

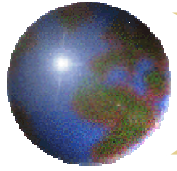


*Cooperation on Cross-Border
Copyright Protection: The U.S.
Experience*



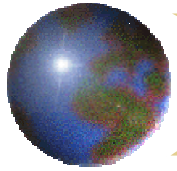
**Michele Woods
U.S. Copyright Office**

**Second Asian Copyright Conference
February 23-24, 2011
Tokyo**



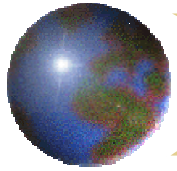
Introduction

- ✚ The World is Increasingly Interconnected in the Area of Copyright
- ✚ Even Domestic Matters Have Cross-Border Implications



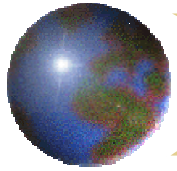
Introduction – The U.S. Experience

- ✚ U.S. cross-border copyright activity takes place in a variety of contexts:
 - ▣ International initiatives – cross-border transfer of copyrighted works at WIPO
 - ▣ Multilateral and regional initiatives – copyright provisions in ACTA and TPP



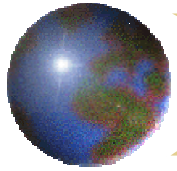
Introduction – The U.S. Experience cont.

- Domestic legislation – rogue websites and proposed Combating Online Infringements and Counterfeits Act (COICA)
- Domestic court cases – proposed Google Book Settlement



International: WIPO

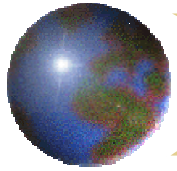
- ✿ Context: Consideration of Copyright Exceptions and Limitations
- ✿ Access to Copyrighted Works for the Print Disabled
 - WIPO Standing Committee on Copyrights and Related Rights – Four proposals for international instruments including proposed WBU Treaty all call for cross-border sharing of accessible works
 - WIPO Stakeholders' Platform Trusted Intermediary Global Accessible Resources (TIGAR) Project for voluntary cross-border sharing of accessible works



International: WIPO cont.

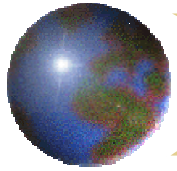
✚ U.S. position:

- Domestic copyright exception – 17 U.S.C. § 121
- SCCR – Consensus Instrument proposal
- Stakeholders' Platform – TIGAR participant through National Library Service for the Blind and Other Persons with Disabilities in the Library of Congress



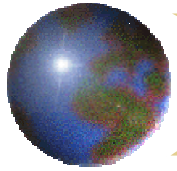
Multilateral, Regional and Bilateral Cross-Border Copyright Initiatives

- ❖ Multi-country initiatives addressing cross-border copyright protection continue to evolve
- ❖ Some initiatives that involve the U.S. include:
 - Anti-Counterfeiting Trade Agreement (ACTA): goal “to establish a state-of-the-art international framework that provides a model for effectively combating global proliferation of commercial-scale counterfeiting and piracy in the 21st century” (USTR)



Multilateral, Regional and Bilateral Cross-Border Copyright Initiatives cont.

- Trans-Pacific Partnership: platform for regional economic integration
- Bilateral Free Trade Agreements: U.S.-Korea Free Trade Agreement and others



Domestic U.S. Legislation: Rogue Websites

- ❖ Rogue websites in the broadest sense are Internet sites dedicated to infringing activities
- ❖ Problem: How to address piracy involving web sites that operate partially or entirely outside national jurisdiction and the reach of national courts
- ❖ In the last Congress the U.S. Senate attempted to expand the available options through the Combating Online Infringement and Counterfeits Act (S. 3804)

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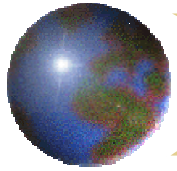
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Internet 100%



Current U.S. Civil Forfeiture Provision

18 U.S.C. § 2323:

(a) Civil Forfeiture

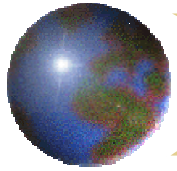
(1) **PROPERTY SUBJECT TO FORFEITURE** – The following property is subject to forfeiture to the United States Government:

- (A) Any article, the making or trafficking of which is prohibited under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or Chapter 90, of this title;
- (B) Any property used, or intended to be used in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A).
- (C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).



This domain name has been seized by ICE - Homeland Security Investigations, pursuant to a seizure warrant issued by a United States District Court under the authority of 18 U.S.C. §§ 981 and 2323.

Willful copyright infringement is a federal crime that carries penalties for first time offenders of up to five years in federal prison, a \$250,000 fine, forfeiture and restitution (17 U.S.C § 506, 18 U.S.C. § 2319). Intentionally and knowingly trafficking in counterfeit goods is a federal crime that carries penalties for first time offenders of up to ten years in federal prison, a \$2,000,000 fine, forfeiture and restitution (18 U.S.C. § 2320).



