



# IT Perspectives from Inside the Beltway

Gigi B. Sohn  
President



# About Public Knowledge

---

Founded in 2001 by Gigi B. Sohn, David Bollier and Laurie Racine

A Washington, DC-based non-profit advocacy and education organization that represents the public's rights in intellectual property and broadband policy debates

We work in Congress and administrative agencies (FCC, Copyright Office, FTC)

Substantive policy expertise, coalition building, press and public education

Strong relationships with other non-profits, like-minded industry and policymakers

We promote openness, access and the ability to create and compete



# PK on Intellectual Property

---

Protection Derives from Article I, Section 8 of the US Constitution: Congress has power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;...”

Artists/innovators get a limited monopoly as an incentive to create AND the public gets broad access to those creations and inventions so that knowledge can be shared and new works created

Reality: legislative/policy process is used to privatize information, limit innovation and competition and diminish consumers' rights. Neither creators nor the public benefit



# A Decade of Enclosure

---

## Stronger and Longer Copyright, Trademark and Patent

- Automatic Copyright/long terms

- Permissions culture/extreme licensing

- Expansion of Secondary Liability  
(Grokster)

- Exclusive Rights in Broadcast Signals

- Low Quality Patents

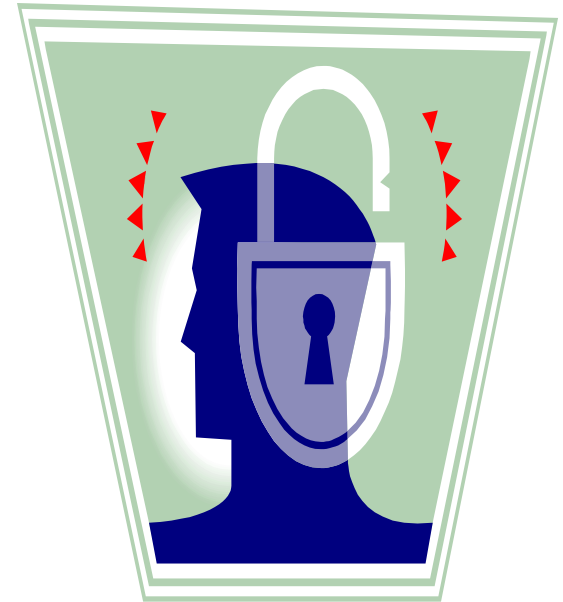
- Trademark Dilution

## Dilution of Safeguards

- Fair Use

- Sony Betamax standard

- Prior Art and Originality



# A Decade of Enclosure

---

Technological Protection Measures and  
Contract Law that Override Copyright Law

Copy Protection Technologies Backed by  
the Digital Millennium Copyright Act  
(DMCA)

Restrictive End User License  
Agreements (EULAs)

Government Technology Mandates

Video and Audio Broadcast Flags

Closing the “Analog Hole”

Forced Filtering of Computer Networks



# Moderating Forces

---

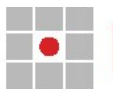
New Technologies

Changing Expectations and Attitudes Towards Copyright

Growth of Copyright Reform Movement Since 2000

Influence of Technology Companies

Policymaker Hesitation



# What's Hot in DC: Copyright and Patent

---

Federal Funding for Higher Ed  
Conditioned on Network Filtering (H.R.  
2669)

NBC request to FCC to mandate ISP  
filtering (AT&T agreement)

Webcaster Royalties/Licensing Reform

DOJ/Chamber of Commerce  
Enforcement Proposal

Mandatory NIH Open Access

Orphan Works

Patent Reform



# What's Hot in the Courts

---

Google Book Search Case (NY)

Viacom v. You Tube (NY)

Studios and Networks v.  
Cablevision (NY)

Perfect 10 cases (CA)



Photo of U.S. Supreme Court at:  
<http://flickr.com/photos/bootbearwdc/37621686/>; provided under creative

commons attribution-sharealike 2.0 license





# PK on Broadband

---

## Principles for an Open Broadband Future

Open Competition

Open to Attached Devices

Open to all Applications and Content

Open Spectrum

Open to All at Affordable Prices



[www.publicknowledge.org/content/papers/open-](http://www.publicknowledge.org/content/papers/open-)



# How We Got to Closed Duopoly

---

Telecommunications service providers must be “common carriers,” *i.e.* “it shall be unlawful...to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service.” *Section 202 of the Communications Act of 1934*



# Telecom Regulation: A Very Quick History

---

1934-1984: Monopoly Price Regulation

1984-1996: AT&T broken up into 7 regulated RBOCs and one unreg. long distance company with line of business restrictions (info services, hardware, long distance). Overseen by Judge Harold Greene (D.D.C.)

