



**Statement For The Record of Sandra Aistars,
Chief Executive Officer, Copyright Alliance**

**Before The House Judiciary Committee
Subcommittee On Courts, Intellectual Property And The Internet**

Chapter 12 of Title 17

September 17, 2014

The Copyright Alliance is a non-profit, non-partisan organization that unites creative people from a variety of disciplines and advocates for the protection of their creative work. We represent artists and creators across the spectrum of copyright disciplines, including more than 40 trade associations companies and guilds, and over 15,000 individual artists and creators. All of our members depend on the ability to set the terms and conditions on which their creative work is distributed and/or monetized, subject to legal exceptions, in order to make work available to audiences via a variety of usage models and over a vast network of platforms and formats. Technical Protection Mechanisms (“TPMs”) facilitate the seamless operation of these offerings, and allow for a variety of different usage models to exist in the marketplace to suit varied consumer interests and preferences.

We welcome this opportunity to share with the Subcommittee a variety of examples of how our members use TPMs to offer audiences new experiences such as the opportunity to:

- play pre-release video games,
- acquire updates, add new features and interact with other users of entertainment products,
- share creative works with others,
- convert works purchased in earlier formats to state of the art formats, and
- license clips for new uses, create custom content and playlists.

We additionally highlight two examples of TPM enabled distribution models identified as being of particular benefit by our grassroots members:

- a TPM enabled distribution service launched by an independent film distributor that allows fans of the films to share in the revenues of sales/streams of films the fan refers to the distributor, and

- a TPM enabled music service that many independent bands enjoy working with due to the flexibility it affords them in offering work to their audiences.

We encourage the Subcommittee to ensure that the provisions of Section 1201 of the Digital Millennium Copyright Act remain strong. These provisions have served authors and audiences of creative works well by ushering in a vast variety of both new work and innumerable new technology platforms for distributing creative works in innovative ways.

How Independent Artists are Using TPM Enabled Platforms

The use of TPM enabled platforms to deliver creative works to audiences by new and mainstream media companies is well documented. Less well described are the many innovative ways independent artists employ TPM enabled platforms to engage with and reward their fans, reach new audiences, and experiment with new business models. We highlight two such approaches here.

Using TPM Enabled Platforms To Reward Fans

Indie filmmakers and distributors are using TPM enabled platforms not just to distribute films to audiences in a variety of new offerings, but to reward fans who spread news about the films through their social networks resulting in referrals and purchases of films. Wolfe Video is a small, independent film distribution company that has adopted a unique two-pronged approach to combatting the challenges of online infringement. In addition to employing TPMs to protect the films the company distributes, Wolfe began an affiliate program that allows users to share links to Wolfe distributed films via social networks and earn commissions on resulting sales. Fans who wish to participate in the program sign up as “affiliates.” Each affiliate is assigned a unique identifying code, which is automatically included when a link to a film is embedded or shared by the fan via social media or otherwise. Any purchases of streams or DVDs or BluRays resulting from a referral from the affiliate earns a 10% commission for the affiliate. Deployed in this manner, TPM enabled platforms facilitate not just new engagement and new social interaction among fans of films, but the return of financial rewards to fans who refer customers to the legal distribution sources of films.

Using TPMs to Manage an Indie Band Catalog

Independent artists, like other artists, make decisions about how to manage the distribution of their work to maximize exposure, improve revenue, support causes and organizations they believe in, reward fans, and achieve a variety of other goals. Platforms and services that flexibly employ TPMs and allow artists to determine when to use them and when not to use them facilitate the effective management of catalogs of creative works for these purposes. Our grassroots members in the music industry report that several music licensing and distribution services including CD Baby, ReverbNation and TuneCore allow artists to pick and choose among the platforms to which an artist wishes to distribute his or her work. Artists may choose to distribute to TPM enabled download platforms, or choose MP3 and streaming platforms that do not apply TPMs. Different decisions can be

made for different albums, depending on the artist's goals for the release. Services such as download cards & codes are also offered.

