

Before the
Office of the Secretary,
United States Patent and Trademark Office,
and the
National Telecommunications and Information Administration
of the
United States Department of Commerce

Comments in Response to “Inquiry on Copyright Policy, Creativity and Innovation in the Internet Economy”

Notice of Inquiry: Docket No. 100910448-0448-01, RIN 0660-XA19

Comments of Contributor Corporation:

Contributor Corporation hereby submits these comments in response to the Notice of Inquiry (NOI) of the Department of the United States Patent and Trademark Office (USPTO) and National Telecommunications and Information Administration (NTIA), dated October 5, 2010 seeking comments on the “Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy”. We thank you for the opportunity to offer our views and hope that the Internet Policy Task Force will find them valuable. We also welcome any requests for clarification or additional information which will support this initiative. Please direct any such inquiries to info@contributor.com.

Background on Contributor Corporation:

Contributor provides a range of technology and services-based products primarily to book, news, magazine, financial and other publishers which enable customers to monitor, protect, and monetize their content on the Internet. Contributor’s monitoring or tracking services are delivered through a sophisticated web crawling operation which identifies copies of customer content, in the form of downloadable files or in the form of full or partial text copies of articles that can be viewed directly on web pages. Once copies or instances of reuse are identified, Contributor delivers content protection services that include the issuance of DMCA and other takedown notices through an automated workflow system which is staffed by a team of trained professional services individuals. For books, an immediate takedown notice is initiated, whereas for news articles, Contributor employs a Graduated Response approach that encourages content reusers to pursue content licensing—an outcome that benefits all involved parties.

While these first two elements of Contributor’s service offering are very focused on anti-piracy and content protection, Contributor has a broader vision for assisting the publishing industry in developing new syndication and revenue models which actually encourage widespread reuse of content, provided that

certain conditions, specified by the original rights holder, are satisfied. The ultimate goal is to create a revenue-sharing ecosystem where all stakeholders (consumers, sites reusing content, and the original rights holder) benefit from the easy reuse of content.

We have formulated our comments to address each of the three broad areas identified in the NOI. Rather than comment on individual questions specifically, we have chosen to summarize our experiences and views generally, many of which relate to specific topics identified by the questions. Attributor has also conducted several research studies which we have chosen to reference in our comments below.

1. Rights Holders: Protection and Detection Strategies for Online Infringement

Attributor has been providing anti-piracy services to major media companies since 2006 and major book publishers for the last eighteen months. Attributor's systems continuously track millions of news articles and tens of thousands of book titles across more than 100 million unique web pages daily, comprising commercial and non-commercial web sites, blogs, cyber lockers, file hosting sites, torrent search sites, and others.

Throughout this time, there has been continuous growth in online infringement activity, both in terms of the variety of content available on individual sites and in the number of sites hosting pirated content. At the moment, Attributor is aware of more than 1 million domains on the Internet where unlicensed copies of content are being distributed. These domains are located worldwide with the largest number of sites being hosted in the US and Europe.

Our current success rate for removing infringing content is between 95% and 100%. The majority of top sites comply with DMCA notices, although the process itself is cumbersome. The time between takedown issuance and actual removal can vary from many hours to many days, and the DMCA does not provide clarity on what should be deemed reasonable. While the burden of notification rests firmly with rights holders, it is our belief that identification technology and services can reduce the detection step considerably, and it is imperative to reduce to the time to removal step as well. Without reducing this process latency, many of these removals are only theoretically effective, and much of the damage (unauthorized access or downloads) likely occurs during that early window of time, before the content is actually removed.

Attributor conducts periodic analysis of data produced through its regular business operations and through special research projects conducted to assess online piracy and content reuse across news, book, and magazine industries. We would like to bring several recent studies to the Internet Policy Task Force's attention.

In December 2009, Attributor published a report on unlicensed content reuse and monetization of articles from [U.S. Newspapers](#).¹ During this 30-day study, Attributor identified more than 75,000 sites reusing content without licenses. The reuse comprised more than 112,000 near-exact copies of articles originally

¹ Report Identifies Extensive Unlicensed U.S. Newspaper Content Reuse and Monetization Online.
<http://www.attributor.com/news/USnewspapercontentreustudy.php>

published by participating newspapers. The study also identified that Google advertising accounted for more than half of the monetization occurring on these unlicensed sites.

In January 2010, Attributor released a report which verified the supply of pirated books and estimated the [economic effects of book piracy online](#).² At the time of publication, Attributor estimated the yearly loss to be around \$3B, based on confirmed infringements for approximately 1,000 book titles identified on 25 of the top piracy sites. If the study were to be repeated across the thousands of sites known to host significant amounts of infringing content, the economic impact would be much higher.

