

A nighttime photograph of the Illinois State Capitol building, illuminated by warm lights. The building's dome is prominent in the center. Overlaid on the image is text in yellow and white. A traffic light on the right shows a yellow light.

CPTWG MEETING

#116

July 22, 2009

Legislative/Litigation Update

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Litigation

- *Cable News Network v. CSC Holdings*
(Cablevision RS-DVR)
- *Capitol Records, et al. v. Jammie Thomas-Rasset*
- *Football Assoc. Premier League v. Google*
- *Arista Records LLC v. Usenet.com*



Cable News Network v. CSC *Holdings (RS-DVR case)*

- Petition for Supreme Court review
- Solicitor General opposed review
 - No Circuit split
 - Bad vehicle
 - Right on merits
- Supremes deny petition, Roberts & Alito recused



Capitol Records, et al. v. Jammie Thomas-Rasset (D. Minn.)

- Mistrial after first verdict (~\$200k damages)
- Second jury verdict: Guilty, \$1.92 million
 - \$80,000 per song shared
- Lawyers have asked judge to reduce damages or declare mistrial
- Appeal likely with constitutionality challenge



Football Assoc. Premier League et al. v. Google

- Judge dismissed claims for damages as to foreign works not broadcast live, due to registration requirement
- No punitive damages, but statutory damages, lost profits, disgorgement available for live broadcast works



Arista Records, LLC v. Usenet.com Inc. S.D.N.Y.

- Usenet.com guilty of direct, contributory, and vicarious copyright infringement, and inducement
- Lots of misconduct in litigation
 - Denied DMCA 512c safe harbor due to evidence destruction
- No Sony Betamax because of “ongoing relationship” with infringing users

Agency Action/Legislative

- FCC Broadband Plan
- Sotomayor on IP





The FCC's National Broadband Plan

- Notice of Inquiry in April
- Reply Comments due Yesterday
- MPAA et al., Disney, Songwriters Guild comments
- Final plan due February 2010

Sotomayor Nomination

- **Souter: Technophobe who wrote Grokster**
- **Past as IP litigator**
- **Copyright rulings**
 - **Supports damages to deter others**
 - **Tasini**



International

- **France and Three Strikes, Again**
- **ACTA, continued**
- **Digital Britain**
- **Australia**
- **New Zealand**

France At Bat, Again

- Constitutional Council invalidated first 3-strikes law (Réponse Graduée)
- New version passed Senate
 - Changes to Internet cut-off, but details uncertain
- Socialist opposition will challenge Constitutionality again
- Four month DVD/Online release window
- Music DRM





