19 315:9 319:8 356:6 361:17

sort 17:10,11 18:12 20:1,9,10 21:8,22 22:16,21 23:1,10 33:1,14 39:22 40:14 42:5 43:5 46:7,22 52:16 69:3 74:14 93:7 111:21 117:17 134:17 137:20 139:8 142:4 150:19,21 155:16 156:9 158:22 159:2 161:9 163:4,13 164:15 166:17 168:5 170:11 171:3,9 173:19 174:14 175:13 177:6 181:17 182:9 184:10 185:5 190:22 191:6 207:21 208:8 210:1,8 211:2,10 223:7 227:5 230:22 231:11 233:5 237:5 248:21 267:16 280:12 281:2 291:20 297:12 310:11 346:15 347:7 349:9 352:8 362:20

sorts 112:10 154:3 210:4 274:4 276:11 313:10

sound 100:12 201:4

SoundCloud 201:16 334:4

sounds 49:3 125:4 129:17 145:2 155:18 183:1 207:15 245:6

source 63:6 73:22 138:18 327:18 350:19

Southern 309:9

space 8:4 95:12 185:19 186:1 219:1 283:16 346:15

spaces 105:22

spawn 313:11

speak 9:22 10:18 89:13,17,22 90:1 99:2,18 100:7 104:20,22 105:3 111:2,5 117:10 125:6 153:13 183:9 209:18 212:1 274:3 285:8,15 291:1 300:2 301:14 338:15 357:14

speaker 10:12 128:4,7,8,10,12 172:19

speakers 7:1 10:14 100:2 157:16,19 189:6 269:12 293:1

speaking 10:2 26:14 60:18 96:8 106:12,13 127:4 184:5 213:20 215:12 261:8 287:19

speaks 76:14,16 331:18

special 150:20 286:16

specialize 17:7

specific 40:12 112:3 117:11,21 120:1 152:20 153:4 219:22 220:14,15,20 228:2 229:6,22 230:1,15,20 231:16,22 232:6,7 234:5 236:6 237:1,11

239:11 251:20 252:7,11,12,19 257:17 259:15,18,20 260:1,2,4,7,11 263:20 265:19,22 266:7 276:21,22 288:14 347:14
specifically 59:7 139:22 183:17 216:16 217:20 219:8 225:10 241:5 252:6 300:10 322:3 330:11 349:9
specificity 266:2
specifics 249:19 250:13 300:19
specify 175:2
specifying 187:14
specious 133:15 143:18
spectrum 211:4
speech 42:17 46:5 52:21 53:5,17,20 54:6,8 57:11 59:18,19 61:4 75:16 76:20 77:14 92:2,4,5 108:4 150:22 152:2,10 153:15 155:8,10,12,13,14 156:1 158:10 159:1 173:15 174:14 179:15,18,20 181:14,16 183:11 189:19 249:2,8 291:7 294:11,14 321:9
speed 14:21 73:4,7
speeding 73:3
speedy 160:5
spend 24:5 73:17 121:4,7 133:14 190:10 241:18
spent 7:15 91:2 120:17 135:16
sphere 26:19 27:4
spider 361:11
spinning 81:18
spirit 243:19
spite 240:10
splits 243:6
spoke 99:20 236:14 314:14
spoken 77:9 89:19 100:1 301:12
spot 197:8
Spotify 125:18,21 316:14
spots 105:18 175:19
spread 293:10 316:7
spur 303:17
spyware 300:5
square 205:9 224:13 230:2 232:3 238:5,14 239:12
squeezing 124:6
stack 18:4
staff 7:14 23:20 104:2 111:18 115:14
staffing 112:7
stage 116:15
stake 63:8
stakeholder 38:20
stakeholders 69:8 87:11 89:4 241:8 338:18
stakes 77:21
stance 185:20
stand 97:12 336:6
standard 19:15,17 27:13 84:8 221:11 231:18,19 236:17 249:17 252:10,15 259:12 261:12 263:1 267:4,7,14 275:5 276:3 279:1,2 282:16 284:5 288:7 295:12 296:12 326:6
standardized 17:22 122:6 355:7
standards 5:14 185:9 212:13,18 216:21 217:1 234:2 235:21 239:19 240:13 255:1,13 263:9 319:9 327:19 349:15 352:17 361:17
standpoint 180:14 288:21 294:16 353:3
standpoint?” 313:2
stands 149:10
Stanford 2:3 3:4 108:13 130:11 170:5 216:11 308:17
Stanton’s 225:3
Star 312:1
start 11:7,14 15:8 31:2 41:22 44:19 68:17 78:22 86:10 88:6 93:2,5 98:7 107:3 110:21 182:9 187:6 213:17,21 216:20 217:12 234:1 240:14 244:3 260:18,19 264:7 276:18 307:6,8,11
started 6:3 22:6 30:20 31:12 90:14 97:9 105:16 136:2 195:8 212:16 263:17 332:12
starting 169:13 185:19 187:2 212:7 240:22
startling 331:11
startup 7:4 135:7
start-up 177:4
startups 132:8 133:13
start-ups 216:6
state 106:6 174:14
statement 201:20 254:17
statements 64:5 218:6 311:5
States 1:2 6:11,18 202:10,15,17,18 203:22 313:18 340:14 344:6 350:17 352:13
statistic 53:19 54:7 125:12 134:7
statistical 22:10
statistically 184:5
statistics 152:7,12,20,22 153:5 173:1 341:15
status 354:3,4
statute 75:9 87:14,15 129:18 141:5 149:12 150:7 164:2,8

204:6 207:19 220:19 221:8,10,16,17 223:17 224:10,11,20 225:21 226:5,14 227:3 229:11 230:2 233:9 236:10 237:8,9,16 238:10,13,20 239:2,9,16 240:10 243:20 245:15 253:6,11,18 254:7,10 255:20 256:8,9,11 259:4,11,15 261:19 264:1 266:19 276:1 277:2 279:10,19 281:18 294:6,8,16,20 295:14 302:15 305:12 324:4,7 338:21,22 356:5 360:4

statutes 252:4 253:20

statutory 61:19,22 62:4 74:13 101:8 133:14 136:7 137:22 139:21 141:10 142:7,21 144:5 145:3 164:10 219:6 229:9 252:2 282:8 313:17 330:7 331:4 351:7

stay 7:19 88:2 110:17 169:9 293:21

stay-down 52:1 110:12 112:19 116:4,13,22 120:22 164:13 169:7,9,11 170:13 173:22 174:5 175:7,14 199:8,12,14,19 200:4,12,19 202:6 268:2 314:11 339:18

