

August 25, 2005

Dear friends,

We've learned an important lesson this week: never elaborate on your previously stated positions in August, when some reporters are trying to make news. After we released our broadcast flag paper earlier this week -- a paper that echoed CDT's longstanding position on how a broadcast flag regime should be limited to protect innovation and fair use -- at least two publications ran stories saying CDT had reversed its stance and was now supporting broadcast flag legislation.

Let me be clear: CDT is not endorsing a federally mandated broadcast flag regime. Our position has not changed.

CDT has always taken a pragmatic approach to the broadcast flag (as we do with other issues). Rather than simply opposing the flag, CDT has worked from the outset of the broadcast flag debate to support policies that would limit the negative impact of any potential flag regime on openness and innovation on the Internet. See, for example, CDT's Feb 2004 Policy Post: <http://www.cdt.org/publications/policyposts/2004/4>, which reflects CDT's then -- and current -- position. When the Federal Communications Commission was developing its flag rule, CDT submitted extensive recommendations on how to design the flag so that it would be minimally disruptive both to users and to technology developers. The FCC took some of our recommendations and rejected others. In our view, the final product contained inadequate protections for technologists and users. CDT is preparing a document -- to be released in the next few weeks -- discussing the shortcomings of the FCC proceeding and the lessons to be drawn. See also CDT's November 2003 Policy Post on the flag, http://www.cdt.org/publications/pp_9.21.shtml, which reflects CDT's then -- and current -- position.

Soon after a federal court overturned the FCC's rules, supporters of a flag regime began pushing for flag legislation on Capitol Hill. We do not know when, if ever, flag legislation will come up in Congress, but we do know from extensive experience that legislation can move very quickly, particularly near the end of a congressional session. If we refrained from commenting until after we saw bill language, it could well be too late to educate lawmakers and their staff on the issues at stake.

So, CDT issued a document this week that we hope lawmakers will draw on *IF* they choose to draft broadcast flag legislation. We call for important limitations on the flag rules and on the power of the FCC to restrict technology. Although it is still vital to ask whether it is worthwhile to have any flag regime at all, we believe that a flag regime that includes our guidance would be far less damaging than one that gives the FCC undefined authority. The recommendations summarized in the paper we released this week are drawn from our December 2003 report "Implications of the Broadcast Flag: A Public Interest Primer (Version 2.0)" <http://www.cdt.org/copyright/broadcastflag.pdf>, which (you guessed it) reflects CDT's then -- and current -- position.

With the benefit of hindsight, we could have made our position on the flag clearer in our flag document. In the next couple days we'll edit the preamble to state more explicitly that the paper SHOULD NOT be taken as an endorsement of broadcast flag legislation.

Finally, a note on CDT's funding. Some people love to impugn CDT, an Internet organization, for taking money from the companies that are shaping the Internet. All of our funding is public information. In fact, CDT probably posts more details about its funding than many other public interest organizations. Recently, in the process of updating our Web site, we de-linked a page listing our supporters, while we redesigned it to match the new look of our site and updated it to reflect 2004 data. Contrary to reports, the page was never removed from the site. It remains located at <http://www.cdt.org/mission/2003supporters.shtml> . By next month, CDT will post the redesigned and updated funding page. In the meantime we will re-link to this older information. One of the articles inferred that surreptitious funding from Hollywood is driving our copyright stance. What's particularly ironic about that suggestion is that companies like Vivendi, Sony and Disney have actually pulled their support for CDT in recent years -- in large part because they disagree with our stance on copyright.

The polarized debate over copyright protection in the Internet age implicates some of the greatest threats to Internet development today. CDT believes in protection of copyrighted material online and offline. We are committed to seeking solutions to problems associated with copyright protection and believe deeply that those solutions will be found somewhere between the black and white positions at either end of the spectrum. Our documents and public statements will continue to reflect that position, which is based on our commitment to preserving the free and open Internet as a tool for democracy and communication. That position was spelled out in our June 2005 paper, Protecting Copyright and Internet Values, is available at <http://www.cdt.org/copyright/20050607framing.pdf> .

Sincerely,
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