



# WARREN'S Washington Internet Daily

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## Today's News

**PASSING MAJOR COPYRIGHT** changes likely to take 10 years, Senate IP counsel tells PFF audience. Orphan works bill seen as model for other issues. (P. 1)

**COPA POINTLESS**, unconstitutional, ACLU says. Online media, site hosts to testify today (Mon.) that the law harms adults more than it helps children. (P. 2)

**MORE MEDIA RESTRUCTURING** seen following NBC Universal layoffs, as companies adapt to digital competition. (P. 3)

**AGENCIES:** FDIC warns of phishing e-mail that could download keylogger. (P. 4)

**INTERNATIONAL:** European Regulators Group priorities for 2007 include NGNs, convergence... YouTube pulls Japanese media clips, Japanese group says. (P. 4)

**SECURITY:** Reported IE7 vulnerability actually in Outlook Express, Microsoft says. (P. 5)

**DOMAIN NAMES:** Federal court refuses to order ICANN to shutter Spamhaus's domain name... Internationalized domain name lab test announced. (P. 5)

## Copyright Update a Decade's Job, Senate IP Counsel Says

Don't expect more than "Band Aids" to copyright disputes from Congress in the short term, Senate IP Subcommittee Counsel David Jones said Fri. That approach will hurt copyright law, he told a Progress & Freedom Foundation discussion: "It may take a decade to pass... but it might be time anyway." His House peers were slightly more upbeat, citing House IP Subcommittee Chmn. Smith's (R-Tex.) progress on a relatively popular orphan works bill, but agreed a wide gap remains on some issues, such as fair use vs. broadcast and audio flags.

Smith wove 3 bills into his huge Copyright Modernization Act (HR-6052) shortly before Congress left to campaign, but after opposition rose, he admitted there's no "realistic way for the bill to be enacted this year" (WID Sept 28 p7). The bill includes measures on Sec. 115 licensing, orphan works and criminal penalties for infringement. "Regardless of what happens in the next few weeks" -- the Nov. election -- the House IP Subcommittee will debate copyright measures in 2007, Counsel Joe Keeley said.

Watchable in 2007, Keeley said: Impact of a Copyright Office ruling that ring tones are covered by compulsory licenses (WID Oct 18 p5) on the Sec. 115 provisions in Smith's bill; the Copyright Office's rulemaking following its triennial DMCA anticircumvention hearings this year, and one on Sec. 108 exemptions for educational and library use. He predicted a 12-18 month time frame on the latter, about what the orphan works inquiry took.

Too much has changed in the copyright sphere in the past 15 years for gradual change to work, Jones said. "It's not even close to the same market for music," and ISP obligations under the DMCA were designed when online bulletin boards were the norm, he said. Revising license laws "takes at least years and frequently decades," by which time assumptions on market structure are outdated. But "the patchwork approach [to legislation] really is problematic," he said. Keeley voiced hope of solving "discrete issues" long-term in less time.

Smith's orphan works bill should be the model for seeking input from and mediating among divergent interests, speakers said. Jones called the Senate's orphan works bill "not ready for prime time," but said it mirrored Smith's approach, which Senate IP Chmn. Hatch (R-Utah) likes -- limiting liability for users who do a "reasonably diligent" search for copyrighted works' owners before incorporating them in a new work. The biggest dispute is what comprises a "good faith" search, said Keeley. Visual arts groups want a detailed list of conditions users must meet to qualify for limited liability; others want flexibility for courts or the Copyright Office. "For copyright legislation, [support] was pretty much near-unanimous," Keeley said.

Revising Sec. 115 on compulsory licensing has been a nightmare from the start, Keeley said, noting his first hearing as a subcommittee staffer was on Sec. 115. The scope of the section, which under Smith's bill could extend to "incidental" copies of digital files used only for smoothness of delivery and playback, is the big disagreement, he said. The "incidentals" dispute isn't "one of those split-the-baby issues" that could be compromised effectively.

