

>> Teresa M. Schwartz: I'm also an emeritus Federal Trade Commission employee. And I wanted to just put into historical perspective, a little bit, my return today to the Federal Trade Commission and our conference. In 1995, I was Deputy Director of the Bureau of Consumer Protection here. Working for and with Jody Bernstein, who is sitting in the second row there, in the middle, who is the Director of the Bureau of Consumer Protection. And we held a week of hearings, called "Consumer Protection in the Global High-tech Marketplace." And I was thinking, as Mr. Donahoe -- not all of you were at lunch, but the CEO of eBay was talking about the beginning of eBay and the founder who started eBay, in a very simple way. He broke his pointer pen and decided he didn't want to throw it away, he might try to sell it online. He wrote some code. He put this little broken pen on the Internet and sold it for \$14. And that was the beginning of eBay. In 1995, it was the beginning of the FTC looking at the Internet and seeing its potential, both good and bad, for consumers. We could never have imagined what has happened in the interim time, but our concern grew out of the fact that we had had a very bad experience with a new technology, which we called a 900 number. It was a pay-for-telephone service technology, and it had been really captured by the scammers. And we thought, "my goodness, could this possibly happen to the Internet?" And it could become the Wild West, as it had with the 900 number technology. And, really, the scammers also destroyed the technology. So, we looked ahead at what we might do in the way of preparing for the Internet and the possibility of fraud on the Internet and the need for consumer protection, under the Federal Trade Commission Act, to apply. So much has happened in the interim. I'm really pleased to be back here and, again, looking at where we are now and also, more importantly, where we're going. This particular panel is dealing with a particularly dynamic area of the Internet, and that is the sale of digital products, digital content. In this morning's "New York Times" is a story about something that's on the horizon. It's just an example. We heard about 100,000 applications now available on the iPhone. Now, the magazine publishers are preparing to work together, also with newspaper publishers, in preparation for taking their magazines online in a new way. The current book readers are not going to be adequate for magazines, which offer a kind of a different format, so they're preparing software for devices that don't even exist yet, because the magazine reader will have to be different than the book reader, and they want to also prepare for mobile technology. So, that's something that's going on, we see this morning in the newspaper and who knows what else is ahead of us. What we do know is that digital content is one of the most successful areas of e-commerce. We heard yesterday from Jill Johnston, for example, a study that

showed, in the UK, that 38% of online purchases are digital products. These products have, of course, great potential for cross-border sales. You don't have to worry about physical products being shipped across boundaries and so forth. So, this is an area of enormous potential. It's obviously an area that consumers are very, very interested in. There is growing demand for these products. There was also some discussion yesterday about some of the consumer protection issues, such as interoperability. Hope I don't have to say that again. The digital rights management issues. In your report that accompanies the program, you'll see, on page 24, a list of, kind of, some of the areas of concern involving consumer protection. Fortunately, we have today a very distinguished panel of experts who are going to help us understand this area -- its benefits, its risks, their concerns and, hopefully, some of their proposals for bringing the guidelines up to date for this particular area. The first speaker is Bjorn Thon, who is the Consumer Ombudsman in Norway. He's held that position for -- since the year 2000. He's an attorney. The second speaker, Sylvie Forbin, who is Vice President of Public and European Affairs for Vivendi. She's an economist and a very distinguished member of the panel. The third speaker will be Mr. Patrick Ross. He's a journalist by training. He's the Executive Director of Copyright Alliance. Then, we will hear from Mr. Graham Henderson. He's also a lawyer. I should give fair warning here. He's president of the Canadian Recording Industry Association. And finally, we'll hear from Eddan Katz, who is the Director of International Affairs at the Electronic Frontier Foundation. So, I will turn this over to Bjorn, who will start us off.

>> Bjorn Erik Thon: Well, good afternoon, everyone. Thank you very much for the invitation. I'm really honored to be invited to this very important conference. I think the only one who will be disappointed about my presence here is my youngest son, because I talked to my wife yesterday, and apparently he has been going around telling all his friends that I am about to have a presentation in the White House. So, coming back, telling him that I've only been with the OECD. Maybe I'll just play possum. I have taken a picture, actually, I bought it yesterday, with me and Obama. It cost me \$5. I took it on the train station. It's not the same. It's not the same thing. But thank you very much. I'm very happy to be here. I'm also very happy that you put this issue of digital content on the agenda, because it's a real important one. If we go back nine years, I'm not going to talk too much about my family, but I did have dinner with my wife, and that was a very special day for us, because that was the day I sent my first text message, my first SMS, and that

was nine years ago. Going back a little further, 13 years ago, I got Internet in my home, and I was quite early. Quite a few people got it a couple of years later. I was afraid of being ripped off, so I waited a couple of years before I purchased on the Internet for the first time. Of course, I got ripped off. But anyway, that was an experience as well. That's 11 years ago. Six years ago, I bought my first digital content. I think it was a song, and I think it was on iTunes. And five years ago, I was in London, again, without my wife this time. I had a speech, a presentation, a meeting. Some of were you there, some of you might remember it, because I was talking about ringtones, wallpapers, and stuff that you bought on your mobile phone. And I asked the audience, how many of you have actually bought something on a mobile phone? I was, of course, hoping to get the same reaction as the president of eBay today, that everyone was raising their hands, but no one did. So, not a single person, actually, of these regulators in the room, had bought something on the mobile phone. Which was, of course, very scary. But that's another story. So, why do I tell you all these stories from my experiences as a consumer? Well, I do it because this development has just started. Five years ago we -- sorry. Five years ago, this was something brand-new, and it's still something brand-new. I think it's very important that we remember that. That digitalization has just started. So, where this development is actually going to end, we really don't know. I will say something about this today. I will take you a little bit through the development, from 1999 to 2009, from the guidelines and up to date. I will talk about and I will focus, especially, on some new challenges, lack of interoperability. That's a difficult word, but imagine saying it, for me, who is not an English speaker by my mother tongue. And lack of interoperability. But anyway, I will say a little bit about the present legal situation, but even more about the present situation. And I will also try to say a few words about the guidelines, in light of these developments that we have seen. I will also show you some pictures. These are all mobile phones. This was like mobile phones used to look about five years ago. You should try to send a text message on some of those. It will take you about five minutes, because they were not exactly user-friendly. Today, they look like this, and they are absolutely beautiful, aren't they? They can be used for other things. I will not bother you about going through all the things that you can use this phone to do, but SMS, e-mails, smart phones, digital TV, this is some of the things that we have got since 1999. Portable PCs, MMS, Web TV, mobile phone, and lately, the wireless reading device, Kindle. Have you seen this before? Yeah. It's a good one. Mark Twain. I'm not reading Mark Twain. Some crime novels, I believe. But I'm also showing you this, because I believe that, in many ways, the consumer world

has been much more complicated than it was ten years ago. You have a lot of more offers. You have a lot of more choices to do. And I see some real challenges in the consumer world. I've tried to summarize these in a couple of principles, that I think is very important to have in mind. First of all, the freedom to choose. Which is under pressure. I will show you some examples of that later on, related to lack of interoperability. But I believe that consumers should be able to shop around when they are buying. I believe that consumers should be not bound to a specific device. I believe that consumers should be able to play and to use digital content, be it music, be it books, be it films, on a device of the consumer's own choice. It's not Apple who has the right to decide which device I'm going to use to play my music. That's the way I view this. Transparency. A lot of people have talked about this. Contracts should be transparent. Marketing should be transparent. Today, I believe it is not. So the question is, do digital services today live up to these principles? I believe that they do in some areas, but in other areas, they do not. And I will say a few words about this very difficult word again, lack of interoperability. I will use iTunes music stores as an example on how this is working, or to be more precise, how it used to work, because they have changed their business model now, so they do not lock in consumers the same way. But this is iTunes music store. They have a lot of, millions, songs that you can buy. If you want to download this to your PC, it was okay. Or to your laptop, or to your Mac. It was okay. But if you wanted to play it on a portable device, of course you can do that on an iPod. But if you wanted to do it on a -- not an MP3 player, or you wanted to do it on a mobile phone from Nokia, for instance. Then, it should be a Nokia phone coming up. No, it's -- okay, anyway. So, this was the situation with iTunes. It's quite problematic when it comes to the consumers possibility to actually choose a device. When we, here, have a company selling music, which maybe has a market share of 80%, both online music, or digital music and on devices. Because they almost have a monopoly on both of them, in a practical sense, and this is quite problematic. And we are facing similar situations right now. We heard some examples yesterday from the survey from Consumer Focus about eBooks and other digital services that was downloaded to the mobile, and it just couldn't play it. So, we are facing a lot of similar situation. I only brought with me two examples today. One is actually related to this beautiful kindle. Because, if you buy an eBook on Amazon, which take exactly one second -- less than one second to actually get into the Kindle, it's very impressive. You can only play it on the Kindle. Or you can play it on the PC, or you can play it on your iPhone. But, I mean, if you want to read, like, I bought a book, it's 700 pages. If you should read that on an iPhone, I mean nothing

wrong with iPhone, or even on a laptop like this, you will be blind. You know? It will ruin your eyes forever. So, it's not really practice so good. But I think it's problematic that you see that the firm is launching something, and it has to have a specific device in order to read this book. And that, in itself, is maybe not so dangerous to use that word, but you don't know what this can be used in the future. I didn't read the article today in "Washington Post," but I probably should have. Because it has been discussed quite heavily whether this is the salvation of the paper papers, whether this is actually the thing that can make people start using daily papers again, and not only on the Internet. Of course, if you don't have a device, you can only download it from one specific site, and also have this device, you can end up in a quite problematic situation. And I think it was someone who yesterday said that, who would believe that Nokia would be the number one camera producer in the world? Or the seller. And who thought that Apple should be the number one music seller? And who would believe that Nokia should be also -- I mean, they were selling tires to cars. And they are the biggest mobile producer in the world. So, we really don't know where this development is going to bring us. I can also mention another example to you, that the consumers can only watch TV programs from provider "X," let's call him or her that, on the personal reader recorder from the same provider. So, again, you have a lock-in. I could have shown you other examples, as well. Another thing is that consumer contracts are, generally speaking, not transparent. If you have tried to read conditions, terms, end-user agreement, whatever you call it, when you are buying music from iTunes, for instance, I mean you have to be a highly qualified lawyer to understand -- not even highly a qualified lawyer can actually get the grasp of the understanding, what does this really mean for me? It's absolutely impossible to understand it. We see, also, contracts with a lot of hidden costs. We see a lot of contracts with binding periods. We see that subscriptions for digital services are actually hidden, so you do not get the impression that it is a subscription. Also, you found in your examination from the United Kingdom and other countries in Europe. So, we have some situations here that have to be tackled. The problems with this, the way I see it, is that all these issues of lack of interoperability. It actually limits the consumer choice. You can't really choose which device you want to use. You can't really choose which place you want to buy your music, or your eBooks, or whatever. And the consumers can be forced to pick one device and one technology and stick to it. If you want to have eBooks today, you have to buy a Kindle. And you have to stick to the Kindle, even though, in one year or two years, other producers, they want to start making eBooks, they want to start making Kindles.

