IT Perspectives from Inside the Beltway

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President

Public Knowledge
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)
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-
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 (?)
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

Assault on Common Carriage

2005: Supreme Court Upholds FCC Decision that Cable Modem Service is an unregulated “information service” Nat'I 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 companies 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