

Protecting Copyright and Internet Values

A Balanced Path Forward Version 1.0 – Spring 2005

This paper seeks to outline a general framework for addressing the problem of copyright infringement on the Internet in a balanced fashion. In CDT's view, a combination of robust enforcement of copyright law to make infringement unattractive and technical protections for online content offers the best possibility of fostering vibrant new markets for content delivery, consistent with innovation and the open architecture of the Internet.

Introduction

The Center for Democracy and Technology is a civil liberties and public policy organization dedicated to defending and enhancing the free flow of information on the open, decentralized Internet. That focus has led CDT to engage in the ongoing and far-reaching civic debate about the best legal and technical means to protect copyright in the digital age. While the debate has been contentious and often shrill, CDT seeks to offer a balanced perspective. As part of that effort, this paper aims to outline a general framework for protecting copyright in a manner that is consistent with the open architecture of the Internet and with the interests of creators, consumers, and technology innovators.

Technological trends – from growth in broadband Internet access, to the convergence of formerly distinct communications and computing technologies, to the development of new content delivery technologies – hold great promise for expanding the “marketplace of ideas.” These trends enable the delivery of new voice, video, and data content online to millions of Internet users worldwide. They also offer new and transformative uses of that content, which will promote expression, civic discourse, and economic opportunity. But these benefits will only be realized if there are appropriate policies and technologies to advance free speech, including protections for intellectual property.

The current policy debate over intellectual property is the result of tension between two important goods: the system for rewarding creators, and the growing capabilities of computers and the Internet. The tension arises because the very technologies that are helping fuel an expansion of the marketplace of ideas on the Internet can also be used to undermine it. Technologies that can

locate, deliver, and transform content can also make possible massive infringement of copyright, which hurts artists and chills investment in new content. There is a critical need to find policies to safeguard content while at the same time preserving the technologies that underlie the open, vibrant Internet.

Although highly polarized debate continues, CDT believes there is a path towards a policy convergence to match the coming technology convergence. In CDT's view, the combination of legal protections to make infringement very unattractive and technical protections for online content offers the possibility of vibrant new markets for content delivery, consistent with the open architecture of the Internet. The VCR was viewed at first as a scourge of the movie industry, yet eventually offered a tremendous new growth opportunity for industry. Similarly, we believe that secure digital delivery has the potential to "make the pie bigger" both for content creators and for consumers.

Achieving this end will require a multi-pronged approach developed with both the needs of creators and the realities of the Internet's architecture in mind. The essential components of this approach include:

- **Punishing bad actors**, whether individual infringers or companies like Grokster that profit by actively encouraging infringement. CDT believes that making infringement a dangerous activity that users recognize as illegal will encourage the vast majority of law-abiding citizens to choose lawful services. Similarly, severe monetary penalties against businesses that intentionally encourage infringement or deceive consumers about what activities are lawful can deter bad business behavior without chilling innovation.
- **Encouraging a marketplace of content-protective and consumer-friendly Digital Rights Management ("DRM")** tools to allow the deployment of new models for accessing content. Apple's iTunes, the new Napster subscription service, and other digital media offerings show how new systems can deliver content without inflexible technology mandates or regulatory restrictions. The policy goal should be the development of a robust content delivery market in which consumers have multiple choices, sufficient information, and in which issues relating to public affairs content and privacy are fairly addressed.
- **Better public education by trusted voices**, including speaking out against bad actors, to teach consumers that infringement is wrong and that illegal file-sharing is dangerous, unethical, and harmful to artists and creators. Reaching young consumers is particularly important. Consumers also need information about DRM, so they can make informed choices and ensure a well-functioning DRM marketplace.

If stakeholders and policymakers do not act to craft such balanced solutions, they risk several adverse outcomes.

- Massive infringement may continue undeterred, chilling the development of valuable and expensive-to-create content.
- Government may seek to combat infringement by imposing technology mandates or establishing a restrictive regulatory regime that would chill new innovation online and in the DRM market.
- A DRM market failure to provide diverse and attractive options will tempt consumers to satisfy their “expectations” through illegal infringement.