Amy Levine, aide to Rep. Boucher (D-Va.), said her boss still wasn't satisfied with the latest language in the Sec. 115 bill, which didn't extend an exemption from licensing to satellite radio devices that can record and "disaggregate" music. The underlying problem is that "more and more analogous business models" -- performance and distribution of digital music -- "are being treated more and more differently under the laws," said Jones, who backs the Smith bill's language. Not really, Levine said: Satellite radio companies already pay royalties for their devices' recording functions under the Audio Home Recording Act (AHRA), and with no digital output on a device, music can't be moved elsewhere. "Congress has spoken to the issue" via AHRA, she said: Why "double-dip" and make satellite radio pay for both performance and distribution licenses? "Music becomes a commodity" that artists decreasingly control under Boucher's preferences, Jones said.

The broadcast and audio flags couldn't be more different in their industries' approach to legislation, Jones said: The broadcast flag is "not a bad Band Aid, as far as Band Aids go." Whereas the broadcast industry has discussed possible technologies and standards for a flag for a year, the RIAA hasn't been at a single meeting of the flag technical working group, Levine said. Record labels haven't figured out what behavior they want to block via flag -- mass redistribution or personal use some would call fair, Jones said. They should take care not to push for flag protections on computer chips themselves, some of which are so ubiquitous they're used in toasters, and should focus on device purpose, he added. "It's unclear who the champion would be" for an audio flag bill in either chamber, Jones said.

Asked if Boucher would back giving the FCC jurisdiction over the broadcast flag, Levine said sure -- but a bill would have to exempt local news and educational programming. And it would have to be merged with House Commerce Committee Chmn. Barton's (R-Tex.) fair use bill (HR-1201), which rightsholders loathe. Fat chance, Keeley said to laughter.

Analog hole legislation is bad news for requiring specific technology, Levine said. It would require companies to pay a \$10,000 licensing fee for technology to prevent digital to analog conversion and reversion, a "huge boon that Congress is dropping in the lap" of an as-yet-unnamed company, she said. Asked if Boucher would support a bill that removed the proprietary language, she said it's "something worth looking at." -- *Greg Piper*

### Age Verification 'Burdensome'

## **Witnesses, Advocates to Tell Court to Strike Down Online Child Protection Law**

The Child Online Protection Act (COPA) doesn't cover instant messaging, e-mail and other increasingly popular forms of Internet communication, making it both "unconstitutional" and "ineffective," ACLU staff counsel Chris Hansen said on a conference call by opponents of the law Fri.

To e-mail readers: By using our e-mail delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and news-letter usage information from any computer that opens this e-mail. We do not share this information with anyone outside our company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at [www.warren-news.com/privacypolicy.htm](http://www.warren-news.com/privacypolicy.htm).

The law -- which imposes penalties up to \$50,000 daily and up to 6 months in jail for hosting material considered harmful to minors -- will be tested starting today (Mon.) in U.S. Dist. Court, Philadelphia. *ACLU v. Gonzalez* was remanded by the Supreme Court after a slim majority suspended the law (WID June 30/04 p1). Children's advocates have pushed for years for legislation like this, said Enough is Enough Pres. Donna Rice Hughes: "We haven't had any type of a 'cyberwrapper'" to protect children... It's an absolute disgrace." Hughes worked on the COPA Commission, which helped draft the law.

In a preview of her testimony, Salon.com editor-in-chief Joan Walsh said COPA would financially and journalistically harm online magazines like Salon.com, which frequently publish "explicit" but newsworthy content. "It's not theoretical to us; we really feel that we would be constantly vetting our content for things that could be over the line," she said. Salon and others hosting risque content would have to verify users' ages, a "quite burdensome" process, she said. The online magazine, which offers free, ad-supported content, resorted to a subscriber-only model during the hard days of the dot-com bust. Requiring logins and passwords eliminated most of the site's traffic, she said. COPA "would really threaten our continued existence," she said.