Maybe they don't sell the same book, so maybe you end up in a situation where you have to have two or three MP3 players, two or three Kindles. This is the worst case scenario, of course, I know, but still, I think it's important to bear in mind that this is a situation that we can end up with. Also, consumers, of course, can't feel the benefits from technological development, because you don't know if you pick the right -- you don't know if, even though, with Mark Twain, it's a good thing today. You don't know if this is the technological winner. Maybe it's something from iPhone, maybe it's something from someone that we have never heard of before. And that might be, actually, quite possible. We are ending up in situation with less competition and consumers -- and this is especially due to long bidding periods and bundling of products -- consumers are locked in. So, how can this -- and this is my last slide. We have seen, to a certain degree, that the market has taken care of this by itself. You know? Even though we have -- did a lot of work on this Apple case, we're going to sue Apple for the breach of contract legislation, due to this lack of interoperability. And then, they opened up their music store, and everything changed. And it really led to a new development in the market, the way I see it. But I think it's important that we are skeptical to all these lock-in mechanisms that we see that companies are trying to impose upon consumers. So, both national and international institutions do, of course, have a role to play. So do national legislators. I know that the United -- European Union -- Norway is not a member, so I don't remember that name always. So, the European Union, they have now worked paper out for hearing, called the creative content. They're trying to balance the stakeholder interest, which I think is quite interesting. So, there's a lot of new things going on. We have heard a lot about the guidelines today, and the creation of the guidelines ten years ago. And you also heard from the eBay CEO what importance these guidelines have actually had. I'm not sure, to be honest, whether you have actually read them, but at least he was bragging about them and said that they had played an important role. And I believe they have done that, too, because you can find traces of them in quite a few of the legal systems around the OECD countries. So, the questions I'm asking, and that's also, actually, a challenge to all of us, and to the OECD, especially whether we should try to build in these principles of transparency, of freedom to choose, of interoperability, and whether we should have them lay down a revised version of the OECD guidelines. Probably privacy issues and other things should be address, as well, but I think that these are really important things that should be regulated on the high level, high political level. And I see the OECD as a good way of starting that. I do not have the answers to this, but I have some suggestions that I have come forward with

and that I will also be very interested to give to you, if you decide to start such work. That's my challenge to you and to everyone. I'll take my Kindle down. And thank you for your attention.

>> Sylvie Forbin: I'm sorry, I cannot speak of interoperability. I shall not give you the answer for the question -- the very important question you ask, because we are quite -- please. There are four.

>> Male Speaker: They're interoperable.

>> Bjorn Erik Thon: He's not writing on this paper.

>> Sylvie Forbin: We have no power for these kind of issues, and we are just a user of solution -- your end solution. So, it was a big issue. Well, I have more talk about the answers that we try to give in the competence that we have. You know that Vivendi is a European group with a worldwide presence in communication and entertainment, and you know that communication and entertainment has become key components of everyday life. So, we try to fit in the everyday life desire. All the Vivendi businesses aim to meet the growing demand for online products and services. I have put, for you, the four branches where we work. Activision created, which is the game branch of Vivendi, which created the leading global online game and community with "World of Warcraft." You know a lot about UNG and you know that UNG as, is and has been at the forefront of digital initiative and you know that after participating very actively in MySpace music video, after having co-created with Nokia, which is a bundle offer content. And mobile handset all together, that we have, yesterday, announced, in New York, a very big deal that we have just made a joint venture with YouTube to create VIVO. You know that VIVO is trying to become, sort of, ad premium and perhaps later on, subscription model for free -- I insist, free, to stream, ad-supported model for the advertising. But as with Spotify, with which we worked a lot. We developed the same system on the subscription basis. And it is streaming, so we avoid the problem of interoperability, because we focus on access to content. Legal access to content. You know, perhaps some of you, was the first in France to introduce 3G services and remain the first. And some of you know, as well, a player and premium and themes channels for distribution and programming. And you -- perhaps some of you know that we have developed new activities -- captured on TV, PC and mobile. So, on those three games, music and television and cinema, we

try our best to be at the forefront of digital services. I have quoted, also, a telecom company, because it's an example of the work we do, as well, in partnership with that telecom company to develop services. And we'll try to develop that in Brazil. As you know, we will be present. To say that we are not afraid of challenges and we think that opportunities in the digital and the online market are the most important thing. Vivendi's business share important common denominators, sometimes we hear that we are just a holding, but a holding which they leverage strong -- we have in common content creation, we have in common copyright management, and we have in common, all the branches, digital technologies, so that makes an enterprise in itself. And for these -- in these kind of stream trends, we try to tackle the challenges and opportunities. I have just put two questions, which, to our minds, are important. Is there a potential -- this is a real question -- potential worldwide consumer demand for an ubiquitous access for online products and services? Second question, how to deal with the increasing risk on the content production side, and how to address fair competition from services and application with strife, at the expense of consumers? I dare say, consumers, as well as right owners. So, for the first part, potential worldwide consumer demand, we think that, of course, we know that there is a strong pressure from consumers to get instant access to large rank of contents. We have -- we know, as well, that their demand is becoming fragmented and more composite. So, that is a real double-hand issue. For that reason, the single approach is not relevant to our view for all types of content, since music, audio/visual program and words and games meet distinctive consumer demand. So, we know, as well, that digital distribution allows new modes of signaling and selecting contents and individualized access and the possibility for each consumer to store large content, library and/or latest on portable, personal devices. So, we need to address all those possibilities, not with a single approach, a single answer, but we need to deal, and I insist on the wording, to deal with different players, be them small start-up, or retailers, or multi-national players. We don't make choose between the size and the companies. To give you an example of -- we have, and we try, constantly, to find new partnerships with all those companies distributors, platforms, whatever. So, for the -- how to meet the consumer expectation, we do it in four directions. I shall not today, because I do not want to speak too much, but of course, it goes through the enrichments of -- it goes through the adjustment to new usages. I said ad usage -- and streaming, but it could be, as well, downloading offers, subscription offers. We don't refuse any models, and we try everything with a very humble position. We try, as well, to do -- to make a pricing differentiation, which is completely different

from the very beginning, when Apple said, "We shall set a single price." We say, "No, it's not fair." Some of the content needs differentiation of pricing. And then -- and that is very important -- we try to enhance the quality and the economy of the use. And this goes to supply of your free MP3 tracks, as you know, that we in France engaged in these agreements to take away the DRM's on music. But we want, as well, to replace the old MP3 bad format -- bad quality format by a new high-quality MP3 format. And as well, we try to launch high-quality offers even for -- in order for the user to get MP3 in a CD format, at a CD quality, which is quite a challenge. But for all those, we try everything, and the appealing -- it's appealing to consumers. But the problem of a legal market is still hindered by practices of players that operate illegally, and I would say, fraudulently. So we are one in France. But as you know, we work in different countries all over the world. But from France, which is the basis of what our policy, we are in a country where some original regulation schemes has emerged in the last years and months. So for these, we call it the so-called "Hado P" effect, expected by all stakeholders in France. So you will see on the scheme that we try -- it's not only a tool to aware citizens not to infringe, it is as well a tool to lead consumers to legal offers in a very soft way. So there is an, of course, an aware mission and mission to say, well, don't go to illegal offers. So this is the so-called "three strikes" policy by -- and according to the other, the infringers will be tracked by the right orders. So the right orders will look at where there are some infringes -- not infringes personal, but tracked in French. Then a watchdog -- will relay the warnings through the ISP to the suspected infringers. But there is sort of a -- the watchdog is completely independent from -- is something completely as a whole in between the right holders, the users and the ISP. And after two strikes and two messages sent, the ISP will be requested by -- to suspend or blacklist the detected infringers through court decision. And in part of this -- in part of this is what we -- arriving accomplished -- part of this that we hope ISP will take their responsibility and adopt some tools to protect the consumer and to protect the use of the consumer, and go on, on the very -- technology, it's a four-square -- technology intelligence when they could develop watermarking, watch-on filtering content and identification. All those tools which they are ready to develop, at least in France. So in conclusion, I would come back to the guidelines of OECD, and I would like to focus on two main points -- sorry -- on two main points. One of the points is -- one of the idea of the guidelines of '99 was that recognizing that consumer confidence in electronic commerce is enhanced by the continued development of transparent and effective consumer protection mechanism that lead to the presence fraudulent and misleading and unfair

commercial conduct online. We think this is very, very important, but we would like -- and I'm ready to work if needed -- to introduce a better B2B regulation in OECD countries to ensure that consumer confidence -- to ensure consumer confidence and to protect Internet users against illegal practices pushed by fraudulent operators and players. I told this morning what I have in mind and what we do in France. The second -- the second part, the second element is the conclusion, considering that electronic commerce should be open and accessible to all consumers. So we re-affirm and we confirm -- we are ready, and with -- yesterday, I can assure you that it is our idea, ambition and commitment. We are ready and we would like to push, and the more general access for consumers to the most and rich catalogs of music, films and audio/visual games and whatever. But it is possible to deploy innovative offers to meet great consumer expectation on the large geographical scale. That is our commitment. However, we would like that we don't forget that local needs and practices must be taken into account. And these go to acknowledge the taste and the expectation of local people in local places all over the world. This make the so-called cultural diversity, which is very -- still very important, and also not to create a sort of global licensing that would jeopardize all those new business models which are going to be very, very present, I hope, all over the big market online. Thank you. [Applause]