CDT maintains that content creators, technology companies, and consumers all have a shared interest in avoiding these outcomes. We believe the path we have begun to outline can lead toward content protection that is consistent with the Internet model, that will benefit both industry and consumers, and that will protect our nation’s constitutional values. It is our hope that the different stakeholders in the debate can find some common ground in the principles and basic approach of this path.

▣ The Difficult Search for Solutions

The same technology that has led to the communications revolution also makes infringement easy and has opened the door to widespread piracy.¹ As copying movies, music, books, and TV programs has become simple and communications networks have made finding copyrighted works easier, millions of people worldwide have downloaded file-sharing software and trafficked illegally in valuable works. Companies like Napster, Aimster, and Grokster have profited by encouraging infringement.² As a result, content owners are alarmed about the impact on their businesses and the prospect of reduced control over their intellectual property.

¹ We use the controversial term “piracy” advisedly. Some have objected that the term is applied too broadly to behavior that is not unlawful, or that infringing copyrights is not the same as stealing tangible property. There is merit to these concerns – and those following these debates should be aware that tangible property is quite different from copyright, which provides a limited set of rights for a limited period of time and is premised on some public use of works. However, given the prevalence, volume, and potential impact of clearly unlawful infringement using digital media, we believe the negative connotation of “piracy” appropriately reflects the seriousness of the infringement problem in the digital age.

² See, e.g., Brief of the Digital Media Association, NetCoalition, the Center for Democracy & Technology, and the Information Technology Association of America as *Amici Curiae* in Support of Neither Party at 27, 29-30, *MGM v. Grokster*, 380 F.3d 1154 (9th Cir. 2004), *cert. granted*, 73 USLW 3350 (US Dec. 10, 2004) (No. 04-480) [hereinafter CDT, *et al. Grokster Brief*].

In framing solutions to these problems, however, many of the most direct or obvious approaches are in direct conflict with the values that make the Internet and other digital communications media so valuable. The Internet's decentralized architecture means that there are no gatekeepers dictating who can speak, what they can say, or what innovative new services or inventions can be deployed online. That openness has led to an explosion in communications technology that will benefit consumers and continue to fuel demand for digital content in new and unexpected ways for years to come.³ But that critical open architecture is also threatened by some of the most direct methods of addressing piracy. For example:

- *Burdensome technical design mandates* that dictate one-size-fits-all technology solutions or give government broad power to regulate the introduction of new technology into the marketplace would threaten innovation in a rapidly moving space. They also would limit the choices of both content owners and consumers in how to protect and access content.⁴
- *Broad liability for intermediaries or equipment makers* would put ISPs and equipment makers in the impossible position of second-guessing uses of general purpose services and products. While punishing clearly bad actors is appropriate, an overbroad secondary liability regime would severely chill innovation, hurting both consumers and content producers.⁵
- *ISP blocking and filtering mandates* would, for the first time, turn ISPs into government gatekeepers responsible for surveilling what their customers do online. This would create a deeply troubling precedent with First Amendment implications.⁶
- *Limiting content delivery* to closed networks or consumer electronics boxes that do not connect to the Internet would ignore the demand for – and the massive marketplace in – access to content as part of computer users' increasingly integrated, multi-media, and creative experience. In so doing, such an approach could have the practical effect of actually fueling piracy

³ See, e.g., Reply Comments of Center for Democracy & Technology at 1-2, Digital Broadcast Content Protection, 68 Fed. Reg. 67624 (Dec. 3, 2003).

⁴ See, e.g. CENTER FOR DEMOCRACY & TECHNOLOGY, MAPPING THE DIGITAL VIDEO COPYRIGHT LANDSCAPE: STAKEHOLDER INTERESTS AND THE INTERNET at 4-7, 14-15 (2004) [hereinafter, CDT STAKEHOLDER MAPPING REPORT].