stayed 317:5

stays 181:16 240:3

stealing 298:8

step 230:8 234:2 239:19,20 240:12 288:10 357:14

Stephen 4:17 12:1 213:22

stepping 123:18 252:21

steps 232:19 237:21 260:22

Steve 3:10 336:10

Steven 2:17 107:20 308:14 309:1

stewards 28:17

stick 63:3 190:21

sticking 361:3

Stiles 4:8 12:15,16 23:15,16 25:20 36:12 49:6 91:8

stimulate 127:13 297:21

stolen 72:19

stop 10:6 68:5,7 86:21 93:18 151:6 196:7 242:21,22 265:7 269:1 286:7 306:7 338:4 359:10,14 365:7

stopped 28:15 56:6 337:6,9 364:15

storage 339:1 347:17 348:12,13,14,20,21

stored 348:17

stories 57:18 58:7 59:1 73:22 86:19

story 74:19 130:5 132:12 202:22 222:1

straight 50:12 56:12,13,17 276:16

straight-faced 301:21

straightforward 355:7

straight-forward 60:1

straightjacket 283:9

strange 302:1 325:21

strategies 80:9

strategy 80:19

stream 103:6 168:22

streamed 72:2

streaming 102:17 103:5 182:19 195:13,14,15 312:11 316:13 330:18 336:11 346:13 347:18 350:9

streams 347:21

Street 1:13

Streets 194:14

strict 94:22 252:21

strike 63:3 281:6

strikes 63:4 263:11,12 281:4 302:1

stripped 58:5

strong 8:20 44:7 133:11 185:20 261:15 297:1 334:2

strongly 353:15

struck 8:15 213:7

structural 290:8 360:17,19

structure 148:15 156:5 220:19 224:11 251:17 302:19

structured 154:2

struggle 337:11

struggling 259:7

stuck 243:18

student 2:17 14:2 107:21 179:4 286:22 287:4,13 290:13 296:16 318:2

students 71:16 128:19 181:2 287:2 288:16 296:14

student's 288:8

studied 160:5

studies 30:16 31:13 33:10 45:19 53:18 58:10,15,18,19 133:18 153:7 173:5 321:5 341:14 342:2 346:9

studio 296:6 317:22

studios 15:18 93:21 183:21,22 191:14 197:6 343:12

studio's 93:11

study's 40:21
stuff 46:17 99:13 113:19 121:17 196:7 243:14 244:12 245:10 264:10 316:2,7
subgenre 130:14
subject 62:14 150:21 237:5 257:12
subjective 231:18
subjectively 145:15
subjects 39:5
submission 5:7 11:5,13 18:1 19:6,8 173:2 192:18,19 235:12
submissions 19:5,15,19 67:3,5 87:9 122:12 325:15
submit 21:17 87:12 88:1 124:8 242:17 311:4
submitted 151:17
submitting 14:16 241:20
subscriber 270:15 303:9
subscribers 295:16 296:21 301:3
subscription 347:22 348:2
subscriptions 298:2
subsection 245:8,9 256:5
subsidy 330:15,16 331:2
substance 352:17
substantial 17:1
substantive 36:18 43:6
substitute 228:1 354:20
substitutes 327:10
subversive 298:11
succeed 51:19 52:3 202:19
succeeding 51:14,16
success 76:14 79:22 111:9 187:13
successes 36:16
successful 45:7,15 80:20 316:5
sudden 291:12 351:20 354:11
suddenly 101:19 177:7
sue 197:19 273:5
sued 145:6 197:16 203:19 204:11,18
sufficient 155:1 226:2 227:18 257:14,19 265:3,4 268:20 269:6 292:17
suggest 61:8,9 133:19 154:1,7 173:3,6 326:4 339:13
suggesting 145:22 155:19 156:1 169:10 355:20
suggestion 201:20 284:17 354:15 355:2
suggestions 35:10 202:5
suggests 147:16 197:12 233:10 293:12
suing 94:14
Suisse 196:14
suit 261:15 286:2
suits 193:15
sung 337:19
superstars 126:7
supplant 205:19
supplement 221:22
support 15:14 28:3 58:18,20 115:7 203:8 213:13
supported 129:9 363:7
supporting 246:20
suppose 274:20 335:15
supposed 45:9,10 129:15 139:17 141:4 144:18 229:5 256:3 279:9 315:11 328:4
suppress 57:10 152:10
suppressed 179:21 189:22
suppression 59:18
sure 10:14,20 12:12 19:16 20:18 22:6 49:12 59:9 61:11 62:8 77:18 89:21 98:20 99:6 104:19 115:6 119:18 122:8,14 123:8 124:2 128:15 166:8 169:18 176:21 178:9 185:2 191:17 197:13 199:9 203:10,12 206:3 219:11 223:12 240:3 247:18 248:20 249:6 264:8 265:5 277:2 280:10 287:20 292:5 300:10 310:3 329:21 350:18 361:6
surfing 361:13
surprised 81:15
surprising 32:5 40:4
surrounding 76:17 165:15
survey 39:12 67:15
survive 56:1 315:1
surviving 120:21
sustain 242:2
sustainable 109:21 116:7
SVP 13:11
swap 335:15
Swift 87:8
symmetrically 78:8
sympathetic 49:13 96:4,7 113:18 181:12
sympathy 49:11
syndication 349:7
system 8:21,22 15:12 16:9 18:11 29:1 30:10 33:15 35:4,5,12 36:2 38:2,3 50:11 52:8 59:5 60:19 62:1 68:11,22 69:13 79:13 92:8 94:13 100:7 101:9 106:20 109:21

110:5,9,12 112:12,14,20 115:5 116:22 123:13 124:5 131:9 135:10,16 137:22 144:19 147:6 148:17 155:21 157:6 161:1 163:5 182:13 185:1,14 186:16 188:19 190:19 191:1 198:15,16,22 199:14,19,20 200:2 201:10 238:13 244:14,19 246:11 260:19 262:10 295:10,17 297:18 299:19 300:6 309:21 315:20 316:22 318:9 319:19 332:1,10,17 337:20 357:17 362:2

systematic 58:10,15 59:1,5,13 60:15

systematically 57:10 60:18

systems 23:10 33:12,21 34:4 71:11 94:7 102:20 113:22 137:10 153:4 170:8 172:16 174:17 185:12,14 187:9,12 200:15 201:18 298:18 318:10 363:8,18