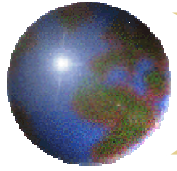
Web Sites Covered by COICA

Internet sites “dedicated to infringing activities”:

2)

- (a) primarily designed to...
- (b) has no demonstrable, commercially significant purpose or use other than to...
- (c) or is marketed by its operator to ...
 - (i) offer infringing goods or services, or enable or facilitate infringement
 - (ii) Sell or offer to sell or distribute goods, etc. bearing counterfeit marks.

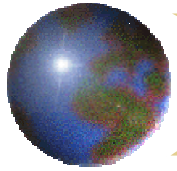
Such activities must be central to the activity of the site.



Web Sites Covered by COICA cont.

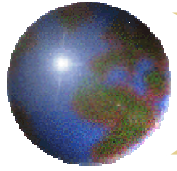
To offer infringing goods or services, or enable or facilitate infringement

- Including by offering or providing unauthorized access to works in *complete or substantially complete* form (e.g., by download, streaming or other transmission), or
- by offering links to other sites to obtain access to such works; or



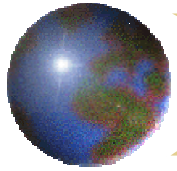
COICA Provisions

- ⊕ Attorney General may apply to a district court for
 - ⊞ a TRO a preliminary injunction or a permanent injunction against the domain name to cease and desist from such activity
- ⊕ Attorney General may commence in rem action against the domain name of such a site
- ⊕ Court order may require domain registrar or registry to suspend operation of the domain name
- ⊕ If registrar and registry are outside the U.S., an order may be served on service providers (ISPs)
 - ⊞ requiring them to take technically feasible and reasonable steps designed to prevent a domain name from resolving to that domain name's Internet protocol address



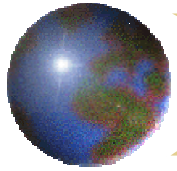
COICA Provisions

- ⦿ Court order may require financial transaction provider (credit card issuer, financial institution, payment network, etc.) to expeditiously take reasonable measures to prevent or prohibit
 - ⦿ Its service from completing payment transactions between its U.S. customers and the Internet site using the domain name
 - ⦿ Its trademarks from being authorized for use on Internet sites associated with the domain name
- ⦿ Court may require a service that provides advertisements to Internet sites to take reasonable measures to prevent its network from providing ads to an Internet site associated with the domain name
- ⦿ Entities complying with such orders shall be immune from suit
- ⦿ Website operators may petition court to modify, suspend or vacate orders



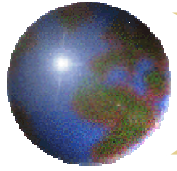
Current Status on U.S. Approach to Rogue Websites

- ✚ COICA was not adopted by the last Congress.
- ✚ There is renewed interest in rogue websites during this Congress
- ✚ Goal is to reach infringing activity by sites that lack ties to the U.S.



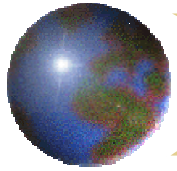
Domestic U.S. Litigation: The Google Book Settlement

- ✚ Example of a case with unique class action approach handled in U.S. court system
- ✚ Proposed settlement has potential cross-border impact around the world
- ✚ Even narrower revised version affects many non-U.S. works and creators



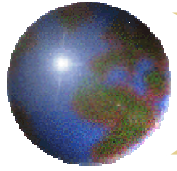
Background: Google Book Search Timeline

- ✿ 2002: Google announces plan to scan “every book in the world”
- ✿ 2004: Project introduced at Frankfurt Book Fair
- ✿ 2005: Lawsuit filed by authors and publishers
- ✿ 2008: Class action settlement proposal
Version 1 submitted by the parties to the court for review



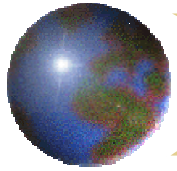
Google Book Search Timeline cont.

- ✿ 2009: Class action settlement proposal
Version 2 submitted by the parties to
the court for review
- ✿ 2010:
 - At least 15 million books have been
scanned and digitized; scanning continues
 - Fairness hearing held one year ago;
waiting for decision



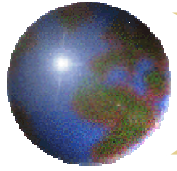
Lawsuit Underlying Settlement

- ⊕ Authors and Publishers sue Google in 2005
- ⊕ Main subjects of lawsuit:
 - ⊞ Digitization through scanning
 - ⊞ Showing “snippets” on website
- ⊕ Legal theories in lawsuit:
 - ⊞ Authors and Publishers: “Massive” copyright infringement
 - ⊞ Google: Fair use



Google Book Settlement Version 2

- ✿ Narrows but retains certain new economic uses for Google
- ✿ Excludes most non-U.S. works but still covers:
 - Non-U.S. works registered with US Copyright Office.
 - Works published in the UK, Canada and Australia.
- ✿ Gives UK, Canadian and Australian authors and publishers representation on BRR



What Next?

✚ What happens next:

- ✚ Appeal?
- ✚ Further action in underlying class action lawsuit?
- ✚ Settlement Version 3?
- ✚ Legislation?
 - Orphan works
 - Digitization and scanning
- ✚ More litigation: Photographers and graphic artists sued Google in April 2010



Thank you!



Michele Woods
*Acting Associate Register
for Policy and International Affairs
U.S. Copyright Office
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