



# CPTWG MEETING #121

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*Legislative/Litigation Update*

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# Litigation

- *MGE UPS Systems v. GE Consumer and Industrial Inc.*
- *U.S. v. ASCAP*
- *Google v. Perfect 10*
- *Viacom v. YouTube*



# ***MGE UPS Systems v. GE Consumer and Industrial Inc.***

(5<sup>th</sup> Cir.)

- **Facts:**

- **MGE:** uninterruptable power supply (UPS) device manufacturer
- **PMI:** GE-owned co subcontracted with MGE to service MGE devices
- PMI obtained software to manage MGE's power supply w/out MGE's permission and allegedly circumvented MGE's security features

- **Holding:**

- **July opinion:** created circuit split; held DMCA does not create liability for users who bypass a technological protection measure preventing a user from accessing a work to simply view it or use it within fair use
- **September substitute opinion:** circuit split gone - court entirely withdrew discussion of whether a copyright violation is a prerequisite for a DMCA violation



# *U.S. v. ASCAP*

## (2nd Cir.)

- **Facts:**

- **Yahoo! And RealNetworks offered music online via digital download; both companies had ASCAP “blanket licenses”**
- **ASCAP sued arguing companies owed additional license fees because digital downloads also a “public performance”**

- **Holding:**

- **A download distinguishable from an online stream and is *not* a “public performance” under U.S. copyright law**





# *Perfect 10 v. Google*

## (C.D. Cal.)

- **Facts:**

- 2004: adult entertainment co/frequent litigator sued Google alleged direct and secondary copyright infringement because Google linked to websites hosting Perfect 10's copyrighted photos
- 2007: 9th Circuit reversed preliminary injunction in favor of Perfect 10 on direct infringement claims; case sent back to district court for secondary infringement claims

- **Holding:**

- Summary judgment for Google on most claims: Perfect 10 failed to provide Google with sufficient DMCA notice and takedown letters.
- DMCA notices must identify with specificity infringed works and location of the infringing work





# ***Viacom v. YouTube Update***

- **Viacom filed a notice of appeal with the Second Circuit**
- **Reports: Viacom hired former U.S. Solicitor General Ted Olson to assist with appeal**
- **Appellate brief expected to be filed in December**



# Administrative Action

- **DMCA Section 1201 Triennial Rulemaking**
- **Commerce Department Seeks Comment on Protecting Copyrighted Works on the Internet**





# Legislative Developments

- **S. 3804: the “Combating Online Infringement and Counterfeits Act”**
- **Twenty-First Century Communications and Video Accessibility Act**





# International

➤ ACTA Update

➤ “Three Strikes” Laws Update

- Irish ISP Case

- NSA “Yells” at French Gov’t Re: HADOPI?



# From Today's Headlines

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THE WALL STREET JOURNAL | TECH

## All Eyes on France as Officials Enforce New Antipiracy Law

By MAX COLCHESTER

PARIS—France's new Internet piracy police has been scouring the Web this month for people illegally downloading films and music and sending hundreds of warning emails to suspected intellectual property thieves.

The implementation of France's new antipiracy law—which is one of the first in the world, along with similar legislation in South Korea, Taiwan and Britain—is considered a litmus test by other nations hoping to crack down on intellectual property theft.

<http://online.wsj.com/article/SB10001424052702303550904575562130775993568.html#ixzz13a0Bs2Il>





# International

- E.U. Parliament approves “Gallo report”
- Mixed results for Google in European YouTube cases
- European Court of Justice Spanish Levy Case



# International

## Korea:

Recommendations by the Copyright Committee (Source: Report of the Minister to the National Assembly, September 2010)				
	Warning	Deletion or Blocking	Suspension of User Account	Total
July 2009	0	0	0	0
August 2009	0	0	0	0
September 2009	2,701	2,524	0	5,225
October 2009	3,750	3,650	0	7,400
November 2009	3,694	3,552	0	7,246
December 2009	2,275	2,248	0	4,523
January 2010	2,555	2,500	0	5,055
February 2010	2,518	2,444	0	4,962
March 2010	3,170	3,128	0	6,298
April 2010	3,520	3,505	8	7,033
May 2010	2,837	2,828	11	5,676
June 2010	3,387	3,383	0	6,770
July 2010	2,471	2,447	12	4,930
Total	32,878	32,209	31	<b>65,118</b>
Compliance by ISPs with the Commission's Recommendations				
Recommendations	Compliance	Non-Compliance (by only one ISP)		