In April 2010, Attributor followed with a report which assessed [reuse of magazine content](#) across the Internet.³ The study is very interesting in that it was the first to quantify numbers of magazine copies that are freely available on the web. Attributor verified 3,996 instances of downloadable, full issues of 133 popular English-language magazines on 20 hosting sites. Of the 133 magazines tracked, 84 (63%) had infringements.

In October 2010, Attributor addressed the topic of [consumer demand for pirated copies of eBooks](#).⁴ Key findings showed a 50% increase in online searching for pirated downloads in the preceding year, 1.5 to 3M daily searches for popular books on Google alone, and a 20% increase in demand for pirated downloads subsequent to wide availability of the Apple iPad.

All creative content-based industries are confronted with similar challenges online. The music and video industries experienced widespread piracy and unauthorized distribution of their content. The music industry's early efforts to develop effective content protection mechanisms were largely ineffective and many of those companies chose to pursue litigation, or threats of litigation, towards file trading sites or consumers themselves. Effective content detection and removal technologies did eventually develop and are now employed by the audio and video industry to police online video streaming.

We further believe that protection via methods such as Digital Rights Management and watermarking is helpful but not sufficient to prevent or respond to content piracy. Although these methods may deter copying in some cases, the protections are inevitably cracked by hackers and the resulting unencumbered content is posted for free to download and reuse in multiple formats online.

It is our view that removal of all unauthorized copies of content online may not be the optimum strategy for many publishers interested in maximizing their return on investment. Syndication, whether authorized or unauthorized, helps content reach a larger audience, and a larger audience typically results in more total ad revenue. The challenge is how to ensure a fair portion of that revenue finds its way back to the original rights holder.

What is needed are business models that embrace and possibly encourage widespread content reuse, but only according to terms defined by the publishers themselves. The spectrum of options can range from fixed-price licensing to ad-revenue share, where both the site that copies the content and the original

² Online Book Piracy Costs U.S. Publishers Nearly \$3 Billion. <http://attributor.com/blog/book-piracy-costs-study/>

³ Online Magazine Infringement Report. <http://attributor.com/blog/book-piracy-costs-study/>

⁴ A First Look at Demand for Pirated E-Books Across the Web. <http://attributor.com/blog/a-first-look-at-demand-for-pirated-e-books-across-the-web/>

creator are jointly and fairly compensated based on the actual ad revenue generated by the page. These types of performance-based, licensing arrangements are a natural fit for the Internet, where information flows freely, content travels fast, and there is a broad range of large and small sites that generate and republish content. The role of content protection, in this model, is to educate and convert sites that do not comply to the rights holders' policy and, ultimately, to remove content only as a last result.

To foster the development of such new syndication models, industry and policy must embrace the use of technology to streamline the process for protecting and removing infringing content. While the DMCA is fairly effective as currently utilized for content takedowns, technology has dramatically improved in the 12 years since the ratification of the DMCA, and as such has opened new opportunities for streamlining the identification and removal of infringing content.

The Task Force should consider opportunities for policy that encourage automated content removals based on either digital fingerprinting technologies or just standard DMCA removal notices where the site in question can use automated methods of receiving and handling those DMCA notices (thereby reducing the notification-to-removal window). Attributor currently sends tens of thousands of DMCA notices per month, each of which must be manually processed by hosting sites. Closer or even mandated cooperation between content tracking companies like Attributor, that can detect infringement, and hosting sites, who seek to demonstrate that they have legitimate business models, would drastically reduce the time required to removing infringing content. Ultimately, such collaborations would help to highlight those sites that are systematically ignoring the DMCA, and help to better identify sites that were intentionally or unintentionally furthering the damage to the content industry by not expeditiously removing content based on available detection and notification technologies.

2. Internet Intermediaries: Safe Harbors and Responsibilities

Attributor's services represent one method that many publishers use to protect their content. As described above, Attributor provides an outsourced solution to book and news publishers. Book publishers provide lists of titles and authors to be protected and news publishers provide articles feeds (typically XML delivered via RSS or Atom). Attributor loads this data into its systems and crawls the Internet to identify instances of content reuse. Suspected copies, identified by Attributor's systems, are loaded into a queue for human review and verification. This is an important step in the process because it verifies that suspected infringements are indeed genuine, and consequently guarantees that notices are not sent in error or false claims are not issued. After an article or file copy is confirmed to be an infringement, Attributor's system sends a DMCA takedown notice to the hosting site on behalf of Attributor's customer requesting that the infringing content be removed. Attributor's system then performs periodic and automated checks to confirm that the infringing content has been removed. The results of this process are reported to customers on a monthly or more frequent basis.