Other Examples of TPM-Enabled Innovations from Members of The Copyright Alliance

A. Entertainment Software

In the case of video games, TPMs enable the distribution of digital content through physical media, downloadable files, and live streaming, while preventing individuals from making and distributing unauthorized copies or using gaming consoles to play pirated copies of the games.¹ In addition, access controls have also facilitated the transformation of game consoles into general purpose entertainment portals.² TPMs ensure an environment in which only authorized copies of video games are playable on the console and, in so doing, cut off incentives to infringe the copyrights in those games. TPMs are also essential to maintaining brand names as they ensure both system security and quality control.³

Microsoft's Xbox Live. This service enables consumers to download games, acquire updates, new features and new content for existing games, store games in the cloud and access them at a location of their choosing. Consumers can also share their experiences with their families.⁴

PlayStation Network & Consoles – The PlayStation Network is a free service available to all PlayStation 3, 4, Portable and Vita console users. The service provides access to free online multiplayer gaming, downloadable game content, access to thousands of HD movies and millions of songs, as well as social interaction in a variety of virtual environments. In addition, PlayStation consoles allow consumers to play Blu-ray games and movies, as well as access the Sony Entertainment Network, which includes a global catalog of over 10 million copyrighted music tracks; SD, HD and 3D videos, including movies from every major studio; streaming audio and video content from providers such as Pandora, NPR, Hulu Plus, Netflix, Amazon Prime and MLB.tv; images and related services from Picasa, Photobucket, and Shutterfly; and content from services such as Twitter and Yahoo!

¹ See ENTERTAINMENT SOFTWARE ASSOCIATION, COMMENTS SUBMITTED BEFORE THE U.S. COPYRIGHT OFFICE ON THE EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES 3, (Docket No. RM 2011-7, 2012), *available at* http://copyright.gov/1201/2012/comments/Lindsey_Tonsager.pdf.

² See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., JOINT COMMENTS SUBMITTED BEFORE THE U.S. COPYRIGHT OFFICE ON THE EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES 9, (Docket No. RM 2011-7, 2012), *available at* http://copyright.gov/1201/2012/comments/Steven_J._Metalitz.pdf

³ See SONY COMPUTER ENTERTAINMENT AMERICA LLC, COMMENTS SUBMITTED BEFORE THE U.S. COPYRIGHT OFFICE ON THE EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES 11, 12, (Docket No. RM 2011-7, 2012), *available at* http://copyright.gov/1201/2012/comments/Jeffrey_P._Cunard.pdf

⁴ See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 9.

Similarly, Nintendo enables console owners to access online content using their Wii.⁵

Valve Corp.'s Steam – Steam offers consumers online access to over 1,000 game titles with instant software updates. Gamers can even enjoy pre-release titles and periods of promotional play at no cost.⁶

B. Literary Works

The marketplace for ebooks and audiobooks has expanded quickly as a result of the proliferation of devices such as Amazon's Kindle, Apple's iPad, iPod and iPhone, Barnes & Noble's Nook, Apple's iPad, and a variety of other tablets.⁷

Random House's Insight & Harper Collins' Browse – These services enable web developers to interoperate with Random House's and Harper Collins' libraries to enable the public to browse books before buying them or search for text or audio content based on terms or subjects.⁸

International Non-Commercial Document Supply Service – Since January 2012, publishers and the British Library began offering a cross-border service to improve access. The framework enables publishers and libraries to cooperatively provide copyrighted journal articles to the libraries' users, such as students, faculty and researchers, for non-commercial research or private study.⁹