>> Patrick Ross: Hello, everyone. Glad to be here this afternoon. I'd like to thank the OECD and the FTC for having me, and thank the FTC staff for slipping this slideshow in, because I was a little late in getting to them, apparently. I like the story, Bjorn, about your son. My kids were born here in Washington, D.C. They are a rare breed, called a D.C. native. And so they didn't expect me to go to the White House. I don't think they really pay much attention to where I go at all. But there is an interesting side note on that. Shortly after my son was born, the hospital where they were both born converted to condos. So that's progress. So we're talking about progress. Progress isn't always good. My son would argue that, anyway. But I am glad to be here. So the copyright alliance, we're in our third year. We're based here in Washington. And we're a broad-based coalition across the copyright industry's advocating on behalf of copyright owners promoting creativity, jobs, and growth. So we have the motion picture and television industries. And we have record labels and performing rights organizations and music publishers. We have book, magazine, and newspaper publishers. We have amateur and professional sports leagues. We have entertainment software and business software. We have photography, graphic arts. Our

membership includes a number of unions, corporations, trade associations, artist alliances, individual artists and creators. It is a pretty broad panoply of players. And I was pleased, if you look at the background report that the OECD prepared, they noted that our copyright industries are leaders in e-commerce. And I think that's definitely true. We've heard a lot here today already about all the different models that are out there and all the different ways, including what Sylvie was talking about, about ways that copyright owners and creators are trying to get their works out there. They're definitely trying to meet consumer demand. I think sometimes, they actually create a consume he demand that wasn't there before. A couple of weeks ago, I moderated a panel on Capitol Hill, and one of our speakers was a publisher with Simon and Schuster. They've released something called a "vook," which is a book, and you download it to your iPhone or computer or what have you, and it has video embedded in it. So you're reading along, and then you hit the video, and that advances the story. And then you go back to the text. And I've bought a lot of books in my life. I've never sat there and said, "Darn it! Why isn't there video in my book? You know, that's just -- that's just terrible. My rights are being denied to me." But now it is being done. And I think consumers are going to start actually demanding that more. And so it's exciting to see developments like that. I think that one of the things that's happened, obviously, you still have the retail, the offline market for creative works but as we've moved into this e-commerce space, content creators and owners have a more close direct connection with consumers now. Often they are the direct distributor to consumers, which wasn't always the case before. Or they may be partnered with an online distributor, and there may be like revenue sharing or other arrangements. So they're very close to the consumer. And I think that's good for everybody, because it allows them to be closer to sense that consumer demand to try to respond to it. And obviously they have even that much more incentive to provide a robust, safe and consumer friendly experience. Now, if you look back ten years ago when the guidelines were written, we were dealing with something here in the U.S. called Napster. Okay, so online piracy was just surfacing. And I think it's fair to say that even as e-commerce in copyrighted works has progressed tremendously, online piracy has as well. And as Sylvie and others have noted, obviously we are trying to combat that with consumer-friendly experiences. But it's definitely a real risk out there in the foyer. The OECD has a book that they published, I think, in July. It's a very good analysis of online piracy. I think you can -- if you want to buy it, you can. But I actually think they allow to you view it on their website through a special viewer for free. So I'd encourage you to look at that. If I had one criticism, I would say that I think

it underplays a little bit the risks posed by commercial pirate sites, infringing sites, people that are actually trying to make money off of infringed works. Now it does note in the report that even though it seems counterintuitive that someone would pay for something that isn't licensed, that if transaction costs are reduced enough, there actually is a market created for that. And I think we're seeing that today. Any industry in the alliance -- software books, photographs, music -- there are people actually profiting online from those works without permission of the rights holders or compensation for them. I'd like to just take a couple minutes today to focus on motion pictures, because Paramount Pictures, and Frederick Huntsberry there, their COO has put together some great slides on that. So there's no question that ten years ago, you had to be kind of a geek to download online. Very obscure, weird software, lengthy downloads. It was pretty clear this was shady stuff that you were doing. If there were advertisers, they were kind of for fly-by-night type organizations. Now they're set up for anybody to use it. There is instant streaming so you get that clear satisfaction. Don't have to download. They look and feel legitimate. They're premium advertisers. Here's a site right here. I mean, that looks like a clean, legal site. There's an iPod down at the bottom there with the Apple logo on it. Definitely creates the impression that this is somehow affiliated with something that I think we all know is a legal licensed service, iTunes. So, very misleading to consumers. They still, like the old P2P sites, rely on individuals to share their own infringed copies. And so they have incentive systems to encourage people to share. You get these little reward points and you can download, you know, fun things. One of the things you can get -- I think we all need this -- a USB-powered rocket launcher. So you know, if your co-worker is annoying you, you just plug it into your laptop and fire it away. Those appear to be Nerf rockets. I certainly hope that is. That would be another consumer risk that OECD should maybe look at if they're not. Now here, you see some of the advertisers that are appearing on these sites, right? TiVo, Ann Taylor, Citibank. Now I think it's safe to assume that Citibank is not choosing to advertise on an illegal site. But this is another issue that comes up. As we know, rarely do advertisers go and specifically place on a lot of websites. They use third parties. The third parties have an incentive to get as many eyeballs as possible to keep their relationship with the advertisers. And trust me, these are not obscure sites here. Their traffic is top five, top ten, you know, of all video sites. So there's definitely a lot of these ads going on here. And it creates the impression to the consumer that this is an up-front operation. Here's another one with legitimate ads. Note the quality of the image there from extracts. So that would be a stream. You could pull that up

instantly. It was just in the theaters recently. And note the Netflix ad. Some of you from out of the country may not be familiar with Netflix. I use it. They mail you DVDs for a flat rate every month. Can you keep them as long as you want. You mail them back. They mail you new ones. They also have a streaming service on their site. Extract doesn't come out on DVD until December 22nd. So if you wanted to see that through Netflix, you'd have to wait. So it seems kind of unbelievable to think that Netflix would want their ad on a site against which they cannot possibly compete, because they're actually following the law, and these other sites are not. This is perhaps -- this is my last slide. It is perhaps the most important for this talk, because we heard, like, on the last panel before lunch, a lot of talk about these trust links and so forth that are on sites that make the consumer feel safe, how important that is. Bjorn was talking about it, it was a couple years before he was even willing to risk buying something online. So we have "verified by Visa, MasterCard, McAfee hacker safe." Those are all fraudulent. These sites -- I mean, obviously they're not answering to the law on copyright. They're certainly not answering to the law or to any kind of private sector negotiated system. So they have little asterisks, you have to fill in all of these codes -- your name, your address, your credit card number. So they're getting all of this information from these consumers. It sure looks legit. And now, the consumer is at risk for identity theft, spyware, adware -- all the problems that we've seen with these illegal sites over the years. And not only does that -- I mean, so this obviously harms copyright owners because of the infringement. It harms consumers because it makes it more challenging to provide legal services. But it also puts consumers at real risk, and it undermines the entire e-commerce model. If you get burned on a site like this, and then you go to a legitimate site that may not even involve copyrighted works, what are you going to do when you see those logos? How do you know to trust it? So it's something that we all need to look at very seriously. I think as we -- to conclude here, as we look at doing new guidelines ten years after the 1999 ones, it's good that we're already recognizing the great progress that's being made with copyright works and responding to consumers. But there's no question that these sites that I just showed are completely undermining consumers, consumer confidence, their safety and security and privacy, as well as the ability to get copyrighted works out there to consumers. So as policymakers look at this, they already have laws in place and -- obligations in place on intellectual property. They can go after these sites, make them answerable, keep them from finding safe havens and hopefully create a better environment for consumers. And so whatever your takes on interoperability or fair use or consumer rights, I would hope that

everyone on this panel would agree that this undermines everything that we all believe in here. And so I hope that you found this valuable. Thank you. [Applause]

>> Graham Henderson: Good afternoon. So my name is Graham Henderson. I was introduced as a lawyer, which is true. I keep thinking, what do I have to do to stop being introduced as a lawyer? I have spent, I will confess, some of my life acting for record companies. I spent a lot of my life actually acting for recording artists, so that's a bit of a redemption. But maybe here it is important to say that I've spent practically all of my life as a consumer. And so I'm not completely without sensitivities in that direction. Now my day job is as a -- as the head of the Recording Industry Association in Canada. But I also am the vice chair of something called the Canadian Intellectual Property Council in Canada, which gives me a lot of interest in all forms of intellectual property right. To some, that means I also have controls to the nuclear codes and can launch missiles and things like that and control treaty. But one thing Bjorn and I do know, and that is here in Washington, if you want a picture with the president, wait until he has a party, line up, go in! I'm doing it. We could go down afterwards.

>> Bjorn Erik Thon: It's on its way to Norway.

>> Graham Henderson: So like others before me, I'm not going to be able to address the issue of interoperability, other than to point out that it's -- it's a problem for all of us, and certainly something like we'd all like to see go away and be dealt with. I'm going to talk about something which some of my friends thought was rather daring, because I'm going to talk about digital rights management systems. They wanted to know if I thought I would really emerge alive. So I thought it's kind of important for me to say, you know, that we support the guidelines, and certainly there's nothing in those guidelines -- which, you know, I'm a Canadian, we were part of the genesis of that -- have any real problems with. But today, what I wanted to do was talk about some of the positives, if you can believe it, that are associated with digital rights management. I think that, you know, while consumers have every right to expect to be protected online, so do creators. And I think it's important for us to agree. I hope we can agree that creators need to be paid for their work. And in Canada, we've done studies on this and there have been studies around the world, which show that the standard of living for recording artists is plummeting. It's not easy to be an artist

today. A lot of this is undermined by the unauthorized taking of their work. So part of what I'm here to say is let's -- as we scramble to find ways to protect the consumers, let's scramble to find ways to protect the artists and those who invest in them. And I think that part of what we're here today and were here ten years ago, is we are talking about rules, the appropriate sort of rules that we need in these new digital marketplaces. We don't want them to be rules-free. I think that's probably a fair statement. But I would argue that the rules have to be fair to both creators and consumers. And we both need them in order to protect us. It's not a one-way street. And I think that there is a way to achieve that. The thing about digital rights management is that -- or rules. That's really all they are. I mean, it is a digital rights management system. It is a set of rules that's attached to a file that you're buying that dictates the way you can or can't use it. And these rules, I would argue, generate new and innovative ways to deliver music to consumers, and not all -- and not just music, but not all digital rights management systems are bad. Some may be. Those that are bad tend to be punished, brutally sometimes, in the marketplace. And I think we sometimes forget that in this debate, that there is actually a functioning market, relatively well-functioning market, and that we can rely on it to -- and the consumers in it to punish transgressors. And -- whoops, backwards -- and so I think I would say that digital rights management is capable of enabling choice, increasingly more choice. Why, you would say, is that possibly the case? Well, it's the case, because it encourages people whose property is really at risk in an ephemeral environment. It encourages them to take risks, develop new business models and put their products out there in a way which, you know, consumers hopefully will like. And I would argue that in a legitimate marketplace, consumers are going to win. And they are going to gain more choice at a fair price, which is part of the theme, I think, of our keynote speaker at lunch. Now one of the things that you encounter often in the media, at least in Canada anyway, is sort of this presumption that digital rights management is all about music, that we're practically the only ones who use it and we use it for entirely invidious purposes. In fact, digital rights management systems are used by a very, very broad range of businesses. And some of these are extremely popular. Some of them have digital rights management systems on them, rules, that are virtually invisible to the consumer. Now that's a good rule. And I think that's what we're striving for when -- when we do this. Now, I would also, as a side note point out that so many of these services, speaking strictly as a Canadian, they aren't actually available to us in Canada, which kind of drives us crazy -- which has led me to sort of make a joke that in Canada, we have a choice between iTunes and i-legal. Now I got