ACTA – Anti-Counterfeiting Trade Agreement

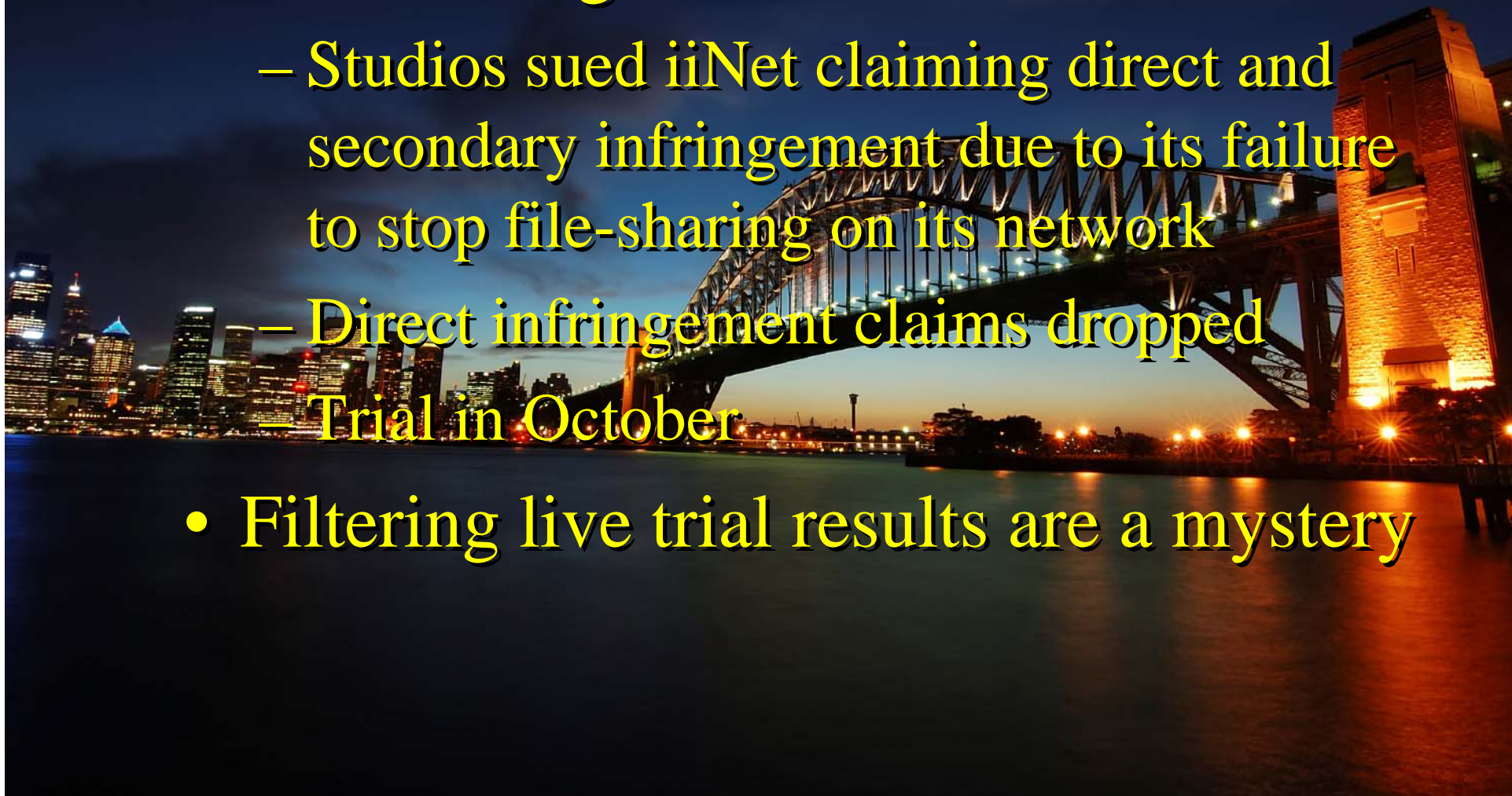
- EFF & Public Knowledge Drop FOIA Suit
- Morocco Meeting Silent
- Group Urges Inclusion of Online Infringement
- Canada Suggests “De Minimis” Exception
- Next Meetings: October, December

Digital Britain Report Released

- Includes proposals to foster UK “creative industries”
- Favors business model innovation
- Proposals:
 - Require ISPs to notify accused infringers
 - ISPs to keep anonymized data, release to content plaintiffs in civil proceeding
 - “Backstop” powers after 12 months