⁵ CDT, *et al.* Grokster Brief; Letters from Jerry Berman, President, Center for Democracy & Technology to Senator Orrin G. Hatch and Senator Patrick Leahy (July 6, Sept. 3, Sept 28, and Oct 6, 2004).

⁶ For discussion of some of the constitutional and other concerns raised by ISP filtering, see, e.g., Center for Democracy & Technology, The Pennsylvania ISP Liability Law: An Unconstitutional Prior Restraint and a Threat to the Stability of the Internet (Feb. 2003).

by leaving peer-to-peer networks as the only way for consumers to get valued content on their computers.⁷

Protecting content online while still enjoying the innovation that will create new distribution technologies will require a different set of approaches.

▣ A Proactive Approach to the Piracy Problem

How then should society address the copyright piracy problem, consistent with the Internet's open architecture and without losing the benefits of this many-to-many, gatekeeper-free forum for participation? CDT believes there is a path towards a set of solutions to the piracy issue. These solutions will not eliminate piracy completely – likely an impossible task. Rather, the goal should be to make participation in widespread infringement unattractive, risky, and rare.⁸

The solutions CDT envisions are based on a carrot-and-stick approach: distributing digital content in ways that will attract paying consumers, while making infringement unenticing and making it clear that bad activity will be punished. The approach has three prongs.

1. PUNISHING BAD ACTORS

A starting point for addressing piracy must be to punish those who break copyright laws. There is no substitute for bringing enforcement cases and speaking out against bad actors, both individuals who infringe copyright and companies who actively encourage infringement. CDT believes that targeted enforcement – consistent with due process, and coupled with legal alternatives – can have a substantial deterrent effect on piracy. Critical steps include:

- *Pursuing people who violate copyright laws.* Since 2003 the RIAA and MPAA have brought lawsuits against over 10,000 individuals who infringe copyrights using peer-to-peer services. While controversial, CDT believes these suits are essential to make infringement unattractive. They send a clear message that the infringing behavior is unlawful and carries a risk of punishment. Over time, the deterrent effect can be substantial. Already, the lawsuits have succeeded in making file-sharing a front page story and a dinner-table conversation for families all over the world. For millions of law-

⁷ See, e.g., CENTER FOR DEMOCRACY & TECHNOLOGY, IMPLICATIONS OF THE BROADCAST FLAG: A PUBLIC INTEREST PRIMER (VERSION 2.0) at 35 (2004) [hereinafter CDT FLAG PRIMER]; CDT STAKEHOLDER MAPPING REPORT at 19-20.

⁸ The software industry has managed to be quite profitable despite stubbornly high rates of piracy, demonstrating that a content business need not eliminate all illegal infringement in order to succeed.

abiding citizens who hear about the lawsuits – including those most likely to pay for content – the threat of lawsuits will mean that they will simply not use illegal services.⁹

- *Secondary liability for certain bad actors.* Secondary liability – holding one party liable for its involvement with or connection to infringement committed by others – is a powerful tool that should be used to punish and deter bad behavior. However, such liability must be crafted only to target bad activity without chilling the development of new technologies or the provision of online services. It should be aimed at the bad actors who intentionally encourage and profit from infringement, while at the same time protecting innovative new technologies and services with valuable uses. Creating a specific legal test that achieves this balance is a difficult but important task.

Other legal tools, such as consumer protection laws, should be used aggressively against those who trick others into violating copyright law. For example, many so-called “100% legal” file-sharing services are in fact unlicensed services that defraud consumers by promising lawful access to works.¹⁰

- *Ensuring strong and appropriate enforcement schemes.* To the extent that there are gaps in current enforcement capabilities, efforts should be made to address them. For example, recently enacted legislation includes a new provision barring the use of camcorders in movie theaters.¹¹ Providing additional resources for enforcement would also help to strengthen the current enforcement regime.