T

T.J 4:8

table 31:9 36:12 65:2 79:2 106:5 183:18 184:2 212:2,3 317:16 322:21 323:6 329:12

tables 120:21 284:12 285:7 324:5,17,21 325:9

tactics 189:22

tailored 114:21

takedown 14:15 15:12,15,18 16:1,12 17:2,7,9 18:3 19:11 21:5 23:21 31:14,15 32:3 48:3,6 49:4 50:11 52:8 55:12 59:12 61:14 69:20 74:18,21 75:7,12,20,21 77:22 82:21 84:12,22 85:6,7 87:14,15 88:8 91:22 99:1,5,10 100:15 109:17 114:5,12 117:17 118:5 121:11,14 122:6 123:12 131:8 133:1,10 144:12 147:7 150:12 156:13 157:17 158:18 166:21 169:6 170:13,17 173:22 174:5 175:14 183:22 185:12,13 187:21 190:10,14,17 191:20 194:20 199:4,8,12,14,19 200:4,9,11,19 202:6 203:14 206:14,20 208:22 221:2 223:2 224:5,16 226:1 227:13,15 229:2 230:5 236:9,10 241:13,21 244:3 245:7,9,14 254:3 255:17 270:13 275:14 278:5,6,8,17 279:5,8,12,13 280:9 295:7,11 302:12 311:19 312:10 314:11 315:10 320:11 332:4 339:18 353:1 355:19

takedown." 255:15

takedownabuse.org 57:13

takedowns 46:21 60:20 62:2,22 72:6 74:8,16,22 90:7 99:3,13 120:18 129:14 158:5 159:20 189:13,14 190:7 217:22 242:5 285:22

taking 18:17 21:6 27:8 51:10 53:3,5 61:17 71:18 151:5 156:12 164:11 174:13 180:12 232:19 239:19 274:19 280:18 288:7 317:8 320:19 325:22 326:2,3 336:13

Tale 332:13

talk 28:5 29:16 30:17 38:16 39:7 41:17 53:22 66:11 68:21 78:17 84:7 90:5 102:14 112:4 149:20,21 156:17 183:18 187:6,8 192:21 199:8 217:15 222:20 255:14 262:21 264:5,19 266:14 267:3,7 268:6 283:17 288:14 289:15 300:18 323:4 324:9 325:13 328:14 333:1 346:19 363:22

talked 31:22 35:1,8 71:19 81:10 82:13,20 83:3 88:10 137:8,15 149:21 171:16 247:15 283:14 291:5 293:1 295:7 318:8 327:19 330:4 331:12 351:8

talking 8:12 26:7 32:15 35:15 56:12 62:22 66:1,19 72:18 75:14 78:6 86:12,14 91:21,22 92:16 97:12 114:17 121:8 125:16 133:6 142:21 149:2,14 150:5 151:8,19 163:3,6 169:9,21 172:14 182:13 184:14 185:8,14,21 186:8 187:7 192:2 199:11 220:20 221:3,17 226:18 229:17 230:4 240:1 242:11 247:10 259:17 290:2,7 304:15 323:9,15 331:21 332:18,20 342:8,10,11 343:15 349:18 357:3,21,22 359:16 363:20

talks 229:11 259:12 290:13
Tangri 2:21 108:6
tantamount 287:10
Taplin 4:9 109:7 194:10,11 196:18 197:11 309:8 310:10 336:20,21 364:3,5
Taplin's 197:3
target 46:22 48:6 53:20 54:8 55:18 168:19 177:15
targeted 41:9,14 42:16 203:14
targeting 53:16 54:14 60:9 135:1 138:13 142:10 152:21 153:5 206:22
targets 39:4 53:2
task 267:19
taxes 296:19
Taylor 87:8
teacher 130:11
team 15:14 102:8 104:1,7 135:17
teams 102:12 146:16
tease 364:6
tech 64:1 136:12 173:15,19
Techdirt 309:3
technical 15:15 111:22 174:5 230:22 231:11 242:8 267:4,5,8,15,22 325:22 326:22
technically 231:11
technologies 102:20 110:14 176:4
technologist 91:11
technology 7:4 13:13 66:12 88:14,15,17 89:1 91:18 95:13 96:21 102:22 110:12 116:5 130:17 174:15 175:12,19 176:17,19 184:16 185:12,21 186:19 187:3,15 188:12,14 201:11 208:14 209:11 210:1 246:20 303:12 314:10 318:1
technology-based 178:15
teed 188:14
teenager 287:16
teenagers 71:16
TEK 109:4
television 2:8 48:8 102:17 107:9 114:4,15 115:19 194:13 235:10,14,17 308:4,9 312:1
temperate 57:16
template 58:6
Temple 1:20 6:2,8,9 11:16,22 14:10 17:4 18:20 19:12 23:3,13 25:11 27:21 29:19 33:19 35:16 37:10,14 38:4 40:18 41:5,13 43:15 44:10 47:4,15 48:13,22 53:15 54:22 56:19 57:2 58:14 60:5 62:6,8 63:14,17 65:6 66:7 69:9 73:8 78:12 81:3,8,22 82:3 83:12,17 84:6,15,19,22 85:14 86:7 89:6,9 93:1 95:10 96:10 99:16 101:22 102:6 103:18 104:10 105:15,20 113:1 114:19 124:21 125:9 137:5 138:12 144:21 146:20 149:8 152:4 154:5 155:17 156:14 161:12 166:10 167:7 169:7 170:2 171:13 174:20 177:16 212:15 216:13 219:16 220:7 222:18 226:16 233:20 238:1 239:3 241:2 243:1 245:16,21 246:3,5 247:20 249:9 251:7 253:3 254:14 258:17 261:6 263:14 265:8,12 266:9 268:17 269:9 270:19 273:12,15 275:6 277:13 278:20 281:9 283:3 284:9 285:10 286:13 288:5 289:19,22 290:4 292:3 294:1 295:1 301:6 304:1 305:9 322:12 356:7
temporarily 127:9
tempting 245:2,11,13
ten 192:14 223:14 235:11 243:15 317:14 319:5
tenant 335:18,20
tend 43:11 365:1
tended 36:9 300:14
tendency 128:19
ten-minute 305:19
tens 100:11 135:16
tension 293:6
term 148:16 227:3 228:11 283:10
terminate 233:17 281:18 282:3 283:1 288:12 290:14 296:3 298:17 299:17 300:16 303:5
terminated 289:12,17 296:9 301:1
terminating 207:20 233:14 280:11 284:19 287:9
termination 269:14 292:17 295:15 301:2 303:6
terminations 300:11
terminology 321:16
terms 9:20 17:22 18:13 19:15 20:13 21:12 25:14 29:7 34:2 35:17 37:17,18 40:21 43:19 47:6,8,10,12 53:16 54:5 58:22 59:2 62:21 70:12