The operator of SexualHealth.com, a medical FAQ site, said the law would put him and his partners at risk of criminal prosecution and prevent teens and adults from learning answers to important -- but often embarrassing -- health questions. Mitchell Tepper said it also would give parents and guardians a "false sense of security."

Salon and others have fallen victim to the ACLU's "smokescreen," Hughes said: "There are always these little poster-child people that the ACLU parades out there and puts the scare tactic onto them, making them think that they are going to be potentially liable."

Parents, not the govt., should take responsibility for protecting their children online, Walsh said. The ACLU proposed Internet content filters as an alternative to the law. The filters -- now included in many ISPs' start-up software and in Microsoft's soon-to-be-released Vista operating system -- aren't perfect, but at least they're "less restrictive [and] more narrowly tailored," Hansen said. If the court sides with the ACLU, the govt. will have to start from scratch, drafting new legislation -- and it's already too late, Hughes said: "We've already lost a whole generation of kids. -- *Alexis Fabbri*

## Writing's on the Wall

### **NBC Universal Layoffs Bring Spotlight to Industry-Wide Changes**

Layoffs and restructuring at NBC Universal will probably propagate through other media, as companies react to new media such as Internet content delivery, industry officials and observers told us. "It's inevitable. It's a combination of reduction and expansion. What you'll find initially is some traditional jobs will be changed," said Pulvermedia CEO Jeff Pulver: "It's a long time coming, but it's clear to me there are some smart people that are understanding the impact of broadband on the future of TV and media."

Companies will have to reallocate resources including staff into digital platforms like broadband and mobile, Pulver said. Indeed, NBCU said much of the savings it realizes from cutting 700 jobs by 2008, reducing its programming costs and closing an MSNBC studio in N.J., will be put back into "higher-growth" areas such as its digital assets. "We have to understand that the changes of the next 5 years will dwarf the changes of the last 50," NBCU TV Group CEO Jeff Zucker said in a press release.

TV stations groups have already taken steps similar to NBCU's announcement. "We see the writing on the wall," LIN TV Exec. Vp.-Digital Media Greg Schmidt told us: "The process is going on in most companies, but NBC chose to sort of make an announcement to make a point of it." For instance, LIN recently switched to a more automated production system, reducing the number of people it takes to put a live newscast on the air. That frees up personnel to handle digital media tasks, Schmidt said.

Digital media revenue might be small now, but developing it is a priority, Schmidt said: "A lot of these things we're investing in are not going to produce instant revenues but they will produce growth, which is something that our core business is not producing right now."

Big media companies like NBCU and Disney will adapt well, but changes in media distribution will threaten TV stations, Pulver said: "The TV affiliate model may be screwed." Broadband video will let independent companies compete for local ad dollars and give TV broadcasters competition they're not ready to handle, he said.

Broadcast networks still provide a venue for high-quality program and deliver large audiences to advertisers, but their effectiveness is diminishing, said BIA Financial Vp Mark Fratrik in a written statement. Under NBCU's cost reduction plan, the network will no longer produce high-cost drama programming for 8-9 p.m. That decision shows advertisers aren't interested in paying to reach the network's smaller audience at that hour, he said. "They [NBCU] have to continue to invest in other distribution channels... to move their product to all audiences, young and old," he said.

### Share Price Trumps Product Quality?

NBC Universal's spending on Telemundo shows broadcasters are eyeing Hispanic audiences for growth amid competition from online media including YouTube, said media investor Leo Hindery, who helped arrange \$150 billion in mergers. Zucker's remarks Thurs. illustrate media targeting general audiences are more vulnerable to competition than niche products, Hindery said: "He didn't talk about cutting back Telemundo."

Broadcasters and cable operators alike are grappling with the Google phenomenon of programming moving online, Hindery said: "Google is a competitor to NBC but it's also a competitor to Comcast." NBC touted its online business, saying digital sales will exceed \$1 billion by 2009. "Recent growth has been driven by initiatives such as the partnership between Yahoo and Telemundo" to start a Web site targeted to Hispanics, said NBC.

