

MICHIGAN STATE
UNIVERSITY

To: Department of Commerce, US Patent and Trademark Office,
National Telecommunications and Information Administration

Re: **Part I** – Overall Insight for Comments on “Inquiry on Copyright
Policy, Creativity, and Innovation in the Internet Economy,”
[Docket No. 100910448-0448-01][RIN 0660-XA19][DOCID:
fr05oc10-35]

Date: November 18, 2010

This is a response to the request for public comment on “Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy,” [Docket No. 100910448-0448-01]. This represents the opinion and insight of the individual authors and not of the overall Programs, Schools, Colleges, or of the Michigan State University.

This is **Part I**, submitted separately from Part II of our comments, which represent overall comments of the issues. **Part II** presents more direct comments on more direct questions.

These comments expand directly on the previous submitted documents for other intellectual property and counterfeiting related Federal Register Notice postings.

To begin, we applaud the coordinated efforts of the USPTO with IPEC, and to the other agencies such as ICE/CBP, FBI, DOC/Trade and others. This is an extremely interdisciplinary issue that requires an overall strategic effort in a public-private partnership. We are pleased to support those efforts from our position in Academia.

Comments:

- Regarding all anti-counterfeiting and anti-piracy programs, it is important to first understand the root fraud opportunity to efficiently and effectively shift focus to prevention.
 - The methodology to deconstruct the fraud opportunity is to focus on the crime triangle and the chemistry of the crime – these are two well respected criminology concepts that have been developed over the last 40 years.
 - This methodology helps to understand the specific roles of specific organizations, whether in industry or agencies, or even between governments.
 - This methodology also helps to directly present how each organization and countermeasure reduces the fraud opportunity. This directly applies to the question in this Notice of Inquiry summary of “...the relationship between the availability and protection of online copyrighted works.”
 - violating URLs.



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- Many of the high-tech cybercriminals are very effective at cloaking their identities and locations, and at evading even the most aggressive countermeasures. Many cybercriminals set-up automated systems to constantly spawn new websites to stay ahead of actions to shut-down known violating URLs.
- As with physical product counterfeiting, rather than digital piracy, many of the court based enforcement countermeasures assume a “responsible defendant” – that is, a defendant that can be identified, that can be brought to court, that has assets that can be seized, and where their actions can be stopped by a court ruling or incarceration. As with counterfeiters and diverters, many of the cybercriminal fraudsters are “irresponsible defendants” since they often flee under an alias and leave behind little or no assets – they often have several identities and passports, they shield their physical assets, and they spirit their money to secure locations.
- We cannot incarcerate or prosecute our way to compliance.
- To respond to several references in the Notice of Inquiry, a key question is asking ***The Role of Each Law Enforcement Agency as a Deterrent to Copyright Piracy.***
- The root issue is consumer product fraud, or the fraudster seeking personal financial gain. That broader lens expands the focus from intellectual property violations of counterfeiting (trademark) and piracy (copyright), to include theft, organized retail theft, e-fencing, and other deceptive practices.
- The challenge cannot be underestimated of deterring a near infinite number of fraudsters and a near infinite number of types of fraud. This does not mean that we should not do anything; this means we need to be very strategic in our countermeasures and focus on disrupting the chemistry of the crime.
- We do feel the USTR Special 301 report is an important component which could even have more teeth if tied into other programs such as C-TPAT (Customs Trade Partnership Against Terrorism, which speeds border inspections to pre-registers and pre-qualified businesses who import goods into the US).
- There is absolutely no doubt that the lack of ability to protect intellectual property stifles business innovation.
- This Notice of Inquiry faces the same challenges of many predecessors, of the lack of a methodology to assess the economic impact of counterfeiting and piracy. There is no doubt the losses are staggering. Before being able to quantify the risk there is a need to develop a scholarly supported, robust, standardized, harmonized ***Methodology to Assess the US Economic Impact of Counterfeiting and Piracy.***

We want to reiterate that we feel these are very important discussions, and important in a public-private partnership setting. We would welcome more direct involvement in the Internet Policy Task Force or, the predecessor, Working Group on Intellectual Property Rights.

Our **Part II** document will respond to direct questions to the specific Request for Comment questions.

I would like to mention the research and insight provided on this topic from my colleague, Dr. Thomas Holt (HoltT@msu.edu). He is a true thought leader in this emerging topic and he has been influential in all our research concerning digital copyright piracy.

We thank the DOC/USPTO for the opportunity to review and comment on this Notice of Inquiry. This is an extremely interdisciplinary threat with very complex and organized fraudsters. To develop efficient and effective countermeasures will require a strong public-private partnership. At Michigan State University and within the Anti-Counterfeiting and Product Protection Program (A-CAPPP), we are pleased to participate in the process and contribute to the research.

Sincerely,

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