80:1 83:14,17 86:2 95:14 103:19,20 110:6 113:2,7 115:1,5,8 116:9 135:13 137:7,9 139:11 143:12 144:7 146:12 152:8,11 161:21 162:9 198:7 226:17 259:10 284:7 288:7 303:5 304:5,11,12 306:7,17,21 339:17 342:22 343:13 344:15 345:1 349:8,17 360:2,3,5
terribly 202:17
terrified 32:22
territories 198:20
territory 129:7 357:5,14
test 155:15
testified 328:18
testifying 328:11
testimony 38:20
text 58:3,7 220:19 221:8
textbooks 23:1
thank 6:3,20 7:12 11:22 13:12 14:11 15:10 17:4 23:16 27:21 28:1 29:19,21 33:19 38:4 40:17 44:10,12,13 54:22 55:2 56:18,19 62:6 63:14,16 69:9 73:8,10 78:11,12,14 81:3,9 83:11 86:7,9 89:6 91:4,6,10 93:1,4 96:10,12 97:21 99:15,16 100:4 101:22 102:3 104:10,11 105:9 109:13 113:1 127:2 148:11 156:14 170:2,4 177:16,18 182:7 184:12,13 188:21 189:1,3,7 191:10,11 194:9,11 196:17,18 203:3 208:5 211:15 212:10 216:13 220:7 233:20,22 239:3,5 241:2 243:1 245:16 247:20 249:9 251:7 253:3 254:14,16 258:17,19 261:6,8 263:14 265:8 266:9,11 268:17 269:9 273:12 275:6 281:9 283:3,5 286:13 289:18 290:1 292:3 294:1 295:1,3 297:2 301:17 304:1,3 305:9,10 309:19 310:21,22 312:14,15 314:1,11,12,14 315:5 316:15 317:15 322:2 325:11 327:1 328:7,9 333:7 335:11 336:20 338:6 340:3,4 346:6 348:9 361:2 362:14 363:12 364:3 365:10,13
thanks 105:10 106:1 130:16 182:8 217:13 243:3 273:16 305:21 307:14 310:3 311:1 335:10
that’s 170:15 171:13,21 172:4 173:6 174:14 175:5 176:20,21 178:16 180:14,15,16 183:2 184:2 185:7,8 186:3,12,13 188:17 189:12 190:8,21 191:6 200:8 202:7 205:7 206:13 207:18 209:11 217:20 219:9 222:13,22 223:13,16 225:15 229:5 230:14 232:16,22 233:5,9,13 234:7 235:3,10 237:18,19 238:13 239:9,15 241:14 242:12 243:18 244:8,12,20 246:10 247:16 248:12,22 250:9,10 251:1 252:10,13,15 253:18 254:4 255:17 256:4,11 257:8,21 259:9,19 262:12,20 263:4,5 266:14,15 294:16 295:9 296:1,16 298:21 299:12 301:1,3 303:14 307:22 312:3,13 317:7 318:12,13 320:13 321:3 323:7,13,14,15 324:19 325:7 329:7 331:13 336:6 337:15 338:4 342:14,20 343:5,12,13 344:9 345:4,5,11,12 346:22 350:15 352:8 353:12 354:13 355:2,11,12 358:11 359:15,16 360:13,22 363:10 364:17 365:6,8,12
that's 19:22 22:21 25:9 26:5 27:9,10 34:12 35:13 41:16 42:14 46:10,19,20 47:3 49:19,20 50:12 53:4 59:12,17 61:7,8 62:12 63:8 64:11 65:18,22 66:3 76:9,21 79:4 86:15 90:14,17,20,21 92:13,21,22 93:6,13 110:20 120:19 122:15 123:15,20 124:14 126:7 127:6 128:8,9 129:10,13 130:8 131:7,9,10 132:3 134:15 136:11 138:22 141:6,15 142:17 144:19 146:17 147:5,22 148:1,9 151:12 152:1 157:10 158:9,11 159:3,4,5 161:7,8,18 165:1 279:17,19

280:14 281:2 284:19 285:4,8 287:18 294:7
theatrical 71:2,3
theft 314:3
theme 38:2 65:8 159:9 239:22 290:2,6
themself 139:2
themselves 11:9 19:6 26:6 54:1 114:18 145:15 148:18 151:6 157:18 161:10 164:22 180:12,19,20 321:5,13 328:3 358:6
theory 139:2 140:20 149:5

–

–There 253:7

T

there'll 311:14
there's 173:3 174:2 177:1 184:5 186:22 188:5,10 190:3 191:6,8 199:7 202:2 205:2 206:7,9,11 207:10 208:14 209:4 210:17 212:8 218:14 220:18 222:2 223:5,7 224:14 226:6 227:7 228:20 235:14 238:7 239:6 243:14 244:5 247:1,13 248:10 249:5,22 252:13 255:10,14 259:13 262:14,16 263:3 266:17,20 267:9 268:4,16 270:22 274:8 295:22 299:15 303:8 304:20 313:3 320:2,7,21 324:20,22 335:15 337:21 341:12 342:13 343:16 344:6 346:15,19 349:7,17 350:6 352:4,22 359:17,21 360:5,16 361:19
thereafter 366:4
thereby 266:21
therefore 103:1 145:11 231:5 233:18 247:3 284:21 331:7
there's 18:13 19:18 20:4 21:10,22 24:8 25:4 28:21 34:17 37:4 45:19 50:2,19 51:2,8,9,15 52:12 53:2 57:6 61:2,11,22 62:10 73:5,16,17,20 76:12 78:3 79:21 81:14 85:18 90:18 103:1 105:17,21 110:3 113:9,15 114:3 122:12 124:3 125:15 132:12,16 141:1 147:14 148:6 150:5,7,15,19 151:12 153:7,9 155:3 156:6 157:4 159:18 163:5 166:20,21 168:11 266:16 272:20 276:7,8 279:21 285:12 288:19,20,22 290:16,21,22 291:18 293:6
they'll 208:22 318:6 362:10
they're 134:3 171:3 175:15 178:4 182:5,17,18 186:8 192:18 219:2 221:8 223:3 242:3 252:9 294:21 311:16 324:13 328:19 329:15 332:11,20 335:17,19,21 353:1 358:6 360:14
they've 192:10 216:19 236:16 269:7 321:6 347:14 349:11
they'd 51:14
they'll 88:8
they're 26:13 30:20 32:21 34:14 49:9 51:16 54:17,18 63:7,11 71:1,6,7,20 74:18 76:10 82:5 83:5 85:10 88:6 97:1,2,6 106:14 113:8 121:2,19 122:10 129:2 135:22 139:13,17 141:4 142:19 144:18 159:11 161:4,18 165:1,3 168:21 258:22 279:9 283:7 286:6,9,17 288:17 290:15 293:3
they've 27:2,3 68:1 83:18 86:5,20 137:16 149:17
thin 39:9
Things" 130:17
third 34:15 39:6 43:4 46:12 81:19 119:15 131:11 159:14 167:19 341:17 359:7,10
third-party 321:12
thirds 74:10
thorough 21:6
thoughts 105:2
thousand 70:4 170:10
thousands 18:2,3 72:5,10,15 87:15,16 269:20 285:17 286:11
threat 27:11 115:20
threatening 348:5
threats 300:20,21 334:11,15 335:7
three-month 16:11
three-quarter 100:21
three-year 55:13
threshold 271:13
thrive 235:22 236:1 240:15
throat 337:10
throughout 7:20 138:19 244:1 297:4
throw 174:19
throwing 27:6
thrown 183:8
thrust 173:19
Thursday 1:8