One prominent Internet investor said there's still money to be made in mainstream programming. "I think there is plenty of opportunity," HDNet Chmn. Mark Cuban said: "The question is which comes first, investing in great content, or earnings per share. Companies are so worried about share price, they lose sight of product quality." -- *Josh Wein, Jonathan Make*

## Agencies

The FDIC warned that a new phishing e-mail had gone out in the agency's name, similar to one in Sept. (WID Oct 3 p4) but with a more malicious link. The e-mail asks recipients, who are named in the subject line, to click a link that will "implement the LinkBank System" -- but the link downloads an executable file that's "likely installing a keylogger or similar piece of malicious software," the agency said in a consumer alert.

## International

Next-generation network (NGN) deployment and convergence are top new priorities for telecom regulators in 2007, the European Regulators Group (ERG) said. A revised EU e-communications regulatory framework in EC review won't take full force for years, but national regulators already face NGN challenges demanding "clear and timely guidelines" for a harmonized approach, an ERG work program said. The time is right to diagnose potential technical, economic and legal problems that could persist in an NGN environment and study regulatory affects of blurring of boundaries between access and core networks, it said. Regulators also will consider convergence issues such as access to networks and content and bundling of broadband services, with its related consumer protection issues. Work on older issues will go on, said the ERG, whose work plan includes: (1) Responses to EC proposals for regulatory framework changes. (2) More work on ways to gauge VoIP, wholesale broadband access, local loop unbundling and other best practice indicators for market competitiveness. A public hearing on the ERG draft work program is set for Nov. 7 in Brussels -- [erg-secretariat@ec.europa.eu](mailto:erg-secretariat@ec.europa.eu).

YouTube pulled nearly 30,000 clips following a complaint from Japanese media companies, according to the Japanese Society for Rights of Authors, Composers & Publishers, Reuters reported. The Society said it would ask YouTube to proactively screen for copyrighted content. It represents 23 TV networks, movie distributors and other media companies. YouTube and the Society couldn't be reached for comment.

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German customers were presented 2 new TV products during the Munich Media Days last week. Deutsche Telekom officially launched its IPTV product that's part of a triple play package. The start of IPTV based on DT's new VDSL backbone had been delayed by the debate among DT, the German govt. and the EC about regulation of the VDSL network. Users get 100 TV channels, about 60 free, and can chose among 1,800 films from the video on demand database. Together with a flat rate fast Internet and flat rate DSL telephony, users pay €80-90 monthly. DT board member Walter Raizner said every broadcaster was invited to join the platform, which is based on Microsoft software, a fact that has been criticized because of its proprietary interfaces. The 2nd announcement came from German private broadcasters Pro Sieben and Sat1, who launched ProSiebenSat.1 Mobile TV over Mobil TV Germany's platform. In addition to their monthly cell bill, mobile TV costs €4.95 per month. Traditional broadcasters and cable companies complain that the new services are free from strict German media regulation and enjoy competitive advantages. -- *ME*

## Security

For those worried that Internet Explorer 7 was buggy from the start, Microsoft offered reassurance: It's just another vulnerability in an older program. On the Microsoft Security Response Center blog, Christopher Rudd said the cited bug in IE7 actually was found in Outlook Express, although the browser is "the vector for the vulnerability itself," he said. The company doesn't know of the vulnerability being exploited in any attacks but is monitoring the situation, he said. Security company Secunia said Thurs. the vulnerability came from an error in the handling of redirections using the "mhtml:" universal resource identifier, which "can be exploited to access documents served from another website" and disclose sensitive information. It recommended disabling active scripting support to fix the problem. The SANS Internet Storm Center said the purported IE7 vulnerability was "nothing new" -- it surfaced in April -- but confirmed the vulnerability was actually in Outlook Express. The group's tests found that the vulnerability can retrieve data only from the Web page where it's displayed, and only when a user is logged in, say, at a banking website.