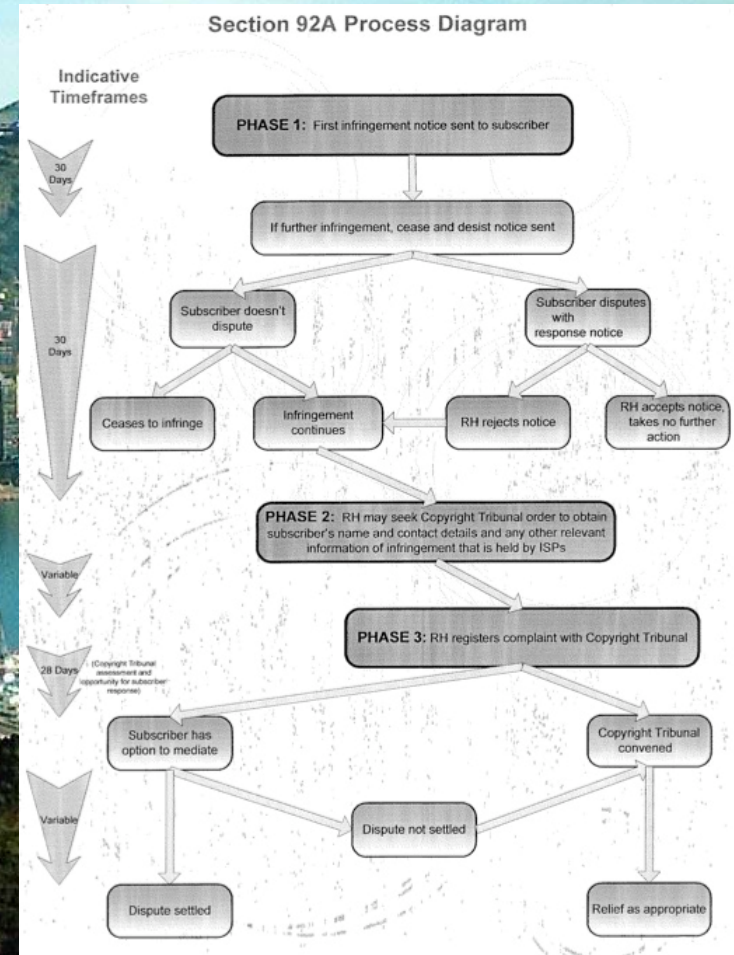
Australia

- iiNet infringement suit
 - Studios sued iiNet claiming direct and secondary infringement due to its failure to stop file-sharing on its network
 - Direct infringement claims dropped
 - Trial in October
- Filtering live trial results are a mystery



New Zealand

- Also proposing a child porn blacklist, but voluntary for ISPs
- Soliciting comments on new 3-strikes process (diagram on right)



Studies

- Harvard Business School Study: Filesharing Is Good For Art
- Cambridge Study: DRM Frustrates Fair Use
- Copyright Industries in the U.S. Economy



A vibrant, slightly stylized photograph of a Harvard Business School campus. In the foreground, a green lawn is partially obscured by a black metal fence and several bicycles parked along it. A large, leafy green tree stands prominently in the center-left. In the background, a multi-story red brick building with many windows and a prominent arched entrance is visible. The overall scene is bright and sunny, with lush greenery and historic architecture.

Harvard Business School Study: File-sharing and Copyright

- File-sharing undermined creative incentives?
- Findings:
 - Sales displacement not enough to weaken incentives
 - Book publishing, new album releases, and feature films all grew dramatically despite widespread file-sharing
 - Goal of copyright: balance consumer access with creator incentives
- <http://www.hbs.edu/research/pdf/09-132.pdf>

Cambridge Study

- DRM Adversely Affects Legitimate Use
- Study based on interviews with UK users, industry, and professional groups
- Substantiates common complaints: Libraries, professors, the disabled all unable to access DRM-protected works despite legal rights to do so
- Recommends amendments to EC's Information Society Directive
- <http://www.law.cam.ac.uk/faculty-resources/summary/technological-accommodation-of-conflicts-between-freedom-of-expression-and-drm-the-first-empirical-assessment/6286>

Copyright Industries in the U.S. Economy

- Total copyright industries represent ~11% of overall GDP in each year from 2003-2007
- Copyright industry growth outpaced overall growth of economy
- Core copyright industry's contribution to overall growth of the economy was huge: between 13% and 22% per year from 2003-2007
- Core copyright industries employ about 4% of the total U.S. workforce
- <http://www.iipa.com/pdf/IIPASiwerekReport2003-07.pdf>