1996: Telecom Act - Monopoly Regulation to Competition (?)



Photo of rotary phone at: <http://flickr.com/photos/spierzchala/363414628/>;

provided under creative commons attribution 2.0 license



# Telecom Act of 1996

---

Repealed AT&T Consent Decrees

Elements:

Interconnection

Bell Company Entry into Long Distance

Telco Entry into Video

Universal Service/E-Rate

1997-2004: Requirement of openness repeatedly litigated by the Bells, e.g., *AT&T Corp. v. Iowa Utilities Board*, 525 US 366 (1999)



# Assault on Common Carriage

---

2005: Supreme Court Upholds FCC Decision that Cable Modem Service is an unregulated “information service” *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005)

2005: FCC says DSL is an information service

2007: FCC says wireless broadband is an information service



# U.S. Broadband Policy Today

---

## No requirement of openness

Incumbent service providers can discriminate against applications and services in which they do not have a financial interest (net neutrality)

No interconnection requirement

No access to network by facilities-based competitors

Wireless is completely closed

## Lack of broadband competition

Cable/telcos own 96% of residential lines

FCC's auction rules tend to favor incumbent service providers

US Ranks 15th of 30 OECD countries in broadband deployment and adoption

US way behind in both speed and value

## Inefficient allocation and use of spectrum ("public airwaves")

2004 FCC Report: most markets have unutilized or underutilized spectrum

Smart radios make underlay and overlay usage possible, but incumbents resist

Spectrum auctions are poor mechanisms for efficiently allocating spectrum



# What's Hot in DC: Broadband Policy

---

## Net Neutrality Debates

FCC Inquiry

FTC Report

Netroots/Blogosphere

## Right to Attach Devices: Wireless “Carterfone”

Skype Petition

700 MHz Spectrum Auction

## Broadband Deployment Disclosure Efforts

S. 1492, Broadband Data Improvement Act

House Discussion Draft on Broadband Mapping and Data

## Debate over US World Broadband Ranking

## Broadcast White Spaces

700 MHz Auction



# 700 MHz Auction

---

FCC, Congress: Goal is 3rd broadband service provider

At issue: 4 “opens”

- Open devices

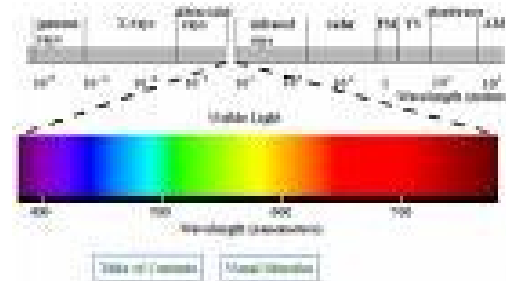
- Open applications (but not NN)

- Open services

- Open networks

FCC Chairman Martin: open devices and applications on 1/3 of spectrum

Decision next Tuesday





# Look Out For:

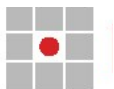
---

Regulation of social networks

Regulation of P2P networks

Regulation of spyware, data mining, other privacy and security issues

Regulation of indecent and violent speech



# Key Questions for the Next Two Years

---

Will the content companies learn to live with (and love) You Tube, MySpace and other disruptive new technologies?

Will ISPs (including higher ed) be forced, either by government mandate or licensing, to filter their networks for copyright violations?

Will telephone and cable companies turn the open Internet into a closed cable system?

Will the iPhone ever be free (as in freedom, not as in beer)?

Will we ever see a 3rd (or 4th or 5th) broadband competitor?

Will Congress pass patent reform? Will it make a difference?

Will the public get engaged in copyright reform as it has in the debate over net neutrality?





# Questions?

Thank you!

*Please visit our website:*

[www.PublicKnowledge.org](http://www.PublicKnowledge.org)