nitpicked on that because I failed to mention the two or three others that we actually have -- one of which, Puretracks, is actually something when I was at Universal, I was sort of instrumental in helping to start. But the general point is made now, you know, in a situation like that, you'd like to blame somebody. Why is that the case? So I thought, well, I could blame, you know, the nearest Canadian at hand. Now I know some of you in this room were thinking I was going to blame someone else, but I'm not. And that's an inside joke. But there are a vast array of these applications, and I'm not going to go through this slide. But music, film, publishing software -- people are using them all the time. And again, as I say, in many cases they're seamless. And a great example Sylvie mentioned today, is Vivo. And I think that's something else to remember, again, about music is that I can't think of a model that we, at this point, haven't licensed. A lot of people think that the only model we've licensed is the CD. In fact, there is a lot more that we've licensed. And I think Vivo is going to be a great success story, and there is no DRM associated with that. But that doesn't mean that there aren't going to be applications where rules like DRM, rules associated with the files, are going to be needed. So I would argue that, you know, the vibrant marketplaces need rules. And I would say that marketplaces that don't have rules, such as the financial market, teach us why it is a bad idea not to have rules. And I would argue that rules-based environments encourage innovation. And I thought that was a great example given to us this morning about the credit card marketplace. It encourages innovation, it encourages collaboration, and it encourages investment. So -- but I would also argue that, at the end of the day, the ultimate power lies with the consumer, because consumers have the power to choose and have an incredibly strong influence over the offerings in legitimate marketplace. I would argue that while markets aren't perfect, they can be responsive, they can deliver value, and they can do it crisply. But it is going to help if we all know that there is a box, what's legal, what isn't legal and what we can do and what we can't do. And interestingly enough, consumers are, generally speaking from our understanding of it, happy with rules. We did some surveys in Canada a while ago that showed that 9 out of 10 Canadians believed that creative content deserved strong rules, so "those who create intellectual property are able to 'sell or commercialize their ideas.'" And more than 8 out of 10 Canadians believe that music videos, computer software and books deserve the same degree of protection from digital misappropriation as physical goods did. So, in my view, we're looking for a golden mean. Now there is little question that baseline regulation and the type of guidelines that the OECD has promulgated are going to play a key role in that. But I would also argue that the

marketplace is still working, and that we are grappling our way, consumers and providers, towards some kind of a golden mean. I think it was interesting in Bjorn's presentation to note that Apple, at the end of the day, bowed to consumer pressure and altered its interoperability rules. And I know certainly that in the music industry, there was enormous pressure on the industry to remove the rules that were attached that had not been on CDs, were put on CDs, and then were taken off again, because they were considered to be just unacceptable. So, in conclusion, I would say I think we're heading in the right direction and I would just add the concluding note that, let's remember that legitimate marketplaces are subject to regulation, are subject to market pressures, but the illegitimate markets are not, and they tend to be beyond the reach of the good offices of the OECD and other regulation. Thank you. [Applause]

>> Eddan Katz: So, I actually wanted to try to address the issue of empowering consumers. I feel like the last several comments have focused more, as was just said, on a particular set of rules and expectations, in regards to protection of, as was described, private property. And I think that there is something that's taking place, that's developing all over the world in national legislation and in plural lateral agreements, such as the anti-counterfeiting trade agreement, that actually moves towards the kinds of enforcement that's being talked about, in regards to visual products that is focused on how our friend from Vivendi described, the HADOPI effect. And so, I'm going to focus on, from a consumer perspective what we should expect -- what we really understand the HADOPI effect to be. One thing that I have to apologize for is I'm going to have to sift through some of the euphemisms that have been used just recently to try to describe what this is. Now the point of the three strikes laws, and HADOPI is an example of it, which is passed is -- are ways of kicking people off the internet for bad behavior. In a set of rules that are attached to that and developed in regards and on the way to that happening, are what the subject is and I hope in my comments to suggest that the OECD and the FTC focus on sort on the due process rights and the kind of expectations the consumer should have when being faced by such charges, because this is increasingly what's going to happen in terms of redress. We need to actually think through how consumers are affected by these enforcement policies and how they're done. Some of the advantages of HADOPI and three strikes and digital rights management as technological that have significant aspects of technological solutions to the problem is that they overlook the nuance, they overlook what sometimes slows down actual judicial processes and administrative proceedings

which involve, you know, due process, the presumption of innocence, the particularized suspicion of wrongdoing. These pesky things are inefficient, unfortunately, when you're trying to enforce -- copyright owner is trying to enforce in cyberspace. So there is a model that's being prepared and being laid down that creates the sort of control mechanisms, which is one of the first euphemisms ISP responsibility. So the kind of control mechanisms on the part of the intermediaries to allow them to further the process of the monitoring and filtering of content in regards to individuals and without necessarily the kind of evidence that you'd expect in a court of law just on accusation by rights holders over a certain number of times someone gets hauled in. After the second warning, they actually are supposed to install some software that monitors your network. This would affect not only your home, as sort of examples are your kids, you should be teaching them better to not engage in bad behavior. It's also on businesses, all their employees that are on the network would be affected, for example. And all of this sort of turns upside down this thing that I know -- I think we're all very attached to the presumption of innocence. So in the online world under a logic of DRM and under the HADOPI effect, we're all presumed under suspicion. We all could be -- the files we're all trading could possibly be copyright infringement. And so DRM needs to be put in place so that that won't happen through technological protection measures that are instituted rules. Those rules don't necessarily take into account those exceptions in how they might be used. For example, and this is particularly relevant today, for the treaty that's being discussed, treaty for the visually impaired, someone who is blind may need to modify or use a particular media files in order to perceive it in a different way than is originally anticipated. That's just one example. And I give it because there is a process going on in the world of intellectual property organization about this. Many of the groups represented by some of the speakers on this panel have come out against this treaty that would focus on allowing those exceptions to exist in copyrighted works. And so, the HADOPI effect was described as leading consumers to legal offers in really soft ways. I really need to address that because in the press in France the HADOPI law was actually described at times as the digital guillotine. And for those who are familiar with ancient Greece, the notion of ostracism was the final and worst kind of punishment that you would be thrown out of the city state for your wrongdoing and would have to, you know, wander the world in an Odessian tragedy sort of way or whatever. But when you apply that to the internet and we're talking about the ways that we use the internet today, as HADOPI anticipates, if someone goes through this three-strike process and is actually kicked off the internet, they're placed on a blacklist for a year that would not allow

them to sign up for telephone services. So this kind of notion of placing someone outside of cyberspace as a result for their behavior, which did not go through the same kind of judicial process and expectations that we expect in our behavior and our practices online, this seems to be extreme. And if we are trying to balance the interests of consumers with property -- with intellectual property rights holders, there needs to be some protections put in place as we go through trying to advance the enforcement of intellectual property. I most definitely agree with the previous speaker that unfair commercial practices and big pirate networks that modify the marketplace and create black markets is something that's not good that we do need to address and we do need to have legality. But we also need to expect as we go through the process of enforcing, we need to maintain the kind of due process rights that an individual depends on, that it isn't the fact that just because someone on the network downloaded a file, which may or may not have been infringing because you haven't taken into account fair use, copyright misuse and other balances within the logic of intellectual property, those people now are -- have to prove their innocence by being -- by the network being monitored and having to prove over and over again through their activities that this is something that they're not doing anything illegal. I think this is really concerning. I think that the OECD was pointed out, there's a report out there on digital piracy. I should also point out that digital broadband content music report in 2005, which was a very important report that we should also look at which really takes into question the exact measurements and the types of exaggerations that take place in regards to online piracy. Because I don't think -- I don't think what's being claimed is that we're all thieves or that 95% or whatever percentage ends up coming out, that we're all thieves. Just that some of us are. So and they're distorting the market. And so, if that's the case, then we shouldn't be punishing everyone and we shouldn't be turning civil and criminal procedure upside down in the digital world. That seems not only disproportionate but a violation of our basic assumptions of civil liberties and human rights. So I would point out that some of the recommendations in the TransAtlantic consumer dialogue put together address the idea of how we can advance due process rights. I think the OECD should take a look at that recommendation. I also -- out in the hall you'll see the Madrid privacy declaration, which also advanced and tries to carve out the fact that communications privacy, intellectual freedom and due process of law should be taken into account when we try to figure out how to maintain a balanced system of IPR enforcement online of copyright. There is also the -- it's just developing the think privacy campaign for people to be able to know how to actually take care of their privacy. It is

actually quite threatening what was said in the last talk about DRM, that its highest achievement would be if it were to be invisible to the consumer. That actually seems to me to be quite offensive to the notion of empowering the consumer and them being able to make choices. The fact that the rules that are governed are invisible and they're not accessible for me to even know as the digital products that I'm using are being restricted in the particular ways that I'm using them. Some of them illegal, but some of them, as the treaty for the visually impaired example takes into place, are what people depend on in order to have access to work. In order to be able to listen to music, read books. Some people actually are different consumers and have different needs and aren't exactly the mainstream market that's being identified in the market research that companies are doing. And so the effect of this kind of over enforcement in regards to privacy, I've discussed that I think this has played out in terms of the telecom package and the amendment, citizens' rights amendment that was passed in the conciliation process actually affirms exactly these due process rights. And so we have that in Europe. The FTC has led the way in regards to DRM and some of the concerns that are along with it. It isn't just about enforcement, it's also about online behavioral targeting and about the ability to monitor individual uses and target music and other preferences based on that. So we should take that into account as we think through DRM. And again, I only need to point to the FTC's work on this most recently, the March 25th town hall meeting. So to conclude, I think focusing on those expectations of consumers of how they deal with being accused online. Due process is a focus. The impact on innovation and the knowledge economy in particular on the participative web and the ability for people to create together rather than just be passive consumers of entertainment products. And privacy, which I think we need to think about as we create safe and legal environments with -- that are trusted that we also want to make sure that the individuals' privacy is taken into account. Thanks very much.

>> Teresa M. Schwartz: Well, as you can see, we have a broad spectrum of views on the panel. We've heard a broad spectrum of views. I suppose we could have a further debate up here among the panelists. And I do want to leave some time for that. But I'd also like to hear from the audience. And I will open up the questions from the audience about what you've heard here and what strikes you, what has been left out, what have you heard that you take issue with or agree with.