Cyber lockers and most P2P indexing sites act on Attributor's notices with a very high rate of compliance. Unfortunately, it typically takes sites 24 to 72 hours to process emails-based claims and to remove the infringing content. For most hosting and indexing sites, this is a manual process requiring human action to remove the infringing content. There is a valuable opportunity to streamline and accelerate this process dramatically through the use of technology. Attributor is able to streamline this

process by providing hosting sites direct access into Attributor's system to view a list of infringements that have been identified and confirmed to exist on the hosting site's system. Essentially, the system serves as an ongoing notification of content infringement for some of the world's largest book and news publishers. Hosting sites would then be expected to process and act on the infringements.

Implementation of such technical enhancements to hosting company systems would offer multiple economic benefits to the various stakeholders. By using technology to reduce the number of steps in the current takedown process, the time elapsed between identification and ultimate removal would be shortened dramatically. This would economically benefit content rights holders because availability of free copies of their content would be further reduced, driving increased revenue through legitimate purchases or other licensed reuse of content. Such changes would economically benefit the hosting sites since automation would reduce the overhead required to review and act on DMCA notices. Finally, decreased availability of infringing content would discourage consumers from seeking content through illegitimate channels. It would also foster the development of consumer attitudes that respect the value and benefit of original content and ensure that rights holders are fairly compensated for their work.

Attributor is taking a leadership position on many of these issues, such as developing collaborative approaches to addressing online copyright infringement through the [Fair Syndication Consortium](#).⁵ The FSC is a group of publishers of all sizes who are seeking an easier way to manage the distribution of their content online. They seek to develop new syndication models that fairly compensate content creators while letting the Internet do what it does best - distribute content everywhere so it can find its audience, wherever they are. The vision is to allow and even encourage full copies of articles to be distributed openly and widely, while respecting the intellectual property rights and financial interests of publishers.

The FSC has successfully established several important elements of the foundation to enable the growth of new syndication models. In 2009, the Consortium published [Content Syndication and Management Guidelines](#).⁶ This article established news industry guidelines for identifying undesirable content reuse and defined a Graduated Response approach (escalation path) for dealing with undesirable content reuse.

In November 2010, Attributor announced the results of its [Graduated Response Trial](#), which tested the Consortium's Graduate Response approach over a five-month period between March and July 2010. The trial involved many of the nation's leading news organizations and found that 75 percent of sites copying full articles complied with the rights holders requests without resorting to content takedown notices per the Digital Millennium Copyright Act (DMCA).⁷ The study demonstrates that the Graduated Response is an effective approach for dealing with infringement and further supports the Consortium's pursuit of innovating new business models and copyright frameworks for online content syndication.

⁵ Fair Syndication Consortium website: <http://www.fairsyndication.org/>

⁶ *Content Syndication and Management Guidelines*:
http://www2.fairsyndication.org/guidelines/Content_Syndication_and_Management_Guidelines_v0.9.html

⁷ Graduate Response Trial Results: <http://www.fairsyndication.org/blog/2010/graduated-response-trial-unmasks-a-cooperative-internet/>

3. Internet Users: Consumers of Online Works and User-Generated Content

In addition to publishing the research described above, Attributor is currently working on two important initiatives to raise awareness of Internet users about content reuse and effect transformation of behavior to better respect copyright and intellectual property rights. The Attributor Protected Badge program is a consumer-oriented campaign targeted at readers of eBooks and FairShare is a service which enables large and small publishers to track and enable their content to be syndicated and monetized online.

The Attributor Protected Badge program aims to improve the general awareness of Internet users about online copyright infringement and about the availability of legitimate sources of copyrighted content. The Attributor Protected Badge program is directly aimed at improving general awareness of book consumers about the issue of eBook piracy. By placing a [linked image](#) of the Attributor Protected Badge in legitimate eBooks, publishers now have a way to educate consumers about the inequities of unauthorized downloading and casual piracy. Readers of eBooks who click on the image while online are directed to a “[landing page](#)” which describes the Attributor Protected Badge Program.⁸ Consumers are encouraged to embrace the principles and ethics around the fair trade and fair use of online content. The presence of the Attributor Protected Badge in eBooks additionally shows consumers and would-be pirates that publishers are defending the rights of original content authors everywhere.

[FairShare](#) is a free service open to all publishers that provides infrastructure to set online reuse policies, encourage reuse based on these policies, collects and disburses syndicated content ad revenue, and audits and ensures compliance web-wide. It augments existing licensing and royalty syndication models — without a need for a sales force or complex licensing agreements. FairShare works with or without the cooperation of ad networks and is the only online syndication platform available for both small and large-scale, independent publishers.⁹

Once again we thank you for the opportunity to present our views and we welcome the opportunity to be of additional assistance.

Respectfully submitted,

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⁸ Attributor Protected Badge landing page: <http://badges.attributor.com/book/protected/h/landing.html>

⁹ More on FairShare can be found here: <http://attributor.com/products/products.php#fs>