However, simply increasing existing penalties – especially federal felony provisions – is not necessarily the best way to strengthen enforcement. In many cases infringement may demand a stiff fine rather than a federal felony charge. To remain fair in the eyes of the public, CDT believes that copyright enforcement on the Internet should be broad in reach, but not overly severe in impact. One approach to achieving this type of enforcement scheme was proposed in the 2004 PIRATE Act, which would have given the Justice Department civil enforcement powers that could make broader enforcement, without criminal penalties, more feasible.

⁹ Lawsuits cannot succeed in a vacuum; they must be coupled with the creation of lawful alternatives to unlawful file-sharing. They also must be pursued with some measure of fairness to avoid a backlash from consumers. For example, they should be targeted at the worst infringers, and reasonable settlements should be accepted – say, \$4000 instead of millions.

¹⁰ Center for Democracy & Technology, Complaint and Request for Investigation, Injunction, and Other Relief, to the Federal Trade Commission in re: Mp3DownloadCity.com *et al.*, Mar. 8, 2005.

¹¹ Family Entertainment and Copyright Act of 2005, §102, Pub. L. No. 109-9, 119 Stat. 218 (2005).

In addition, there may be opportunities to use the threat of enforcement to change the behavior of small-scale infringers, without actually resorting to full-fledged lawsuits. Cooperation between content owners and ISPs on a voluntary basis to find practical and appropriate ways to pass crucial information on to specific individuals while protecting their anonymity (and while steering well clear of putting ISPs in the role of tracking and policing subscribers' behavior) could be a positive step.

2. EMBRACING DIGITAL CONTENT DELIVERY AND CONSUMER-FRIENDLY DRM

The keystone of a digital copyright solution is delivering content to consumers in the digital forms they crave, in ways that are attractive, lawful, and paid for. Ample opportunities exist – iTunes is the best known example – for digital distribution models that will attract paying consumers and give protections to content owners. Such distribution models will rely on a marketplace of content-protective DRM to prevent widespread infringement and facilitate new capabilities for consumers, without technology mandates or regulatory restrictions.

The conventional wisdom among some content owners has been: “You can't compete with free.”¹² But as consumers are discovering, peer-to-peer services – slow, unreliable, laden with spyware, and illegal – are anything but free. And as the music industry is finding, new digital distribution systems provide ways to compete with these services.¹³

At the same time, the conventional wisdom among some consumer-oriented groups has been that DRM is bad for consumers, and that no DRM system can adequately meet consumer needs or reasonable consumer expectations.¹⁴ While DRM systems can be very restrictive, much work is underway to create content protections that allow expansive consumer uses, while still protecting against widespread redistribution.¹⁵ It is also clear that DRM is a critical enabler of many business models – like online movie rentals – that consumers will find attractive even if they come with restrictions.

¹² For examples of this type of argument, see Recording Industry Association of America, *Anti-Piracy*, at <http://www.riaa.com/issues/piracy/>; Motion Picture Association of America, *Anti-Piracy*, at <http://www.mpaa.org/anti-piracy/> (both last visited May 31, 2005).

¹³ One recent study found that 47 percent of people who downloaded music in December 2004 and who were age 12 or older paid a fee to do so. That same statistic was 22 percent a year before. Dines C. Sharma, *Study: Fee-based music gains on swapping*, ZDNET (Feb. 10, 2005) at http://news.zdnet.com/2100-9588_22-5571262.html.

¹⁴ See, e.g., ELECTRONIC FRONTIER FOUNDATION, *DIGITAL RIGHTS MANAGEMENT: A FAILURE IN THE DEVELOPED WORLD, A DANGER TO THE DEVELOPING WORLD* (2005).

¹⁵ Examples of experimentation in DRM include the FairPlay DRM in Apple's well known iTunes service, TiVoToGo, and the AAC-S-LA standard for next generation digital video content protection.