>> Female Speaker: Does it work? Yes. I'm very fascinated about the discussion about technological enforcement. The discussion that has not started yet, but we all heard. This is also part of my research, the fact that if you technologically enforce legal rules, that in order to do that, to digitize them, you have to translate them into a digital format. And that has consequences. I think Lars Lessig has discussed in terms of losing fair use in the process, saying that some constitutional rights are like affordances of certain technologies. And that if you create the new technological infrastructure and you want to retain these affordances, human rights, et cetera, that you will have to build them into the infrastructure. The problem that I see here is that if you enforce legal rules, then you might lose out on the transparency, due process, that is not really thought out, but it is like a side effect of the technology of the script which is the technology that we use for law at this moment. So I'm very curious to have the response from those that want to defend intellectual property rights by technologically enforcing them. And I think this is an issue that will continue, because there will be many legal rules, protection of property, that will have to be enforced technologically. Because just writing down a law will not work. And it is very important that those -- both regulators and industries and computer scientists that actually design these enforcement technologies sit down to think about this issue, how to build in contestation for the consumer, the issues that were presented by Eddan Katz. Instead of polarizing this, polarizing -- making a controversy to sit down together and to acknowledge that this is a very serious problem, that regulators, computer scientists and industry has to think about and maybe this is also an issue for the guidelines to say that technological enforcement will become more important and that these aspects have to be taken into account.

>> Sylvie Forbin: I shall begin. Perhaps it is not sufficiently clear. I'm very pleased that my colleague from the Electronic Frontier Foundation just focused on the three-strike solution that we have -- we are putting in place in France. Perhaps have you not well heard, but it was perhaps two minutes in my presentation, 80% of my presentation was how we are offering, how we are trying to deal and the dealing of Vivendi and the importance asset for Vivendi is the deal, the deal behind, the deal B2B and the consumer is the king and the consumer is at the end of the day the person we want to address, of course. But we need the deal. And it's not a barrier, the technology solution that we are trying to put in place, because as I said, we will not have any technology barrier. It will be free access. But the problem is -- and the point is now with, for example, VIVO because it is the

latest offering that we think it will be -- we hope it will be a solution for the music crisis with this big joint venture between the music producer and the platform of the platform financed by Google, you will have a win-win deal, and the win-win deal will be win-win deal with the consumer as the king because the consumer can access any content he wants and share with his friends. And there is no -- it's not a question of position. We are not -- no more with this model on the download, upload, illegal, legal. It's streaming, so in streaming you have not this question of position of music. You have access to music. You have access to service. If you are -- if you think you can support advertising, okay, it will be free of charge. If you don't support it, it will be a subscription with a free use within the subscription that you will have. So it's very friendly models and we are not going use the technology to make barrier in between the right owners and the consumers. It's a question of B2B. It is not a question of B2C. The three-strike is an awareness movement, which goes along in order to tell the population that there are legal offers and there are illegal offers. When we have illegal offers, I said this morning that we will fight against software publisher but also we have another tool in France which is very important, which is blocking access to illegal sites, and these will be done with a judge, so within the due process, of course, but it will be a tool by which we will be able to ask a judge making an injunction to the ISP to block the site and the access to any illegal content. This is the protection for the consumer. This is the protection. Or if you don't say that it is a protection, you think that everything as to go as it went, that is to say without any distinction between legal and illegal offers.

>> Patrick Ross: So you asked us, those of us who support copyright enforcement to talk about the online space. I come at this, I'm not a lawyer or economist, as you heard. I'm a writer, and so I spent most of my career earning a living created copyrighted works and marketing those. And the amount of time and labor I put in to creating work is the same whether it gets published in analog or digital format. Something goes into 1s and 0s, there's no difference there from my perspective. So the question is, I think it is arguable that the rights are online. The question is how do you enforce them in a way that's respectful to parties involved. The examples I gave, I would think even Professor Lessig would agree you should absolutely go after criminal corporations. If you're talking about individuals, I can't speak to France, I can only speak to the U.S. But I think that there is a role for regulators to play here. We're in the FTC right now. I spoke at the town hall meeting on DRM that Eddan mentioned in March. And I was very pleased with how that went. The FTC is

very focused on consumer protection and anti-competitive practices. They have stepped in at times and raised concerns when they thought consumers weren't being treated properly. They said that they would continue to be vigilant and so I don't see why just because you go from analog to digital the rights change, but I also don't see why when you go from analog to digital that you need to change the rules or laws. Whatever is good for a consumer in the analog space, they should continue to have those rights in the digital space. And you can enforce rules on bad behavior while still protecting.

>> Bjorn Erik Thon: Sorry. I'll try to have a bit more of an overall view on this, because what we are discussing here is actually how to develop a good market. That's the overall discussion. We have heard a lot about how to fight privacy. Piracy, sorry. It's late in the evening. Protect privacy and fight piracy. Wow. It's even more difficult than interoperability. They also discussed how we can develop good business models. I think -- I mean, where do we actually put the focus? Should we fight piracy or should we create good use, friendly services? And if we are looking at the history here -- yeah, I know we say both. But if you are looking at history, we heard Napster, someone mentioned Napster. So the pirate people they have been innovative. They have really made and developed a lot of quite user friendly services while the recording industry, they have been going after the pirates instead of developing good services. I think that's been -- you know, we are ending up today with generation of thieves in a way, because young people today. And I think that's really sad. Young people today, they are used to steal music on the internet. And there is a lot of work to be done in order to change their mind in that sense. Through education, and there's a lot of challenges on the recording industry and all the others who are creating business model to actually manage to develop something that is user-friendly, easy payment and all these things so that they are using them instead of using the illegal sites. And I know that you are doing this now, but I think that probably started a bit late, because Napster, they did it many years ago. KaZaa did it many years ago. And then you've got iTunes. Now we're starting to get this really good services. But in the meantime, as I said, the whole generation has sort of been used to taking music free from the internet and to change their mind and change that behavior, I'm willing to work with you to do that, of course, because I don't defend piracy in any way. But there's history here. Too much focus on fighting piracy instead of trying to brag about the good services? I don't think that's the right strategy.

>> Teresa M. Schwartz: One thing we've seen is -- we have a lot more material to discuss, and this is an invitation tomorrow afternoon to rejoin this group so that we can continue this dialogue, which is very rich and interesting and complicated. And there's so much more to be said. I'm sorry that we don't have enough time to get into it further now, but we do have tomorrow. So please come back and join this group on digital content. And thank you to all the panelists.

>> Male Speaker: Well, look. We're constantly trying to manage time here. We had to run this group a little longer. We are going to therefore extend this session today to 6:00 from 5:45 so that we can have enough time for the next group to present and to have questions and answers. So could I ask the next panel to come forward now, please.

>> Male Speaker: We had to run this group a little longer. We are going to extend this session today to 6:00 from 5:45 so that we can have enough time for the next group to present and to have questions and answers. Okay. Now as I mentioned, because we have time constraints and we don't seem to be able to run any of these panel sessions in the time limits we have. You did. Yes, you did, you did. Congratulations, you're the only one. We are going to extend this session until 6:00 to allow enough time for the presentations and for you at least to get a preliminary or two in on discussions and questions. So I'm going to turn this over now, this is the final session on the participative web, consumer driven content in electronic commerce. Our moderator for this section is Dr. Daniela Battisti who is the chair of the working party of the information economy to the OECD committee on information, computer and communications policy for the cognacenti, that is the ICCP. So I'm going to turn it over to Daniela right now.

>> Daniela Battisti: Thank you, Michael. So I was recommended to be within the limits of our allotted time, so I will keep skip the introduction and the niceties. Also I would like to remain within the limits because I think that people are very tired. If the Internet is very resilient, probably human beings are not that much resilient. Now I start to work with OECD on participative web three years ago and actually we produced this research participative web and user created content. And I think that most of the issues that were discussed at the time are still valid today. We are still missing some answers, and also I think we have new questions. Actually the OECD is working now on a very interesting horizontal project that is on the role of Internet intermediaries. I think

that that work would be extremely relevant to the discussion we are having today and tomorrow. So before our speakers start to talk and also to shorten the time, I would like to ask them my questions. This is because I think we have the right panel to answer those questions and tomorrow of course, we have the breakout session so we can come back on those issues. We do have also some questions from the web, and I would like also to propose those questions to our speakers since, well, I think that our audience on the web deserves an answer. Now I'm going briefly on my question. The first question is about this massive digital dossier about the users of generated content sites like Youtube or social networking sites. So the question for our speakers is how the user can take control on this data, and how do we deal with new issues such as behavioral advertisement. Especially in consideration of differences among countries regarding privacy. Of course, the different approach between Europe and the other parts of the world. Also another question that I think is relevant for OECD work because the OECD of course works mainly for the use of policymakers, and so in a way should provide advice and guidance, is how government can assure that citizens have a global understanding of their rights and obligation in the digital environment. I'm thinking about the EU guide that I should have here. A guide that I wasn't familiar with, and so we need to also to advertise this kind of work to users. Another question that I thought was important to understand today is, I found that -- well, of course it's very good that users are more and more involved through the network, and so they review products. They review places. They have a lot of interesting suggestion about hotels and treats. However, I think it should be very clear if these users are, I say independent users of the service. So people like me and you who go to a place we like and we want to share this wonderful experience with the rest of the world, or if in a way they are related to the product of the service that they are writing about. I think that's very important because that would be like -- I would say at least a ground for market distortion and so the question is, if the policy regarding disclosure should go beyond requiring just disclosure of the affiliation, if this system are really working as one could expect, and what is the next wave of more perfected user evaluation and rating schemes. Also another consideration that came to my mind was what role can Internet intermediaries play on contrasting fraud. Another set of question is again from the point of view of Internet intermediaries, is the new challenges like uploading of racist, discriminating or hateful content. The question comes to mind because I work for the government, so we are -- sometimes we hear that the Internet is wonderful and sometimes we hear that the Internet is evil. And you know how especially the political level tends to react

always in an emotional manner one way or the other. The question is how can we assure the benefits of mass collaboration are not diminished by irresponsible behavior. When Internet intermediaries derive revenues, especially advertising related, should we consider them as materially contribute to the unlawful conduct of their users? And do we need mechanism to legally qualify participative web platforms diversifying between host and/or editor? This is something actually that the OECD is going to deal with in the paper I just mentioned before. In terms of intellectual property, now we know we have just had an entire panel on the issue but here -- again, I'm referring to an OECD work on this -- on the new generation of learners. The OECD calls them digital natives. My question is, does the legal system for IPR leave out to the expectation of the digital natives who are more often the creative force, especially in terms of the work of the participative web? And in the case in which user can be required by contract to transfer their copyright in favor of UCC platform, what kind of measure can be enforced to protect and support amateur users in their contractual relations with professional suppliers. So it is not just content protected by copyright, but also the content produced by the amateurs. And then the last question actually -- that's for Professor Katz, I hope -- is this idea. I was reading a lot of articles lately about this phenomenon of cyber polarization that, of course, is the literal version of group polarization. But I think that with the Internet, this phenomenon has been taken to a new level, especially if we consider that some views that are so far-fetched or outlandish that will never resist to the criticisms in the real world, sometimes find the support of other believers on the web. And here I think especially in the social network platforms, the thing that comes to mind is really do we need a gatekeeper -- not a gatekeeper in the sense of a censor, but a gatekeeper like the editor in the newspaper, in the printed world or in the broadcasting, where someone takes responsibility for what is written or published. Last question that's for all the panelists is, terms of services, policies on websites. I found very interesting service that the electronic frontier foundation website offers where you can verify how the big Internet giants change their policy terms without making that clear to users. By the way, if I consider myself a person who can read, sometimes I cannot understand a word of what these terms of services prescribe. So how can we improve this information for the benefit of the users? Those are all of the questions. It is a lot of ground to cover, but I'm sure that our panelists who are very expert could answer. Not all of them, at least some. Okay, I'm going to pass to Dr. Matalitz, who is counsel to the U.S. International Intellectual Property Alliance.