## Domain Names

A federal court declined to order ICANN or registrar Tucows to suspend Spamhaus's domain name, saying the relief requested was too broad. Spamhaus was sued in Ill. state court in July on claims it wrongfully blacklisted mail from e360 Insight, which calls itself an opt-in e-mail marketing company but which Spamhaus contends is a spammer (WID Oct 11 p1). Spamhaus got the suit moved to the U.S. Dist. Court, Chicago, but it then withdrew from the case. A default judgment and permanent injunction were entered against the spam-cop this month. When Spamhaus declined to remove e360's Internet Protocol addresses from the list, the plaintiff sought an order requiring ICANN or Tucows to suspend the spamhaus.org domain. U.S. Dist. Judge Charles Kocoras denied the request Oct. 19, saying there's no indication ICANN and Tucows aren't "independent entities, thus preventing a conclusion that either is acting in concert with Spamhaus to such a level" that they could be bound by an order against Spamhaus. Moreover, Kocoras said, a suspension would cut off all lawful online activities of Spamhaus through its domain, not just those complained of: "While we will not condone or tolerate noncompliance with a valid order of this court, neither will we impose a sanction that does not correspond to the gravity of the offending conduct." Spamhaus is seeking review of the default judgement in the 7th U.S. Appeals Court, Chicago.

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Stockholm-based Autonomica AB will conduct a lab test of internationalized top-level domains to gauge their viability and effect on the security and stability of the domain name system, ICANN said Fri. Results are expected by the Dec. board meeting in Sao Paulo, Brazil. If the lab test is successful, a live test will follow.

## Industry Notes

Google's profit nearly doubled in the 3rd quarter from a year earlier, rising to \$733 million from \$381 million. Revenue rose 70% to \$2.7 billion, and its traffic acquisition costs were \$825 million, or 31% of ad revenue. International business did particularly well "in a seasonally weaker quarter," CEO Eric Schmidt said.

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Wired News released code developed by a contributor that found what it called predatory patterns in MySpace user profiles -- contradicting MySpace claims that it was impossible to develop code to do such a thing. Results from searches using the code led to an arrest in Suffolk County (N.Y.) on attempted child endangerment charges, writer Kevin Poulsen said. "Anyone is free to take the software, look at it, validate (or invalidate) the methodology, discuss, tinker and improve the code," he said. But he warned the code wasn't a "plug-and-play application for average parents or concerned citizens who want to protect specific children who have MySpace accounts." The code requires a Web server, MySQL database server and some knowledge of Perl scripts. "This code is a starting point for human reporting," Poulsen said.

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Streaming video traffic at News Corp.'s MySpace is poised to grow now that the company has made it easier for users to add videos to their websites and begun highlighting user-created video on its homepage, Pali Research analyst Richard Greenfield wrote in a note. "Video growth is set to accelerate notably over the next few months due to [these] technical changes," he said.

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A Google Earth partner is searching for automated public alert data to publish on the imaging service, officials said at an ITU-sponsored meeting last week. "Neopolitan will entertain requests from any alerting agency worldwide to publish their official, public alerts into the Neopolitan/Google Earth infrastructure," said Andrew Rogers, system architect at Neopolitan, which works on Google Earth systems. The data could be in the common alerting protocol standard or a different format, said Frank Robles, Neopolitan CEO: "We are doing Amber Alerts in the US as well as earthquakes for the planet." The company is also looking for disease control data, Robles said: "Anything that the public needs to know about... What is very important however is that these data points have a specific longitude/latitude component." -- **SB**

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A new online video sharing service compensates content creators with ad dollars, its chief said. But hosting 100,000 pieces of content puts the company in the "difficult position" of screening for copyright infringement, hate speech, defamation and other potential legal sore spots: "We taught our user base what we're willing to play with," said Revver.com founder and CEO Steven Starr at the U. of Southern Cal. last week. In its 7-month history, the company has received only one cease & desist letter, he said. Revver pays video makers some of the money it gets from ads its server attaches when a user downloads a clip. Investors in the Hollywood company include Comcast Interactive Capital and Turner Bestg. -- **AF**