tie 52:11
tied 210:11
tiers 312:11
till 344:19
tilt 52:22
tilted 246:11
Tim 312:19
timely 150:15 153:17
tiny 26:3,11 111:18 276:18
tip 9:22 241:12
tired 323:9
title 11:9 45:1 72:4 330:10
titles 55:16,18 103:16
TJ 12:16
TJ's 28:2
today 7:13 8:9 9:17 10:2 14:12 49:22 51:7 69:11 70:21 81:14 86:11 92:6 110:1 116:5 120:16 132:10 153:8 183:6 185:16 189:8 199:21 212:18 235:19 248:8,11 262:14 283:14,19 306:15 320:12 321:2 323:15,21 329:8 330:4,6 332:22 333:11 337:17 338:15,20 340:13 342:14 353:11 364:20 365:12
today's 213:9
today's 116:11
toggling 245:6
toleration 51:2 52:7
Tom 3:16 214:19
tomorrow 198:11 211:22 311:12 324:9 358:15 365:11,13
tomorrow's 363:9
ton 133:13
tonight 311:14
tons 187:16
tool 45:10,11,12 46:4 47:19 79:19 91:3 168:6 248:5 361:9
tools 16:1 49:8 80:17,21 88:19 196:12 198:18 357:16
tools," 304:13
toothless 150:6
top 55:16,18 135:22 162:17 167:16 168:1,3
topic 5:2 236:6
topics 307:1 323:15
top-line 254:7
torrent 94:5 165:18 166:14 182:18 271:9,13,14,15
TorrentFreak 166:4
torrents 165:19,20,22 271:7
tort 251:13,15,17,21 253:1 254:18
total 24:20 184:1 327:10
totality 323:18
totally 180:1 209:3 361:14
touch 77:8,11 119:21
touched 341:17
tough 243:9
toward 12:12
towards 42:16 52:22 146:10 246:12,20 267:17 268:5 364:8
track 109:19 218:16
tracking 271:8,9
tracks 315:15 322:18
Tracy 366:2
trade 23:1 81:12 342:14
trademark 113:16
trade-off 172:12
trade-offs 112:9 161:6
traditional 130:15 251:12,14,17,21 252:22 341:1 345:17
traditionally 26:4
traffic 72:9 73:2,6 112:18 192:5,6,7 339:9 341:20 342:1 343:22
tragedy 28:20 29:14
trailer 129:3
train 129:4
trained 21:4
training 189:20
transcoding 327:6
transcribed 10:21
TRANSCRIBER 367:1
transcript 367:4
transcripts 10:22
transformative 60:22 61:16
transitory 347:8
transmission 272:2
transmissions 271:7
transmitted 231:4 348:18
transmitting 347:20
transparency 54:11 83:22 84:3 85:21 302:22
treat 172:4 278:9 279:11
treated 62:2 75:17 113:17 242:7 349:11
treating 280:15 310:19
treatise 261:10,14
treatment 267:9
tremendous 7:15 340:20 342:16 343:3
tremendously 20:12
trend 43:18
tricky 288:3 289:8
tried 28:8 70:7 191:3
trigger 219:21 277:14,17,18 283:1
triggered 117:7

triggering 272:2
trip 322:20
TRO 181:17
trolling 321:15
truck 317:8,11
true 36:3 46:12 64:8 83:9 125:15 194:18 196:7 234:8 235:18,19 238:13 249:21 299:18 332:14 334:20 355:17 357:18 360:15 366:6
truly 160:1 182:2
truth 58:2 336:10
try 25:15 30:15 35:10 38:21 39:3 40:6,15 44:20 68:7,10 87:7 90:19 111:3 128:16,18 144:11 151:6 165:6 172:13 177:15 182:1 185:2 198:22 212:6 223:11 224:8 227:5 258:19 261:15 316:15 333:8 364:5
trying 30:6 32:15 36:19 42:22 56:15 59:4 86:3 91:2 99:12,13 103:22 112:20 113:14 137:9 147:4 168:18 170:20 171:8,14 182:4 188:2 209:4 210:22 211:4 227:6 248:2,3 274:1,4,6,18 280:2,12 307:3 326:14 333:22 359:19
t-shirts 285:18 286:8 339:12
tsunami 337:16
Tulane 3:17 214:18
Tumblr 201:16
tune 196:2
tuned 185:15
turn 72:5 153:14 166:16 167:19 193:5 250:6,9 259:14
turned 87:13 310:8 330:14
turning 132:21 291:1
turns 75:8 192:8 236:8 249:19,20
TV 165:18
tweak 355:4
tweaked 354:22
tweaking 115:5
tweaks 364:6
tweet 291:13
tweets 166:5
twice 292:2
Twitch 201:16
Twitter 200:21 334:5
twofold 230:6
two-hour 192:13
two-sided 61:19
two-thirds 32:4
type 9:4 32:1 43:17 88:17 114:21 121:20 138:16 150:18 191:14 240:5 277:16 293:15
types 19:13 36:22 79:11 85:18 111:13 137:11 329:14 361:1 363:4
typewriting 366:5
typically 215:10 302:2
Tyre 3:19

U

U.S 1:17 6:14 9:10 341:20
UGC 183:2 328:2
ultimate 33:17 188:19
ultimately 352:3
Ultron 16:14
umbrella 314:6
un 158:14
unable 49:9 337:10
un-American 124:14
unauthorized 92:1,15 178:12
uncertain 70:12
uncertainty 248:7
unchecked 17:18
unclear 135:1
uncomfortable 187:5
unconscionable 313:18
uncovered 35:5,6
underfunded 135:22
undergoing 161:11
undergraduate 287:2
underlying 9:14 135:3
undermine 283:10,11
undermined 326:22
underscore 182:10,21
understand 30:13 36:4 39:5 44:16 115:2 125:20 140:17 143:1 175:6 180:6 185:17 189:15 200:11,12 212:7 271:1 280:22 311:7 320:1 354:8 363:8
understanding 37:5 47:11,12 277:4 321:9 342:21
understood 203:11 226:4 239:8 273:18 304:6
underutilized 356:18 357:2
under-utilized 76:6
underwrite 76:11
undue 145:13
unequal 118:13
unequivocally 17:13
unfair 327:4 336:16
unfortunate 46:14
unfortunately 8:8 10:11 103:10 236:5,13 251:18 329:8
unhappy 146:14
UNIDENTIFIED

