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

- 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

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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
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
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

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