C. Motion Pictures and Television Programs

UltraViolet – Developed by the Digital Entertainment Content Ecosystem, a consortium of more than seventy companies, UltraViolet is a cloud-based service designed to allow consumers to purchase, acquire and reacquire content from participating retailers and then watch it on a wide array of compatible devices. Because UltraViolet is designed with families in mind, the service allows accounts with multiple users. Once an account is created, any authenticated user can go to a participating retailer and obtain UltraViolet-enabled content; once in the account, multiple copies of that UltraViolet-enabled content are available (subject to certain restrictions, e.g., parental controls) to any authenticated user to view on multiple platforms and displays, including on television screens (with or without a DVD or Blu-Ray player), desktop computers, laptop computers, tablets, and smartphones. A further benefit is that UltraViolet enables multiple methods of content delivery: streaming, download, and physical formats (e.g., DVD or Blu-ray). UltraViolet also enables consumers to convert titles they previously purchased on DVD and Blu-Ray into

⁵ See *id.* at 9, 10; SONY COMPUTER ENTERTAINMENT AMERICA LLC, *supra* note 3, at 7.

⁶ See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 10.

⁷ See *id.* at 10.

⁸ See *id.* at 10, 11.

⁹ See *id.* at 11; see also BRITISH LIBRARY, Document Supply Services, <http://www.bl.uk/incd> (last visited Sep. 15, 2014).

UltraViolet-enabled content.¹⁰

“TV Everywhere” Initiatives (Comcast’s XFINITY website and mobile apps, DISH Network’s DISHOnline, and Verizon’s FiOS TV Online) – Member companies of the Motion Picture Association of America and other content owners, in conjunction with multichannel video programming distributors (“MVPDs”) offer unprecedented online on-demand access to movies and television programs as part of their cable/satellite television subscriptions. These services provide users with the ability to access televised content on their Internet connected devices. Some MVPDs allow their customers to view certain live television channels within the home via applications for mobile devices. This complements the existing access by subscribers to significant numbers of shows and movies, often in high-definition, on their television sets at a time of their choosing via video on demand. In addition to access offered by portals managed by MVPDs as described above, a growing number of cable networks, including HBO, CNN, Cartoon Network, TBS, Cinemax, Showtime, ESPN, The Disney Channel and the Big Ten Network provide access directly to subscribers via branded content portals. In addition to cable networks, many broadcast television networks allow the general public to view popular television programming online on the networks’ websites at no cost. In addition to authenticated “TV Everywhere” services, most popular movie and television content is available on mobile phones and tablet computers through subscription models and one-time payments. Services include Apple’s iTunes, Hulu Plus, Amazon Prime, and AT&T U-verse Live TV.¹¹

Disney Movies Anywhere – This service, provided through an app, allows consumers to browse and watch their collection of Disney, Pixar, and Marvel movies along with bonus material and exclusive videos. Consumers can also download and stream movies across their devices.¹²

Apple’s iTunes – This system allows consumers to purchase or rent movie and television programming content for playback on a variety of Apple and non-Apple devices. Apple’s system allows multiple devices to have copies of the same content, giving flexibility for consumers to use a single purchase or rental.¹³

Kindle Fire – This service makes available thousands of movie and television titles to Fire owners. The content is also available for use on other devices through applications.¹⁴

Apps – Android devices also have networks of content available, both through the Android

¹⁰ See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 11, 12.

¹¹ See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 12, 13.

¹² See DISNEY MOVIES ANYWHERE, <http://www.disneymoviesanywhere.com/support> (last visited Sep. 15, 2014); see also ADVANCED ACCESS CONTENT SYSTEM LICENSING ADMINISTRATOR, LLC, COMMENTS SUBMITTED BEFORE THE U.S. COPYRIGHT OFFICE ON THE EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES 5, Docket No. RM 2011-7 (2012), available at http://copyright.gov/1201/2012/comments/Bruce_H._Turnbull.pdf.

¹³ See ADVANCED ACCESS CONTENT SYSTEM LICENSING ADMINISTRATOR, LLC, *supra* note 12, at 6.