128:4,8,10,12
uniform 115:12 268:21
uniformly 276:17
unintended 34:21 177:3
unique 17:10 81:1 95:12,22 112:14 167:21,22 210:10,11
uniquely 93:9 209:16 289:7
United 1:2 6:11,18 92:13 202:9,14,17,18 203:22 313:18 340:14 344:6 350:16 352:13
Universal 3:20 87:5 90:8 102:9 103:21 321:2
universe 175:18 183:3
universities 111:15 286:16
university 2:12 3:14,17,18 4:10 13:7 108:17 125:19 177:19 178:19 214:15,18 215:2,8 216:11 287:10,11,13,20 288:9 289:12 296:14,16 309:9
university's 287:14
unlawful 41:14 54:9 60:9 226:12
unlawfully 59:17 166:11
unless 50:21 129:5 197:17 242:20 269:7 282:13 299:15
unlicensed 175:10 186:15 253:19 254:5
unlike 279:2 281:15
unlikely 233:12,17 286:1
unlimited 347:21
unmask 157:18
unnecessary 188:9
unofficial 19:14
unprecedented 79:5 314:3 341:5
unquestionably 357:6
unrelatedly 203:4
unsatisfactory 78:10
unsustainable 121:4
unusual 155:5 160:7
unwanted 182:3
upfront 135:20 136:20 139:3 141:10 143:18 335:13
upheld 247:4
upload 121:21 192:12 312:7 343:3
uploaded 69:18 242:18,20 339:3,6
uploader 70:7 190:20 203:17 320:18
uploader's 180:14
uploading 292:12
uploads 100:17 101:20 210:13 242:9 327:6,9
upon 25:21 130:1 245:4 363:7
up-posts 168:21
upset 57:8 144:14
Urban 4:10 13:6 29:20,21,22 34:7 36:3 37:11 38:1,10 39:21 40:4 41:4,12,16 43:21 44:14 47:5,15 53:18 58:21 110:3 195:6
URL 87:18 186:17 226:10 257:22 258:1,6 268:21
URLs 15:19 20:7 87:16 103:11 167:4 168:9 225:15 237:16
URL-specific 87:14
URL-stacking 186:16
us." 272:7
usage 289:3
usages 339:18,19
USC 4:9 109:8 194:12
useful 39:14 40:16 302:21 358:18 359:18
Usenet 262:8
user 66:11 85:9 112:18,20 120:7 122:19 138:4 139:12 141:14 145:20 146:14 163:19 190:9 203:19 204:4,13,16 210:13 244:5,7 247:2 248:16 252:11 271:16 276:14 278:7,8 280:5 290:14 292:12 319:20 360:15
user." 339:1
user-generated 118:9 183:1 327:10 353:17
username 85:12,13
users 47:9 62:13 66:14 74:4 112:18 135:18 136:15 139:8 144:3,13 159:1,2 160:13 164:19 173:16 177:5,10,11 178:13,22 179:7 199:17 200:22 201:8 204:19 205:6 232:18 233:4 248:22 253:13 277:3 278:12 280:1,4,10,21 287:2 289:5 291:20 294:22 298:17 299:17 300:16 307:5 310:16,17 312:7 326:7 327:8 332:5
user's 291:1
Users 141:8
use-type 43:9
usual 165:5
usually 131:11
usurping 346:20
utilize 20:5,18 86:3
utilized 356:18

V

vacuum 101:5
Valentina 4:12

108:9,10 165:9,10,11 166:13 167:12 169:13 309:15 346:7,8
Valentina's 201:19
valid 158:18 163:12 171:9 184:21 185:3 227:15 320:6,7,8
validation 20:20
validity 18:13 26:18 37:18
valuable 31:5,10 182:22 279:21 350:22
value 25:5 27:19 70:18 71:16 92:4,5 136:12 164:14 253:22 342:19 343:13 345:5 357:13 363:21
values 52:21 59:19 161:5 167:22
van 317:12
vanishingly 101:14
varied 181:1 276:13
varies 20:12
variety 19:13 30:3 35:6 102:20 104:8 134:8 136:16 142:11 313:8
various 9:12 51:6 79:10 153:7 173:4 181:18 216:19 240:5 289:17 290:18 292:9 305:12 307:4 310:1
vary 20:5 32:1
293:5
vast 62:21 128:21 178:1 182:15 184:6 195:1 209:21 246:19 281:12 313:9
vastly 222:5
vehicle 45:17 221:21
veiled 310:11
vendor 208:9
vendors 15:15 102:13 116:10 165:17
venture 129:6
venue 66:19 171:12
venues 290:19
Veoh 151:18 220:11
verdict 282:17
verge 326:12
verified 321:10
verify 41:17
Verizon 59:10 60:6 284:18
version 70:6 346:18
versions 69:18 71:5
versus 18:17 20:15 35:18 47:9 61:1 66:12 84:3 103:2 110:8 189:13 228:22 229:10 267:11 344:9
vested 272:17
Vevo 318:9
via 121:18
viability 348:7
Viacom 214:4 220:11 225:4
233:3 236:21 260:3
vicarious 255:2
vice 13:4 14:4 73:20 108:10,18 214:6 216:8
victim 256:3,22
victims 170:22
video 61:15 71:9 79:8 130:19 131:17,18 154:14 168:8,17,21 201:4 203:14,16,20 204:5,8,14,18 254:4,8 280:13 331:12 342:3 343:4 344:1 348:1,2
videos 61:17 97:19 100:12 129:5 130:18 131:16,22 171:1 195:19 318:17 322:4 329:6 334:3 338:8 341:9
view 41:9 47:6 57:20 59:5 60:11 61:8 70:15 76:12 79:18 110:16 124:15 145:13 154:7 163:4 175:13 178:6 199:16,17 205:9 207:14,16 213:5 219:17 225:18,20 226:21 231:20 258:9 277:13,17 284:20 307:2 323:14 330:14
viewed 41:6 79:17 300:7
viewing 247:12
341:22
views 70:5 95:14 179:10 195:19 267:6 275:9 337:18
vigorous 179:2 274:7
Vimeo 259:16 318:9
vinyl 316:12,19 331:18
Viola 4:18 11:19
violates 148:21
violating 106:9 277:3
violation 231:12 295:20
violations 61:3
violent 82:15
viral 164:15
Virginia 282:18
virtually 67:5 143:11 146:7 313:17
viruses 288:20
vis-a-vis 290:8
visibility 17:18
visitors 111:11
visits 339:8
visual 241:4,5,9 242:10 338:19
vital 80:12
Vitale 4:13 12:5 96:11,12 98:5 99:2
VOD 71:9
voice 63:20 114:10 159:2
voices 96:18 97:4
volitional 327:13
volume 18:22