Seen in this light, DRM is an essential component of a vibrant digital media marketplace. Consumers benefit from DRM that allows content owners to release digital media in myriad ways, at different prices, and for different uses. DRM is already being deployed in many consumer products, from online music services to cell phones to DVD players, and is helping to expand consumer choices in the market for content. Examples include the popular iTunes music service; services that allow unlimited access to large music collections for a monthly fee; and the new MovieLink or Starz/Encore video downloading services. All of these rely on DRM.

CDT's view, therefore, is that *content owners are generally within their rights to put out restrictive DRM. In a functioning market, DRM that fails to provide an attractive bundle of rights at an attractive price will fail.*

Still, there are several reasonable consumer-based concerns about the role of DRM in the distribution of digital media.

- *A well-functioning market for products and services using DRM is crucial. The benefits promised by DRM arise from a proliferation of choices for both producers and consumers of content.*

This means producers must be free to experiment with various models of digital distribution, using different content protection technologies and offering different sets of permissions and limitations. Government-mandated, "one-size-fits all" approaches to DRM, or any other overly restrictive regulation of DRM offerings, must be avoided.

Consumers, meanwhile, must have real options for purchasing different bundles of rights at different price points. The menu of options must not be unduly limited – whether by government mandating a particular approach, or by content producers using market power or acting jointly to restrict choices.

Consumers also must have sufficient *information* about their choices. If consumers lack advance notice about the capabilities of various media products and devices, as implemented through DRM, they cannot make purchasing decisions on an informed basis. Consumer understanding of what they can and cannot do with products they buy is essential to creating an informed marketplace where consumers can demand and bargain for greater capabilities.

- *Concerns must be addressed regarding the potential impact of restrictive DRM on important First Amendment uses of content. Preserving access to news and political content is particularly important. Restrictive DRM, widely adopted*

(or, even worse, generally mandated by regulation), could preclude otherwise legal uses of digital media – such as using a portion of a work for a political ad, for online review or commentary, or for a university class.¹⁶ Such limitations raise concerns about creating gatekeepers to online speech, and undermining the Internet’s status as the most participatory communications medium in history.

For example, video clips from the Presidential campaign and the Asian tsunami disaster were widely distributed online and had a major impact on many people’s understanding of important world events. Copy protections should not preclude such valuable uses of content for political and educational purposes.¹⁷

- *DRM systems must not violate consumers’ privacy.* Protecting content using DRM need not lead to the collection of personal information in violation of fair information principles. DRM should avoid collecting detailed information about consumers’ listening, viewing, or reading habits. Any collection that does occur should be narrowly limited to what is necessary to protect against unauthorized use of the content, unless the consumer understands and consents to the broader collection.

Building a market of diverse, consumer-friendly DRM solutions is in the interest of content companies, technology providers, and consumers. Such solutions will provide new ways of accessing content for consumers, while allowing content companies to take advantage of the tremendous potentials of digital distribution.

3. PUBLIC EDUCATION

Consumers need trusted sources of information in order to understand their rights and responsibilities regarding copyright law and the use of copyrighted works. Copyright law can be a technical area, and consumers’ initial assumptions about what is and is not permitted are often not fully accurate. Public education is needed to help shape consumer expectations and norms concerning the use of copyrighted works in a digital world – because without effective public education, new technological capabilities relating to (for example) peer-to-peer networks and DRM may create their own “facts on the ground” with little regard for law or policy.

¹⁶ See, e.g., CDT FLAG PRIMER, at 24-27.

¹⁷ Such uses of content are now legion online. CDT is collecting and archiving salient examples.

Public education also goes hand-in-hand with both sides of the carrot-and-stick approach discussed above. With respect to the “stick” of punishment, education about copyright infringement and its potential legal consequences is needed to increase the deterrent effect that enforcement campaigns have on the general population. Moreover, if individuals are to face the threat of lawsuits for infringing behavior, it is important to have widespread public understanding of what constitutes infringement.

