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Ownership on the Internet

I was very pleased to be asked to discuss the issue of *Ownership on the Internet*. The AAP represents most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly societies, and we are great fans of WIPO. In 1996, the U.S. and many other world powers signed the World Intellectual Property Organization Copyright Treaty creating a global legal framework for distributing content on the Internet. AAP lobbied very hard for legislation to implement the treaty and this was accomplished in October 1998 with passage of the Digital Millennium Copyright Act (DMCA) by Congress. Since then, many other countries have moved to implement the Treaty and we have almost reached the number required to make it an international standard. Industries that produce books, software, movies, music, and other intellectual property see the treaty's implementation as a very important tool for protecting their property rights on the Internet.

There was strong opposition to the DMCA in the U.S. When it passed the “new economy” was booming. It was our brand of tulip mania.

Many technology companies opposed the DMCA, calling it a “publishers” model that would destroy the “open model” of the Internet. That meant our insistence that intellectual property owners be protected from piracy made us the enemies of “openness.” The technology companies’ definition of “open” was “free.” Our opponents started advocating that everything on the Internet should be free. The popularity of Napster shows that people like to get things free and will take whatever they can access. They don’t feel like pirates if they take it in their own home.

People think they are doing the work by copying. They purchased the equipment to do the copying. They are creating the copy, so why should they pay someone else? But, technology is not a creative tool. It is a high quality copier of the works created by others. In the Napster model, the creator loses totally.

A famous U.S. author, Stephen King, decided to release a book he had written but not previously published one chapter at a time over the Internet. He asked those who downloaded it to pay him a dollar for each chapter. Halfway through the book he called a halt, because not enough people were paying and he couldn't figure out how to recover his costs.

We can bemoan human nature, but we must deal with reality. Imagine what would happen if you could digitize beer! People will pay for all the equipment and the online services. One reason they willingly paid is that those selling the technology and online services convinced them there was a huge candy store in cyberspace and everything was free.

Those with gray hair like mine didn't understand how this new economy worked. It turned out we weren't all wrong. Folks are now having sobering second thoughts about the e-economy. It was easy to figure out ways to use the Internet, but very few were able to figure out how to make money using the Internet. Guess what? Investors want a return on their money. One reason money could not be made was that the "Internet culture" fought the idea of ownership, arguing that everything should be free and vigorously opposing the DMCA. Many librarians, who share our passion for free speech, converted that passion into advocating free content. There are many who are still trying to reopen the DMCA debate and gut the enforcement provisions. While people were willing to pay for the equipment and connections to access the Internet, they weren't willing to pay for content on the Internet. Therefore, you could order a book on the Internet but it came by snail mail, because there was no safe way to deliver the book securely on the Net.

In this mature period of reflection when people are re-thinking the Internet, many have said an effective way to protect intellectual property is needed before the Internet will reach its potential. I agree.

AAP would never have predicted that publishers would be among the first to test the DMCA in the U.S. Nevertheless, that is what happened. This summer, Adobe came to us with information that some Russians had hacked through the encryption system being used to protect some of our members' e-books and that the Russians were offering the hacking software for sale on a website. This was our worst nightmare. Adobe warned the Russians they were engaged in an illegal operation, but to no effect. Adobe

then persuaded the Internet service providers to take down ads for the web site, which they did. Then one of Russian operation's chief engineers who had hacked the encryption and helped write the software being offered for sale came to the U.S. to give a speech. The current U.S. Attorney General, John Ashcroft, who was a United States Senator when the DMCA was passed, was a leading opponent of the bill. We were very uneasy about his enthusiasm for enforcing the Act. Adobe went to the Justice Department and showed them what had been done by the Russians; the Justice Department arrested the Russian hacker while he was in the U.S. AAP was delighted that the Justice Department was taking the Act seriously and sent a letter to the Attorney General to that effect.

We were very surprised when Adobe decided to withdraw their complaint against the Russian. However, the Justice Department is proceeding anyway, and AAP has become "the bad guy" and a prime target for everyone on the Internet who thinks the DMCA is wrong. I could fill this room with printed out angry e-mails we've received.