22:19 81:17 109:18 151:12 178:1 189:16 212:22 267:22 268:1

voluntarily 85:19 274:14 363:5

voluntary 9:1 159:5 197:1 201:14,21 202:4 203:2 240:5,17 242:16 268:8,12 274:1 324:9 363:10

volunteer 101:19

volunteers 100:16

von 4:14 109:9 196:19,20 198:2,10 203:12 205:4,6,13 207:7,9,18 209:8

voted 243:13

Vudu 71:12 72:13

W

wait 71:21 145:18 243:7 302:13 359:20

waiting 120:21 265:9

waive 180:20

waiving 246:20

walk 139:11

Walt 11:21

Waltz 194:14

Warner 69:20 70:5 87:9 90:8

warrant 101:16 292:17

warranted 291:17

Wars 312:1

Wash 141:12

Washington 3:18 214:15

wasn’t 179:21 203:9 230:19 235:18 300:7 358:17 360:2 361:11,20

wasn't 44:9 45:9,10,11,12 55:17 59:20 64:13 83:8 121:12

watch 12:15 235:17

watched 312:16

watching 329:4,19

watermark 210:15

watermarking 17:8 208:14 210:1,6,10

Wayne 3:6 13:17 97:4,11 98:16

ways 8:21 31:21 40:6,15 41:18 134:11 142:11 147:15 148:7 156:21 158:19 177:14 185:2 225:5 259:6 267:1 274:15 341:5,18 345:22 360:19 365:3

we’d 349:2

we’ll 131:3 170:14 183:15 189:4 196:9,19 197:2 208:22 209:2 211:20 212:7,10 213:21 301:15 305:20 307:11 309:20 346:8 358:15 365:11,12

we’re 172:21 177:21 178:1,5,16 179:3,6,15,16 180:21 181:1,5 182:12,21 183:6 184:14 185:14 186:2,5 189:4 193:6 197:19 198:12 203:22 204:11 206:3,6 207:1 209:16 210:18 211:17 212:4,5,6,16 216:20 218:10 219:13 226:16 230:4 234:18 240:1,3,22 254:9 259:4 294:12 297:9 301:7,9,11,15 305:17 306:12,18 307:2,8 315:18 316:3,18,19 318:12 321:11 323:15 324:3,5,20,22 325:3 328:8 331:21 332:22 343:11 344:5 348:11 358:9,11 360:8 361:3 363:5 365:8

we’ve 169:16 174:2 175:8,22 193:15,16 201:22 208:15,21 209:1,13 211:12 236:5 240:6 251:20 267:15 297:4 301:8 306:3,5 310:5 316:4 323:21 324:1,2 331:11 332:1 333:2 347:15 349:15 350:4,8 351:7 353:10 363:4 364:18

weaken 239:17

weakening 136:9

wealth 317:7

web 20:4 36:6,8,10,14 37:7 75:6 111:13 171:1 218:21

webpage 171:1

website 11:1 16:15 20:8 21:19,20 25:7 122:22 166:12 187:20 315:13 364:10 365:5

websites 14:20 18:3 19:20,21 22:14,16 24:11,15 85:16 122:18 156:20 303:10 356:12,20 364:11,13

website's 19:11

We'd 252:16

weed 135:17,19 293:19

weeding 136:20 146:13

weeds 234:1 247:6

week 73:16 131:15 206:19 241:14,19 247:18 286:10 318:16

weeks 120:2 204:6,9

weighed 243:7

weight 157:14 337:4,18

weird 35:20 162:8 177:4

welcome 81:2 106:3 232:2 236:22 325:8

welcomed 219:21
we'll 10:4 11:9 81:4 89:11,14 104:17 105:9,21 106:7,17 107:5
Welles 130:16
well-thought-through 172:15
we're 6:2,6 10:1 14:8 17:12 20:6 50:6,15,19,20,22 52:5 61:16 66:1,2,19 69:6 91:12 92:14 98:10,11 99:19,21 101:1 104:18 105:15 106:4,12,13 109:15,16 110:13 117:4 120:15 121:3 128:16 132:7,10 133:3,6 149:14 150:19 153:18 163:6 165:5,21 167:12,15 168:20 284:10 287:4 289:7 290:17 293:1 294:3
weren't 262:11 305:11 352:11
West 2:7 216:4 308:2
Weston 4:15 12:3 17:5,6 19:5,16 20:18 22:6 23:6 25:13 35:14 109:11 208:5,7
Weston's 191:14
we've 8:5 22:8,9,12 23:22 24:3 45:16 51:7 52:17 62:9,22 65:8,12 76:19 79:14 80:19 88:10 99:7 100:5 109:18 110:2 127:18 131:8 133:18 137:15 149:1,20 150:10 156:21 158:2 159:8 168:13 265:3 283:13,18 284:11
whack-a-mole 28:9 80:4 110:13 120:15
what's 189:10 191:9 196:8 219:5 225:18 239:16 271:3 272:10 273:8 312:13 330:8 347:13 349:8 354:14 362:17
whatever 67:3 73:4 96:20 134:13 164:6 175:4 176:17 287:17 291:13 319:15 352:19
whatsoever 26:21 28:15 149:1 160:10
wheels 81:18
whenever 304:17
whenever's 290:10
whereas 173:4 210:6
whereby 168:22
Where's 125:12
wherewithal 176:18
whether 8:14,15,16 9:3 18:13 19:9 35:13 41:7 44:20 76:13 95:15 110:14 111:22 113:9 119:9 135:1,2,3 136:22 137:1 138:20 140:11 141:3,4 142:6,8,10 145:16 147:1 149:22 155:15 158:4,6,7 161:2,3,21 162:12 165:1,2 177:1 196:15 204:1 212:20 219:18,20 220:13,20 222:9,10 223:10 232:18 241:6 247:13 260:9,21 266:5 271:13 275:13 278:7 281:2 282:7 291:15 300:16 317:22 318:5 320:6 331:15 352:7,9 359:21 363:17,19
whiff 249:5
whitelist 122:13
who's 170:18 186:6 187:19 190:9 198:6 210:22 295:22 296:1 311:12
whoever 63:2 69:21 71:12 358:10,13
whole 10:7 29:11 57:7 130:13 155:19 156:2 199:2 217:10 222:8 260:22 310:11 321:13
wholesale 331:16
wholly 56:15 360:13
whom 195:7 366:2
who's 73:6 85:13 99:18 137:7 165:8 266:4
whose 45:20 59:17 91:20 170:22 171:1 252:17 257:2 345:6
wide 7:3 30:2 345:1
widely 32:1 56:15
widespread 250:22
wield 47:20
wife 322:14 323:2 337:14
Wi-Fi 273:3,4
Wikimedia 4:2 12:19 100:9 177:11
Wikipedia 12:20 100:10
Willen 4:16 214:2 220:8,9 223:7 224:14 225:20 227:4 228:6,9 229:14,19 230:3 232:9 237:4 239:13 248:15 275:19 278:1 279:1 281:13 282:2 285:13 295:4 309:17 348:9,10 349:19 350:3,18 352:14 355:3 357:1
willful 259:17
willfully 259:18,21
willies 325:18
willing 204:21 207:2 332:22
Willman 367:3,15
Wilson 4:16 214:2 236:14 309:17
win 318:20 328:9
wind 173:20