>> Steven J. Metalitz: Thank you very much. Thanks to the OECD and FTC for the invitation to appear here.

>> Male Speaker: Steve, I'm leaving it to you to give her all the information. [Laughter]

>> Steven J. Metalitz: I think I'll hit the high points here, how about that? I'll just skim through it quickly. You've asked obviously a lot of very important questions, and they all have to do with a phenomenon of the participative web, which is almost as hard to pronounce as interoperability. I'm going to answer this from two perspectives, really. One from my work as counsel to the international intellectual property alliance, which is an umbrella organization of seven leading copyright industry associations, all of which have a growing role in e-commerce and are very much affected by all this. But also from my private law practice in counseling e-commerce companies and those providing e-commerce services to try to figure out how to navigate this arena. I think the common thread in a lot of what the questions that our moderator posed is that we have more consumers than ever taking on a new role and being thrust, therefore, into a new legal arena that certainly the consumer of 20 or 30 or 40 years ago didn't have to take much -- pay much attention to. So consumers are not only acting in the traditional consumer role, but they're taking on some legal responsibilities. Many of them are unaware of this, and nearly all of them, I think, are unprepared for it. So this is the source of some of the problems that the moderator has raised. Obviously we've already heard about copyright and some discussion about that. I'd be glad to get back to that, of course, since that's something that I work on all day long. But in fact the copyright issue is in some ways easier to handle, or less of a challenge, than some of these other issues. I say that because, while the copyright law can be complex, and there can be questions about how it applies in the online arena, at least we have a relatively high level of harmonization of copyright law around the world. We have copyright agreements that virtually all countries that are active on the Internet world anyway already subscribe to, and they've implemented many of agreements as a relatively high level of harmonization there, at least. Now when you talk about something like privacy protection, it is -- there's certainly a degree of harmonization of the legal rules within the European Union, but then have you some very big outliers, such as the United States and others. There is certainly less harmonization there, and activity that may raise problems under the data

protection laws of Europe may not raise any problems in Japan or in the United States or other countries, and vice versa. Then when you get into areas such as defamation, and when you talk about people providing their reviews of either the lovely place that they enjoyed, but more the place that they really hated and they thought didn't live up to their expectations, you have wildly divergent standards as far as defamation and what constitutes a defamatory statement, and what are the defenses. So there is very relatively little harmonization in that area. So you could often have a consumer acting as the reviewer, acting as someone who is generating content that may raise privacy issues, for example. Doing something that doesn't really raise any legal problems in their own jurisdiction, but may well raise a lot of legal problems in a jurisdiction where that material is accessed through the web. So the real challenge that we face is two-fold. First, who can best -- who's going to take responsibility for educating consumers about these new roles and these new legal responsibilities that unwittingly they are taking on. And secondly, how can we best make sure that these norms are respected, how can we make sure that they are fulfilled. Again in a way that hopefully will avoid unnecessary litigation or -- and will use the most efficient dispute resolution mechanism. To some extent, I've answered your questions with a couple of other questions, but I think those are some of the common themes running through much of what you say, and I do think that one aspect of the answer has to be to look at the role of the intermediaries of the services of the venues where people are speaking, and where their speech sometimes does trigger these legal responsibilities, and ask what are they doing to help educate consumers and to make sure the consumers stay, if you will, on the right side of the law when they are engaging in the participative web. All the talk about three strikes and you're out and I think this in some way obscures this larger problem which is how to enlist the intermediaries in this project of insuring that people's use of the web does respect the legal norms that they may not even be aware of, but that are certainly implicated by what they do. So that's a problem we struggle with all the time in the copyright arena, but I can see that it would be in some ways perhaps even more difficult in some of these other areas. Thank you. [Applause]

>> Daniela Battisti Thank you. Now Mr. Thompson?

>> Mozelle Thompson:. I'm not sure -- thank you very much for the introduction. I'll try to keep people awake here. You can move closer, if you want. I don't throw things. I guess I hear your

questions, and I can answer some of them. Let me first give you this caveat, that I advise Facebook, but I am not Facebook. Facebook speaks for itself. But on the other hand, I've been very closely involved with this whole phenomenon of social networking and the world that's changed because of it. And I guess I hear some of your questions, but I -- but your questions have a lot of assumptions that I think are incorrect. For example, I don't think that the world of top-down management of a lot of these public issues really in some instances don't make sense anymore, because they are not effective. Because one of the keys to the participative web -- I raised this yesterday -- is that it's people communicating amongst themselves horizontally so that even if you wanted a top-down regime, either by Facebook controlling everything or the government controlling everything, I'm not sure you could actually do that. Because people have opinions, and they're using the platform as a means of expressing themselves with their own content. So I mean I'm sure the government of Iran would love for Facebook people not to comment about the president. But I don't think that worked out that well for them. So let me just give you some context here, okay? Yesterday I talked about what the world was like in 1999 and how it's changed, particularly how we communicate with each other. And I discussed the fact that because of technology, we have come much closer to this model of real interactivity that people communicating with each other, and it's not just a one-way street. And that becomes -- that brings with it a diversity of ideas and a real difference in scale. I also talked about the loss of central command and control and horizontal or viral information flows. But there are a couple things I didn't talk about which really, really affect the world as it is today. One is that there is a significant difference in speed than what we saw in 1999, that there's a transmission of information and the development of content and a use of technologies that happened really quickly. So Facebook five years ago was an idea in someone's college dorm, and Facebook today has 350 million users around the world, and when I say that, active users. They have a lot more members, but active users who have visited once in the past month, and they are adding about 5 million new users a week. And so it's really interesting to watch this. And less than 13% of Facebook users are under 18. The fastest growing users are over 35 with particular emphasis in the 40s and the 60s. Yes, Grandma is on Facebook. So -- and, another change is that the expectations that all of us have about information, that we expect information in realtime, and that if we communicate with people 24 hours a day, we expect responses on a 24-hour-a-day basis. And, the other thing that I think is really positive here is that the barriers to entry are low. A lot of these services are free. Even if you want to create a

Facebook application and have your own business, the application process costs you \$300. So that changes the world. Let's stop and think about that for a second because I had the opportunity to actually talk to a bunch of university students a couple of months ago. And I realized that this was not a usual audience for me. I usually talk to older people about how the world has changed because of technology. I'm talking to a bunch of people who never knew what the world was like before. So I started by talking to them about -- it was almost, I felt like their parents. I said, "You know, most of us go through life, and we have friends we accumulate over time, and over time some of them fade away, and that's okay, and we don't talk to them anymore." I said, "You're the first generation of people who could probably never lose a friend. You'll have them forever if you want them, and if you have a friend you want to get rid of, you actually delete them and they know it." Okay. I said -- and then I said to them, there are so many things I thought of that are just different for them. And it's younger people actually educating older people. So that world has changed, too. I said, "How many of you have actually learned -- either you or your friends have learned that they were breaking up with their boyfriend or girlfriend because they saw a change in their status on Facebook from committed relationship to single?" And I said, now -- and almost everybody raised their hand. And I said, now, for most of us who are a little older, we think that we at least deserve a voicemail, a post-it, some note somewhere. And I said, but that's the world that has really changed. So let's talk about -- this gets to some of the answers to your questions. We forget that -- one of the byproducts of all of these features that I just talked about is that a lot of consumers and users out there are not naive, they are not shy, they're quite technically able, and they have high expectations because there are viable alternatives out there. So and that it's a mistake to think that -- see, it's interesting. Facebook is an example. Facebook doesn't advertise. Everything that it's done is all by word of mouth. Friends talking to friends. So it's a mistake to think that these -- a lot of these platforms have no value because the value is in what the user thinks that value is supposed to be. And we shouldn't discount that. And most of them are using these platforms very successfully. So they're not necessarily victims. They're actually empowered. And you see this in citizen journalists and other things, and they -- but it's much more defined according to -- I think of Facebook as not 350 million users, as I think of it as 350 million individual networks where a person will decide what their value proposition and how they connect, not strangers for the most part, but people that they know. And what that means for the OECD guidelines is this -- is that I think it's helpful that the guidelines -- I read them, and I still think they're pretty good -- that it

has a very basic legislative and enforcement regime that's really based on the concepts of consumer empowerment and intelligence and wisdom. I think that governments and businesses and consumers have not taken it the next step. They have not encouraged the use of tools to get better information, to encourage user feedback, because I can tell you that if Facebook users don't like something, they let you know right away, and they let you know in a big way, and they expect things to change. And so I think what I would encourage here is this -- just an observation. I heard a lot over the past 24 hours, some of which I've been disappointed at. I'll tell you why. One of the hallmarks of the guidelines I thought was the ability to get people not to think as much about their differences, but to think more aspirationally about what their commonality is, what are the things that they have in common. Because there are lots of questions that have been going on -- the question of jurisdiction's going on for 150 years. I'm not sure you're going to solve it immediately in this vehicle. But, I think that people need to think bigger, that these guidelines are an interesting place and a great place to start. Let's talk about areas where people need better information. They need to know how to use this new power that they have more effectively. And that's not just in terms of hard rules, but in terms of guidance. And I think that that's the opportunity. If we sit down and talk about the ends of the bell curve, the areas of highest conflict, you may not get there, because I think most of the people are in the middle of the bell curve. They're left with a lot of tools, and they are trying to navigate the world effectively, and they want to know how to do it better. And I think that's the opportunity for the OECD and the members and the people who consult with them. That's what I think the opportunity is. [Applause]

>> Daniela Battisti: Thank you. Mr. Lee O Eun? I'm sorry, I got it wrong.