The Russian hacker was arrested under the anti-circumvention provision of the DMCA. This provision is one of the keys to being able to protect copyright ownership on the Internet. No reasonable person on the planet believes that a totally secure encryption system can be developed. Any encryption can be cracked, just as with patience and determination, any lock can be picked. The law permits an exemption for research, so that if you discover a weakness in my encryption system and inform me, that's legal. The problem arises if you hack away until you crack my encryption and then sell your discovery to allow others to do the same. That's illegal. It's analogous to making keys to a bookstore or library and selling them to others so they can go in after hours and help themselves. It's breaking and entering, even if you don't actually remove the books from the bookstore or library. Nevertheless, many in the U.S. see this as interfering with invention and progress. Others claim that the issue is one of free speech and if you crack a code, you can give out the details to others. In the Adobe case, AAP saluted the government for taking their enforcement duties under the DMCA seriously. Some of the statements from the other side are very interesting, such as "Interoperability, reverse engineering -- this is our bread and butter." That's a nice way to say: "We make our living by hacking through other people's property; don't bother us." This is an important issue. Consider the case of a New York company that no

longer exists. FileOpen Systems was a firm that sold extra e-book security for scientific journals and financial newsletters that publishers could use for their paying customers. ElcomSoft (the same Russian operation that broke the Adobe e-book code and was profiting from the sale of hacking software) produced a piece of software that cracked FileOpen Systems' code, and drove them out of business.

There are many other issues that have been thrown into the debate. Some allege the DMCA tramples on “fair use.” Fair use gives one the right to lend or copy parts of a book you own. Since no software can read intent, it is impossible to give people unlimited right to copy electronically because the copy could be sent to millions. Another point of contention is that the e-books people buy are not interoperable on different platforms. This is not the fault of the publishers nor of the DMCA. It is the software providers who want their readers to use their platform only. They have proprietary rights to the software. They don’t want a universal standard such as the one used for producing CDs that could allow e-books to be read on any machine. I think *all publishers* would prefer the CD universal standard model, but again, this is a marketplace issue, not a legal or DMCA issue. Ironically, many of the same people who think it should be legal to hack through encryption used to protect intellectual property, don’t think it should be legal to hack through encryption used to protect privacy. Devices that would circumvent encryption protecting financial, medical, or political information and permit embarrassing disclosures or wrongful uses might not be so popular.

Other intellectual property associations joined us in backing the Justice Department’s action against the Russian hacker. We will see what happens with the case. We are also working together to get more funding the enable the Justice Department to continue enforcing the DMCA in the future.

Publishers are responsible for content. Publishers are not responsible for the design of devices or software. Publishers are trustees for the authors who created the content. Publishers are tired of being called, “greedy.” Publishers must do everything possible to protect their content so authors will be paid. Publishers are really investment bankers in copyright and investment bankers must be sure their investments are secure. Publishers and authors alone cannot protect their content in the global environment of the Internet. They need the support of of the international legal framework that WIPO is

creating, and their own government's help to enforce the international protocols. This is why in viewing the *dot com* wreckage, many financial gurus insist that unless we find a way to protect property on the Internet, the Internet will become merely a cyber yellow pages or advertising billboards.

The business models constructed by the first generation of e-commerce participants simply won't work. When we asserted the need to be paid for content, their answer was "give it away free and the authors will get more paid speaking engagements, sell more tee shirts, or find some other way to market themselves, not their writings". Many professed shock that authors might want to be paid as well as wanting to be read. This is very unrealistic. This business model doesn't work.

There is another difficulty in protecting ownership online. In some ways we've treated hacking as a game. It showed who was the smartest geek. Now that e-systems are such a vital part of the country's economy and security, no one thinks it's "cute" if an eleven-year-old crashes a banking system or hacks the air traffic control system.

While last year, there was a fast breeder monthly e-book conference reactor this year there is a total pause. Publishers have watched the music industry win their cases against Napster in court, only to have mutant systems develop to snatch their content free. It was clear the public did not feel this was "piracy" in the normal sense. They argued that "music companies make too much money". Some artists wanted their music to be free and many others confused the argument with issues that had nothing to do with whether or not the rights of intellectual property holders would be honored on the Internet.

Publishers want to be able to deliver their content digitally. They want to use the Internet and make their content as customer-friendly as possible. They cannot do this if content is not protected. That is why WIPO is so important in this global economy. WIPO is where the world comes together to protect the intellectual property each country produces. When we can do this, the Internet will move into the mature new era many envision for it. If we fail, it will be cyber advertising only.

There is no way the world is going to be able to deal with online protection of property unless we stand together and have strong enforcement policies in our countries. We also need to educate the public. This will be very hard to do because things have

gone so far. Making the most noise doesn't mean one is right. That must be remembered by all of us as we proceed.

Thank you very much.