window 153:16 311:21 312:3,10
windows 346:21
winning 202:14
wire 305:4
wireless 298:8,9
wise 27:5 276:5
wisely 47:20
wish 8:5
withdrawn 319:15,17
withdrew 48:16
witness 69:17
woefully 259:6
woke 28:12
won 93:10 318:18
won't 191:15 246:8 267:19
wonder 119:7 359:13
wonderful 288:17
wondering 52:7,18 164:4 179:1
wording 231:13
WordPress 156:19 157:15
work 16:21 21:7 23:3 26:12 60:22 61:16 62:17,18,19 64:11 68:3 69:14,15 71:17 72:7,20 74:18 91:3 93:11 94:19 99:11 104:8 108:13 117:1,3 118:16 127:13 132:19 133:19 135:5 164:11 168:12 169:5 170:5 191:14,16 200:10,12,17,20 201:2,6,7 202:8 208:20 214:21 222:8,21 223:2,4 225:13 227:10,13 237:19 242:4,19,20 243:9 249:15 254:9 256:4 257:1,4 264:14 268:22 269:5 285:18,19,20 313:12,13 314:9,16,20 321:21 337:1 345:6 351:22 355:19 362:21 363:1,8
workable 268:5 314:4
worked 22:8 63:22 94:11 102:12 194:14
workflow 242:6
working 8:22 18:1 22:7 27:10 29:18 30:13 31:20 32:21 39:19 40:6 65:2,4,11,17 89:4,5 95:15,17 99:6 104:9 115:6 124:19 155:7 157:11,13 163:5 166:22 167:6 170:7 175:22 195:7 203:1 208:9 210:22 211:13 212:21 239:16 241:10 246:18 332:15
works 2:9 25:5,6 27:11,12 29:3 30:6 49:17 55:10 62:16 69:13 91:14 94:2 103:13 110:17 114:9,13,17,18 130:2 131:9 154:10 191:17,18 198:16,21 201:12 208:12 210:4 215:22 224:17,19 225:1 228:19,21,22 237:15 242:17,18 253:22 256:22 257:5,7 258:7,13 264:16,22 265:1 271:8 286:12 311:10 319:19 332:1 338:19 339:3,4,6 348:16 354:20 356:5 361:20,21 364:21,22 365:1,2
world 14:20 22:14 27:14 28:4 70:14 78:16 87:2 92:12,19,21,22 115:19 138:19 157:9 171:10 187:14,16 196:3 255:3 285:16 323:7 340:15 350:12 352:22 358:2
world's 208:13
worlds 184:15 186:2
world's 165:3
worldwide 235:15 311:11 331:19
worried 51:20,21 97:2,3 202:12 313:6
worry 43:14 51:17 101:10 174:16
worth 4:17 12:1,2 93:3,4 96:2 97:17 208:20 213:22 214:1 217:12,13 220:2 273:10
would've 264:15 302:17 330:20
wouldn't 177:2 345:15 353:5,7 359:14
wow 126:15
wrap 188:2 365:12
write 53:8 69:15 209:1 274:7
writer 13:17 70:9
writing 73:11,16 74:5 187:14 274:15
written 74:19 76:8 105:6 178:12 192:18 211:19 256:9,11 259:5 305:15 333:20 341:16 344:21
wrong 59:10 88:13 96:3,9 156:9 165:1 197:11 206:9 236:15 243:5 256:8 259:3,9 284:14 317:7 328:1
wrongful 173:5 266:6
wrongfully 259:16
wrongly 260:3
wrote 58:3 194:22

Y

Yahoo 304:10 315:16 361:10 362:9
yep 271:19
yesterday 73:21
yet 51:22 102:19 103:16 131:5 174:11 188:18 195:14 196:3 244:8 252:13

301:12 318:16 330:4
yield 272:13
York 8:7 33:20 42:5 97:11 124:22 167:8 175:9 198:4 284:12 285:7 297:5 298:17 307:1 328:12,18 330:3 332:12
you'd 233:12 348:14 357:22
you're 185:21,22 190:9 196:11 205:20,21 207:6,15 213:20 217:11 218:3 220:20 221:3 228:4 230:9 236:22 239:19 240:13 243:17 245:6,7 252:6,10 259:20 261:3 272:5,19 273:21 299:1 318:13 336:13 342:8 344:8 348:13 349:18 352:4,5,6 357:3,4,21 358:21
you've 170:18 189:2 200:13 201:14 220:11 238:22 255:7 306:6 319:15
you'll 7:19 29:11 88:7 106:6 130:11
young 3:14 108:17 215:2 337:1
younger 329:12
yourself 10:19 46:7 207:14
YouTube 24:13 51:8 60:20 63:1,6,9 69:18 70:3,8 87:10 130:18 135:15 141:7 169:16 179:17 183:15 190:14 191:3,7 194:21 195:7,11,12,14,18 196:4,8,21,22 197:4 199:22 200:6,8 201:16,22 203:7,13,14,17 204:10,16 206:20 207:13 214:4 223:14 269:5 280:5 291:12 310:12 311:16 312:6 318:9 328:17 330:17,19 331:14,15 334:3 337:17,19 341:22 353:17
YouTube's 196:13
you've 47:19 50:13 64:21 65:22 66:3 68:15 97:4 98:19 126:2 130:10 142:20,21

Z

Zedek 4:18 11:15,19,20 15:9,10 32:14
zenith 79:15
zero 299:15
zombie 67:4
zombies 58:2