>> O Eun Lee: O Eun Lee. My last name is Lee. My first name is O Eun. My turn? Thank you. Good afternoon, everyone. My name is O Eun Lee from Korea. Unfortunately I'm not good at English. My Korean language skill is good. [Laughter]

>> Male Speaker: Your English is better than my Korean.

>> O Eun Lee: Thank you. First of all, I am very pleased to be here today, and it is my great honor to make a presentation in front of you. I'm going to say briefly about effects on online consumer

reviews on e-commerce in Korea. As all of you here know better than I, a variety of factors have had influences on purchasing behaviors since we began business traditions using the Internet. Especially several recent academy associates, as well as various kinds of business surveys have confirmed, consumer reviews increasingly give great effect on other consumers' buying behaviors. First, I would like to briefly say that what functions and characteristics these online customers have. Consumers can obtain useful products, information, specialized for themselves from other buyers, and cut down their search of desired products in spite of overflowing various advertisement and pieces of information. On the other hand, sellers can naturally lies their awareness of positive consumer reviews, and enhance consumer loyalty by inducing them to decide to buy products. These two functions of consumer reviews result from their own special qualities. In our world, consumer reviews are subjective and based on personal opinions and feelings of other buyers. Then they take the product information from business companies unilaterally, but content is formed by activity between seller and buyer. These interaction leaves consumers to have friendly feelings towards their participative shopping. These consumer reviews are embodying various forms in Korea keeping of recent government. The first case is the viewer of e-commerce sites. E-commerce site is like eBay or in Korea, auction company. And where every user's visit to the page can leave his or her product review and read other readers' reviews. The second case is utilizing broad or social network service which has its own separate product. You can see items related to product reviews -- representative portal site and the community site. This is a result of e-merce survey conducted two years ago. This survey was focused on the rate of consumer reviews at the stage of purchase decision. Here the survey shows the outstanding points is that consumers evaluation through feedback like review and satisfaction. Is most important factor when consumers decide to buy products. And in this slide is another survey which was conducted by the commerce center in 2009. Shows considerable effects of consumer reviews. Over 90% of respondents answered that they are mostly affected by consumer reviews when they actually buy products. According to the survey, about 80% of the respondents said that consumer reviews stimulate buying desires and are desirable product. They also gave affirmative answers about credibility and authenticity of consumer review. You can see that about 60% said yes to that question. And this survey shows that leadership in the market has recently been changed -- having changes from business to consumer side. According to the results of internal survey conducted by Korean TV commerce business, consumer review shows volume increase two or four times more. The survey

also showed that more than 65% of them provide incentives such as points to consumers after making their reviews from their purchase. So we can know that in shopping affect -- of course, consumers reviews do not always work on the positive side. You can see the slide. According to a recent survey and then literally some persons of companies have actually deleted bad consumer reviews by using their own authority. Some companies may use consumer reviews as kind of advertising tool. The emerging new forms of business is not always accompanied with positive aspects and effectiveness. Some facts do not necessarily have reasons to regulate business through legal means. As a result, both business and consumers should make good progress together, and government regulations or guidelines in respect to reviews should match up with business developments effectively. Since the commerce was linked with the Internet, e-commerce has already been responsible for a portion of distribution to society as a pattern of our relatively daily life to go shopping. Also, thanks to increasing transactions in the virtual space and the various forms of services, now we can see consumers producing their content by themselves. To say nothing of interactive feedback and their own evaluations or reviews highlighted as the most important element of buying something today. I appreciate your attention. Thank you. [Applause]

>> Daniela Battisti: Thank you, Mr. Lee. Now Mr. Medros.

>> Adam Medros: Hi. Thanks for inviting me. I think I'm the only non-lawyer possibly in the room, which puts me in grave danger. But --

>> Male Speaker: We'll fix that! You'll be one, too.

>> Adam Medros: I'm here from Trip Advisor. I think many people are familiar with Trip Advisor and have used Trip Advisor. Some of the questions you asked I'm not really the best person to answer, or certainly not an expert. But on the topic of user generated content and purchases on the web, I think Tripadvisor is a great example of the power of the travel community globally, the power of user-generated content. By way of background for those that don't know, Tripadvisor is the world's largest travel community, more than 35 million visitors come to our sites monthly. We have over 30 million reviews and opinions, and we cover 14 sites, ten languages, and expanding with content on 400,000 hotels, more than 600,000 restaurants, couple hundred thousand

attractions, 65,000 cities. So really, global reach in terms of reviewing and giving people a platform to talk about their travel experiences across the globe. The power of UGC is, at this point I don't think is in much dispute. Users love user-generated content. Right? They trust user-generated content. They find it valuable in their travel planning experience. There is a recent I believe Jupiter study, more than 60% of people ranked user-generated content as the first thing that they look to and the thing they trust the most when they're planning travel. So the thing that's notable when we talk about user-generated content, we talk a lot about text. But user-generated content is video, it's sentiment, like was it a good value? Did I like it? Would my friends like it? It's photos. These are all hard things to put a lot of regulation, if that's where we want to go conversation-wise with this, around. But we can I think all agree that what's valuable about it is that it not be biased, it be transparent to users, who's writing the content and why. One of the things that's really -- one of the reasons users love user-generated content so much, when we talk to people and we say, when I say to people that I work at Tripadvisor, they almost all start some sort of story like, I love your site, I used -- it helped me plan my honeymoon, my vacation, my trip to somewhere. The reason why it's so valuable is, it's fresh. So a guidebook takes around 15 months to go from writing to publication. By the time you get that guidebook out of the store, it's pretty old, you have no idea whether or not the writer's actually been to that property, you have no idea whether they were comped a room. You have a lot of the same editorial things that you will expect in terms of the content, but the freshness of Tripadvisor content, thousands of pieces of content being published on the review every minute -- I'm sorry -- on the site every minute makes a real biasing of the content almost impossible. New reviews coming in constantly that tell you what the property was like yesterday, whether or not there's construction going on, whether or not the things that other people have noticed that are good and bad have been fixed or changed or addressed. And so it is somewhat self-regulating in that the content -- it is hard for the content to be overly biased one way or the other. It's a reflection of real sentiment yesterday or as recent as you can get it. So one of the things that I think everyone believes about user-generated content or when we talk about user-generated content is that it's just a gripefest, that it is overtly negative, that it's people bashing their bad experiences. But Tripadvisor data says it's actually the opposite. Right? People more often than not come to celebrate, come to talk about their great experiences. I think a couple slides down, we've got a bell curve of our reviews. You can see that it's overwhelmingly positive content. Certainly people come and write negative reviews. They talk about bad experiences. That's

important. But generally what users get out of user-generated content is the shared experience, and it's a platform for owners of properties for people in the travel industry to respond, to take it as feedback. Users are generally pretty forgiving. They don't expect -- at least in the travel space -- their travel experiences, to be perfect all the time. They understand you're talking about travel. You're talking about weather. You're talking about people that work at properties. So they're fairly forgiving, they're fairly understanding as long as the properties are making their best effort and are delivering what the user expected, what was promised to the user. So that's where the photo that's in the hotel brochure and the photo that users send in when they differ wildly. That's where users get their most benefit out of user-generated content. It's important that users at the end of the day believe and trust that content. And so Tripadvisor has zero tolerance for fraudulent review writing. It's something that we invest a lot of time in. It's resources, systems, in finding, ferreting out, fraudulent reviews and removing them from the site. And we do that in a couple different ways. We use these automated systems. We use people power and a bunch of methods to find fraudulent content. But we also use the community. It's really hard for a hotel, or it's really hard for an individual to bias the reviews one way or the other when you have hundreds or thousands of reviews coming in. It's -- and the more they try, the more obvious the fraud is. So the platform tends to level itself out fairly easily. And where it doesn't, we're pretty quick in responding to a user saying that review just seem like the experience I had, or a hotel you're seeing, that review bashing my hotel doesn't line up with the facts of the people who stayed here yesterday or last week or the details in that person's review. Last point, I think it is an important one is, Tripadvisor has to stay unbiased not just in who's writing the reviews, but who we work with as partners. As a business, we generate leads for travel partners. We help people book their vacations. So our parent company Expedia, Inc., we don't give them any favorable treatment. We don't give owners any favorable treatment, as well. We give owners tools where they can respond to reviews, where they can market their properties in a transparent and unbiased way, and make that connection between users and travelers. I love this example. It is one of my favorites. The number one Tripadvisor hotel in Rome is a hotel that you cannot book online. Right? And nonetheless, we continue to let our users comment on it and write their experiences because their experiences are so overwhelmingly positive about how great a place it is to stay that we think you ought to go find out how you can book it. You can't buy it from Expedia or Travelocity or any of the partners that we

work with. Nonetheless, number one hotel in Rome, great experience, and something that we think showcases the power of user-generated content. Thanks. [Applause]

>> Daniela Battisti: Thank you. Was very reassuring actually. I'm glad that you provide so many good things and information about your service. Now Mrs. Grand?