¹⁴ See *id.*

Market and through use of applications that give consumers access to content on a variety of other distribution networks. Microsoft has its own platforms, taking advantage of its game console as a hub for content delivery as well as enabling Microsoft-based smartphones and computers.¹⁵

Anyclip.com – On this site, users are able to search an online library, which as of December 2011 included access to over 12,000 films and over 50,000 clips. The site allows users to compile clips into playlists (as a professor might wish to do for classroom use) and access the library with any API to incorporate clips into an application that the user is developing.¹⁶

Online clip licensing – For uses where licensing from the content owner is appropriate, motion picture companies have moved much of their clip licensing to an online system. This is intended to simplify and shorten the licensing process. In some cases, the entire transaction can be completed online, including searching the studio's movies for the clip that is desired, putting clips into an online cart along with details of the proposed use of the clips. After the prospective user checks out using the site, the studio reviews the request and, if the studio agrees to the license, responds with a link to the desired clip.¹⁷

Other services facilitated by TPMs include: Flixter, Amazon (Instant Video and Prime), Hulu and Hulu Plus, Microsoft Zune/Xbox, Netflix, Android Market, Vudu, Redbox, BD sales, DVD sales.

D. Music

iTunes Match. Since 2011, this service enables consumers to access purchased music on a variety of devices and at a variety of locations. For a low annual rate, the service even allows consumers to access, online, music purchased on CDs rather than through iTunes.¹⁸

Spotify. Since 2011, Spotify offers users a vast library of recorded music, available for ondemand streaming. Spotify also enables creative methods of sharing music with friends. The service is offered in free advertising supported form, or by multiple subscription models. In 2014, Spotify reported 3 million paid subscribers in the U.S.¹⁹

Muve Music. This service allows users to download millions of songs directly to a mobile handset from anywhere, with unlimited music downloads included in the user's rate plan.

¹⁵ *See id.*

¹⁶ *See id.* at 8.

¹⁷ *See id.* at 9; *see also* www.universalclips.com for an example of this type of service.

¹⁸ *See* ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 14; *see also* APPLE iTunes MATCH, <https://www.apple.com/itunes/itunes-match/> (last visited Sep. 15, 2014).

¹⁹ *See* ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 14; *see also* Yinka Adegoke, *Spotify Now Has 10 Million Paid Subscribers, 3 Million In U.S. (Exclusive)*, BILLBOARD (May 21, 2014, 8:00 AM), <http://www.billboard.com/biz/articles/news/digital-and-mobile/6092226/spotify-now-has-10-million-paid-subscribers-3-million>.

The service includes songs from Universal Music Group, Warner Music Group, Sony Music Entertainment and EMI Music. Muve also allows users to create their own ringtones, ringback tones and playlists.²⁰

E. Operating Systems and Software Distribution Platforms

App stores – Apple’s App Store, Google’s Android Market, Microsoft’s Windows Phone Marketplace, Amazon’s Appstore, RIM’s BlackBerry App World, and others provide users with a centralized place to locate and acquire software applications for their device. Developers – professional and amateur alike – have created over a million different apps for mobile devices in less than four years. App stores cover both mobile and desktop operating systems.²¹

Security upgrades— Thanks to access controls, virtually all commercial software applications can be accessed, downloaded and/or updated online, whether directly from the developer or through third parties.²²

Cloud computing –As software is increasingly downloaded for use or delivered as online services in the future, the importance of keys, IDs and passwords in enabling these services while protecting software copyright holders’ rights increases accordingly.²³

The breadth and variety of services enabled by TPMs and unique experiences offered to consumers as a result demonstrate the beneficial effect the anti-circumvention provisions in section 1201 have had on the development of the digital market for entertainment products both among independent creators and major copyright owners/distributors. We urge the Subcommittee to ensure these provisions of the Digital Millennium Copyright Act continue to serve these goals.

²⁰ See CRICKET WIRELESS, <https://www.cricketwireless.com/o/support/apps-and-services/muve-music/muve-music.html> (last visited Sep. 15, 2014); see also ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 14.

²¹ See ASSOCIATION OF AMERICAN PUBLISHERS ET AL., *supra* note 2, at 15.

²² See *id.*

²³ See *id.* at 15, 16.