Education is equally important with respect to the “carrot” of making legal channels of digital distribution available and attractive. As discussed above, a well-functioning DRM marketplace requires informed consumers who understand the benefits, limitations, and tradeoffs associated with different DRM-enabled products. There is a risk of widespread dissatisfaction if, for example, consumers find out only after-the-fact that the music they are buying online can be used only with a particular music player, or the discs they are creating on new broadcast flag-compliant DVD burners will not play on their existing DVD players. In addition, public education about copyright is necessary for an informed debate about the impact of DRM on First Amendment uses of such digital content as news and public affairs information, as discussed in the previous section.

▣ Translating the Approach Into Action

CDT believes that the three-prong approach set forth in the preceding section offers a roadmap for action to protect content and make the pie bigger in a manner consistent with an open and decentralized digital media environment. CDT is engaged in a number of concrete activities that we believe can help make progress in the digital copyright debate.

- **Supporting effective enforcement** – CDT supports efforts by the government and by private copyright holders to punish infringers. CDT is playing a significant role in helping to craft an effective and appropriate enforcement regime.
 - *Lawsuits against individual infringers* – CDT has publicly supported the actions brought by MPAA and RIAA against individuals who infringe copyright using peer-to-peer services.¹⁸ CDT believes that lawsuits

¹⁸ Letter from Jerry Berman, President, Center for Democracy & Technology to Cary Sherman, President, Recording Industry Association of America (Sept. 15, 2003) [hereinafter CDT letter to RIAA]; Press Release, Center for Democracy & Technology, CDT Supports Enforcement Actions Against Copyright Infringers, Calls for Measured Actions and More Lawful Alternatives (Nov. 4, 2003).

against infringers – pursued fairly and settled reasonably – are an essential tool in the campaign against piracy.

- *Secondary liability for bad actors who promote infringement* – CDT supports secondary liability for bad actors based on bad behavior, and sees it as an important weapon in the copyright enforcement arsenal. At the same time, CDT believes that great care must be taken to ensure that the threat of secondary liability does not stifle the development of technologies capable of substantial non-infringing uses. CDT’s amicus brief in the Supreme Court case *MGM v. Grokster* attempts to provide a roadmap for one possible approach to creating a balanced secondary liability regime.¹⁹ CDT also participated actively in the debate over the INDUCE Act, and we look forward to continuing to work in the courts and with Congress to ensure that secondary liability rules are carefully crafted and enforced.
- *Effective tools for enforcers* – CDT supports legislation to address identified gaps in current law, such as the camcorder and pre-release works provisions enacted in the Family Entertainment and Copyright Act of 2005 and the civil copyright enforcement provisions that passed the Senate in 2004 in the PIRATE Act.²⁰ CDT likewise supports efforts to provide additional resources for enforcement. Finally, when Congress was examining the controversial issue of administrative subpoenas to identify suspected online copyright infringers, CDT proposed a compromise approach to designed to allow for quicker identification while also protecting the privacy rights of Internet users.²¹
- *Services that deceptively promote infringement* – CDT filed a complaint at the Federal Trade Commission against a number of services that claim to offer “100% legal” access to copyrighted works but in fact are simply unlicensed file-sharing services.²² CDT believes that consumer protection laws should be used aggressively against those who promote piracy by deceiving consumers.

¹⁹ CDT, *et al.* Grokster Brief at 14-15.

²⁰ *See, e.g.*, Center for Democracy & Technology, Analysis of the Family Entertainment and Copyright Act of 2005 (Apr. 2005).

²¹ *See Consumer Privacy and Government Technology Mandates in the Digital Media Marketplace: Hearing Before the Senate Comm. on Commerce, Science, and Transportation*, 108th Cong. (Sept. 2003) (statement of Alan Davidson, Associate Director, Center for Democracy & Technology).

²² Center for Democracy & Technology, Complaint and Request for Investigation, Injunction, and Other Relief, to the Federal Trade Commission in re: Mp3DownloadCity.com *et al.*, Mar. 8, 2005.