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News Corp. doesn't plan to buy EchoStar and is focused on expanding online businesses, said Chmn. Rupert Murdoch. Asked by an investor at the company's annual meeting if a deal that involves EchoStar and DirecTV, part owned by News Corp., is in the works, he said: "No." MySpace sales are doubling every 4 months, with "new media assets... are moving quickly toward profitability," he said: "We can afford to make these investments in such high growth businesses because our established businesses are such bedrocks of steady cash." In addition to MySpace's collaboration with the National Center for Missing & Exploited Children to fight crimes against kids, Murdoch said, the company is in "constant discussions with parental bodies and legislators throughout the country." Fox is transcending sagging broadcast TV ad growth amid surging online marketing, Murdoch suggested when queried on the NBC Universal restructuring. -- **JM**

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EchoStar and WildBlue will combine to provide high-speed Internet service via satellite, they said. Varying by package, data rates are available up to 1.5 Mbps, they said. Prices start at \$49.95 per month.

## Washington Internet Daily Calendar

Oct. 23      Mobile Monday DC, "Hello World Through SMS," innovations in digital graffiti, 5:30-7:30 p.m., Science Club, 1136 19th St. NW, Washington -- [www.mobilemonday.net/mm/washingtondc](http://www.mobilemonday.net/mm/washingtondc)

- Oct. 23-24 Search Engine Strategies 2006: Multimedia & Mobile Edition, Wilshire Grand Hotel, L.A. — [www.searchenginestrategies.com/sewmultimedia/oct06/index.html](http://www.searchenginestrategies.com/sewmultimedia/oct06/index.html)
- Oct. 23-26 Digital Hollywood Fall, Loews Santa Monica Beach Hotel, 1700 Ocean Ave., Santa Monica, Cal. -- [digitalhollywood.com/DigitalHollywoodReg.html](http://digitalhollywood.com/DigitalHollywoodReg.html)
- Oct. 24 Alliance for Public Technology and National Caucus and Center on Black Agedbrown bag lunch: "Older Adults, Broadband and the Future of the Internet" featuring Kristin Fabos, SeniorNet. Location: NCBA, Suite 800, 1220 L Street, NW.
- Oct. 24 Pulvermedia and Isen.com Peripheral Visionaries Internet & Communications Summit, National Press Club, Washington -- [www.pulver.com/pv](http://www.pulver.com/pv)
- Oct. 24 U.S. Telecom webinar on IPTV, 1 p.m. -- [www.ustelecom.org/events.php?urh=home.events.web20061024](http://www.ustelecom.org/events.php?urh=home.events.web20061024)
- Oct. 24 FCBA Fall Reception with FCC and NTIA bureau and office chiefs, 6-8 p.m., J.W. Marriott, 1331 Pennsylvania Avenue, NW, Washington -- [www.fcba.org](http://www.fcba.org)
- Oct 25 CEA, Public Knowledge and Media Access Project news conference, "Digital Freedom Campaign," 10 a.m., National Press Club, 529 14th St. NW, Washington -- Jennifer Stoltz, [jstoltz@qorvis.com](mailto:jstoltz@qorvis.com)
- Oct. 25 NetChoice Coalition teleconference to discuss importance of ICANN, govt. interference, 1:30 p.m. — 888-453-4221, code: 762507
- Oct. 27 "Business Models for Rural Broadband," Columbia U. Institute for Tele-Information, N.Y.C. -- <http://www.ersvp.com/r/event5291>
- Oct. 30-Nov. 2 U.N. Internet Governance Forum, "Internet Governance for Development," Athens -- [www.igfgreece2006.gr/](http://www.igfgreece2006.gr/)

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