- **Supporting the development of effective, consumer-friendly DRM** – CDT is working to analyze the consumer interests in DRM and to promote a market for consumer-friendly content protections that can facilitate new models for delivering digital content.
 - *DRM metrics* – CDT is working with the assistance of industry and technology experts to develop a set of metrics for use by consumers and product reviewers evaluating digital media products and services.²³ These metrics will focus on such factors as transparency for consumers; protection for reasonable uses, especially for important public interest content; interoperability with different devices and platforms; and privacy impact. CDT believes that developing criteria for evaluating the benefits and costs of DRM is an important step toward creating a well-functioning DRM market in which consumers are well-informed market actors.
 - *Broadcast flag* – CDT has participated in the debate over the broadcast flag, advocating a balanced approach that provides protection for broadcast DTV without chilling valuable uses of television. In our December 2003 report, *The Broadcast Flag: A Public Interest Primer*, and again in comments in the FCC proceeding, CDT argued that any broadcast flag requirement should be targeted at avoiding mass redistribution (not all unauthorized uses); should create objective standards for approving new technologies and uses; and should provide breathing room for the free flow of news and public affairs programming. CDT will continue to press for a reasonable balance in broadcast flag implementation.
- **Educating the public** – CDT seeks to work with both industry and consumer representatives on public education initiatives relating to digital copyright issues.
 - *Consumer education website* – Consumers need trusted sources of information about their rights and responsibilities online when it comes to file sharing and copyright. It is particularly important to send the message to younger consumers that infringement is unlawful and unethical. This effort cannot be pursued by industry alone, and CDT hopes to assist by augmenting the popular family education resource at

²³ For example, in February of 2004, CDT, Public Knowledge, and Consumers Union held a workshop with DRM technology and policy experts alongside experienced technology editors and product reviewers from Consumer Reports Magazine, at the Consumers Union testing facilities in New York.

GetNetWise.org to include information on the risks and illegality of unauthorized file-sharing.²⁴

- *Consumer understanding of DRM* – Consumers need better notice and information about copy protections in new digital products and services. CDT will continue to “educate the educators” by working with product reviewers on common and understandable DRM metrics, as discussed above.
- *Spyware and deceptive practices* – CDT has helped expose spyware and adware underlying many peer-to-peer services, starting with our study *Ghosts in Our Machines: Background and Policy Proposals on the “Spyware” Problem*. CDT then filed a groundbreaking complaint to the FTC against SpyWiper, which led to the first FTC spyware action in the fall of 2004. Public exposure of the spyware problem promotes consumer understanding of some of the risks involved in some file-sharing services.
- *Other collaborative initiatives* – CDT believes that public education is an area where additional collaborative efforts should be possible, and intends actively to seek such opportunities. All parties, from content providers to technology vendors to ISPs, have an interest in education that promotes the growth of legal distribution methods.

Beyond these specific steps, CDT’s overarching activity in the digital copyright debate is aimed at developing reasonable consumer positions on copyright and articulating them to Congress, the administration, the press, and the public at large. CDT also aims to communicate those positions to stakeholders, and to seek common ground around jointly held principles. Facing a policy stalemate in Congress and the courts, a balanced consumer position is essential in moving forward with dialog among all the affected stakeholders to make real progress in the policy debate.

Conclusion

The digital copyright debate implicates core values: maintaining the potential of the digital revolution to empower individuals, improve civic engagement, and promote economic opportunity. It is critical for public interest groups, technologists, and industry to work together to craft solutions in this complex technology and policy environment. We look forward to working with groups

²⁴ GetNetWise receives 130,000-150,000 unique visitors a month.

from across industry sectors and the public interest community to pursue what we believe is a broadly held goal: a digital environment where high-quality content is widely available in ways that continue to protect the authors and owners of that content, as part of a well-functioning market that allows for new and exciting uses of content by individuals.

FOR MORE INFORMATION

Please contact:

Jerry Berman, President

David Sohn, Staff Counsel

Michael Steffen, Policy Analyst

<http://www.cdt.org>