>> Victoria Grand: Hello, everyone. I have the distinct pleasure of probably being the only lawyer in the room who gets paid to watch wacky Youtube videos all day long. It's a pretty fun job. I think I'm going to repeat some of what other folks said. I think what we're seeing with Youtube and these other platforms is really the democratization of information. We have really the situation where everybody now has a printing press, and there is a very low barrier to entry. It used to be that you had to be a government or member of the press or you had to be a wealthy individual or corporation in order to broadcast a global message, and now average citizens are able to do that and increasingly this has had a transformative effect on society. People view themselves as authors and as artists and as content creators. I recently read a study that said that 60% to 70% of high school students have created content online. So we're seeing a real shift in the way that people view their contributions to the world. They're not sort of passively observing the dialogue. They're actually contributing to it. Now all you need to participate in these platforms oftentimes for Youtube anyway is a video camera or cell phone and you can broadcast a message to the world from your bedroom, or you can go out into your neighborhood, whether that be the streets of Tehran or you can capture the protest at your local grocery store in San Diego. So there is this concept of really being able to broadcast a message globally in an easy way. In terms of the Iran example, we saw with the situation there this year, Youtube was flooded with videos from the region, and it was interesting to see that you had regular people who were fluent in digital communication, and essentially all of a sudden they had a voice in an area where they didn't otherwise have the ability to speak freely. And I think they were able -- when things broke down, they were able to use the tools at their disposal. They had access to an audience, and they were confident that the story that they had to tell mattered, and that it would be heard on the Internet. I think they were really uniquely positioned to do what CNN could not. You know, in terms of sort of that ability to amplify the voice of one individual, I think what we're seeing in the consumer realm is this idea that if you're unhappy with a product or as a service -- as we know from Tripadvisor -- which I love -- you can

instead of sort of being subjected and tortured by the telephone directory, as I was with the D.C. cab system this morning trying to get a cab in the rain, you can actually go to Twitter or to Youtube and you can talk to your followers and you can start a community about what's going on and you can actually be heard. Right? So I think in a lot of ways this many-to-many communication model. We went from the one to one model of the telephone and telegraph to the one to many with the television, the many to many of the internet. This many-to-many model actually is I think much better suited to consumer protection than the one to many model of television where really the message is controlled by the lone speaker. It's one way, and it's being filtered by corporations and by the media and by the government. In terms of -- I think a lot of people associate Youtube with the wild west. That's probably what I thought about it before I had start working there. I really started to appreciate a lot of the protections that we have in place for our users. I think there was a recognition that a vibrant community requires rules, and that has been discussed a lot over the course of the past day. I think for us, even the founders at the beginning recognized that if we didn't have guidelines about the type of content that could be on the site, that our site would quickly become a porn site probably faster than anything else. So I think in order to preserve the nature of the sites that the founders wanted, they created some rules of the road which are called our community guidelines, our users are required to abide by them. And how do we enforce that? Well, that's a giant challenge given the scale and the nature of the platform. We've got 20 hours of video uploaded to the site every single minute, which means that it's a significant challenge. What we do is we rely on the community, which flags videos to the tunes of thousands a day. I'm one of the people who reviews those videos. And essentially, they're online 24 hours a day, 7 days a week, they're watching these videos. They're not sort of sitting back and passively consuming the content, they are actively engaged. We have a staff that are approximately 50% of people who view videos on Youtube, comment on the video or rate the video. So they're actually engaged in the video. When they see inappropriate content, they flag it. Then our community basically -- our enforcement team reviews it, then makes a decision about the takedown. That's the way our enforcement system works. Again it is about harnessing the community to help us preserve the nature of the site. Obviously we also have -- I think we need to make sure that that enforcement scheme is working, because we also want to be able to monetize the site. Right? It is really important for a positive user experience and for monetization in the future for us to make sure the inappropriate content is not there. You referenced a case in Italy. I think that really represents a

grave threat to Internet freedom. I believe this idea of making four individuals from Google potentially criminally liable for information that they did not produce, they did not upload, and they did not even view really will have a chilling effect on the Internet.

>> Daniela Battisti: Thank you.

>> Michael Geist: Thanks very much. Thanks to the OECD for an invitation. Speaking last on this panel gave me a lot of time to try to think through a lot of those questions. I think if there was a commonality to the questions, specifically the ones that you specifically posed to me around concerns around quality and the like, it's about the risks of the participative web, the lack of an editor, the misrepresentations that can occur, the difficulty in judging quality, sometimes the signal to noise ratio that exists. I certainly think it is true that these risks exist, and it would be a mistake to argue that they don't. I would at the same time argue that those same kinds of risks exist offline just as much as they do online. Judging quality, you can claim that quality is job one. It doesn't mean that a consumer necessarily knows whether it is or not. They face some of those same kinds of risks in terms of trying to reach that and from a signal to noise perspective at a time when I'd like the news to be talking about Copenhagen talks and things like that, all anybody seems to want to talk about on the main news channels is Tiger. And so there is a lot of noise that takes place, even in the -- even within the mainstream media today. I think though it's a mistake if we focus solely on the risks created by the participative web. In fact, I think that it's important to recognize that there are risks to the participative web, that there is in fact a certain amount of fragility that exists within this participation that has been incredibly successful. I mean, you hear 350 million users on Facebook. That's a remarkable number that was frankly not imaginable even a few years ago, even a few months ago, I suppose. Incredible thing to see. And yet there are risks. And I guess one way for me that I think about it is through one personal experience. It involves a lawsuit that I'm currently involved with. So I run -- I have my own website, MichaelGeist.Ca. Several years ago, a lot of -- it gets a fair amount of traffic. People post comments and the like. Several years ago, I don't even remember a specific posting -- people started posting comments on it and I got a notice from someone who objected to one of the comments. Now I didn't know the person who made the objection. I didn't know the person that made the comment. I took a look, and frankly didn't want to have to deal with the hassle, so I said, okay, fine, and I took it down. The person who had it

taken down put it back up again. And the person who sent the notice sent another notice. So this time I took a closer look, and, frankly, didn't know the parties involved, couldn't really make an effective judgment as to whether or not this was truly defamatory in the way this person was claiming it, and they were claiming not just defamation on the post, but they said I was linking to websites on my blog rule that contained similar kinds of defamation. I needed to remove that link as well. I kind of just said, you know what? I don't know, and I shouldn't be put in this position to have to make this judgment. The third notice that I received was from a professor who walked in to my office and asked if I was Michael Geist. When I said that I was, he handed me a lawsuit. That suit continues. I live in Ontario. The suit is actually in British Columbia. I have to say that this particular case strikes a real chord for me in terms of the risks to the participative web. Now, first off, this issue of judging quality. I'm a lawyer and I do this stuff, and I teach this stuff, but I couldn't make a judgment call as to the quality or the legality of those particular comments and the notion that we would want editors or someone to sit in judgment of so much of this participative web, and that they would somehow be well-suited to make those judgments. I think it's not only unrealistic, I think it's highly problematic. The reality is that you can't often make those kinds of judgments. That's why you need rules around things like notice and takedown and the like. But to set up a system, or I think even more some intermediary safe harbors. But to ask me to make those kind of choices -- to ask anyone to make those kind of choices is hugely challenging, hugely problematic as well. I think it also says something about the power of legal threats. Now I think lawyers -- we heard there is all but one person in the audience is a lawyer. But that's not really true. There are a lot of lawyers here. I would say that lawyers tend to underestimate the power of a legal threat, especially in jurisdictions where they don't see a lot of lawsuits. They just say, well, it is just a demand letter, it's just a legal threat. Even as someone again who is a lawyer, your heart skips a beat when somebody walks in and asks "Are you Michael Geist?" And hands you a lawsuit. I begin to wonder, as the case starts to unfold, how do I respond? How do I pay for this? Do I have to respond to this? This person isn't even in my jurisdiction. Do I have to travel to Vancouver to defend myself? What is my employer going to think? This person walked into my office at the university. What is the university of Ottawa going to think? Will they support me? Will they say this is part of what a university prof does or will they say, no, no, this is something on your own time, you're responsible for it. These threats have power. I received three notices. And so with respect, when we hear that three notifications are just a small part of an education program, they are

far more. The threat that someone could face, disconnection from the Internet, not knowing quite how to react is a very real and grossly disproportionate response. The notion that we would even consider this to be somehow a standard kind of response is not just a threat to those individuals, it is a threat to the participative web as a whole. Because it leaves people wondering whether or not they can speak. It is truly, I would argue, has a chilling effect. And now third point to make on this is to note that, when we look for that silver bullet, as we heard, let's let the intermediaries solve this. What responsibility do they have? I was an intermediary. There are millions of intermediaries, and they are not just ISPs. They are anyone who participates in this kind of format who very often will welcome comments, welcome people to engage, create communities around the kinds of things they do, and if you say it is your responsibility as an intermediary to police what takes place in your environment, recognize you are not just talking about Facebook or Youtube or some of the largest players on the Internet. You're talking about me, you're talking about millions of people like me who are participating, and at the same time don't know possibly where to turn. Now I will tell you that that's not the only threats we face when it comes to the participative web. People in countries that don't have effective fair use provisions face the same kinds of questions, am I infringing when I seek to speak out from a participative perspective? People with any circumvention rules that don't permit the same kind of traditional fair uses face the same kinds of questions. In fact, places where there isn't neutrality rules or at least sufficient amount of competition to ensure net neutrality on the network face those same kinds of threats to a participative web as they question whether or not their voices will even be heard in an environment where there are gatekeepers who may be in a position to decide. So as we think about the participative web and talk about do we need guidelines to protect us from the risks created by the participative web, I would argue that, if anything, we need to think long and hard about the risks to the participative web. Thanks very much.

>> Daniela Battisti: Well, thank you Professor Geist, and thank you to the panelists. I mean my questions were kind of doomy and gloomy because I wanted to raise the discussion and try to think about it and try to avoid at least the inconveniences that Professor Geist just mentioned or Mrs. Grant mention. Unfortunately, we read about these inconveniences every day in the newspapers today. We have two questions from the web. One person asks, what are the linkages between social networking and e-commerce? And second, in a way, is related to what more closely related

to what we are discussing right now, is what protection could the OECD guidelines provide to consumers who join online social networks. Who wants to answer this question first?

>> Mozelle Thompson: The answer is maybe. The first question is, I think also involves one of the earlier panels, that if a site like Facebook is viewed as a platform and people are communicating with each other, there's the C2C aspect of consumers talking to other consumers about goods and services. That's one aspect. Second is, that there are advertisers and companies who also create their own presence on Facebook, and that they have their own relationship with consumers who participate with them. But this also goes to some of the points that you made, Adam, and Ed. Also what Michael raises -- is that what we're seeing here now is in the participative web is an interesting challenge, is that there are some who would like to censor but the -- absent something that's clearly illegal or something that's clearly abusive, that the general way the participative web works is the best antidote to bad information is more good information and that we see that -- so it makes it very interesting environment for companies or for that matter governments who may actually find the participative web a little bit threatening because it's direct accountability that if you have a Facebook page, and you come up with something you don't -- the FBI has a Facebook fan page, if the FBI doesn't do something that someone doesn't like, you're going to see comments on that fan page about -- or direct responses from the public. So that's an interesting environment. It's a realtime environment. But you're right, keeping -- one of the challenges that Facebook has for example, Michael, is that trying to find the balance -- allowing a platform where people can participate and for some, including in government, who would like to overreach. There are plenty of police and security people who would love to camp out at Facebook as a way to spy on people. Duh. And we've made it very clear -- in some instances it's not been very popular -- in order to get it, we'll cooperate as long as you go through legal process, actually get a court order and if it's carefully tailored about something very specific. There are some people who don't -- some in law enforcement who don't like that. But I think that's necessary to maintain essentially an open relationship with your users so that they can feel free to actually communicate with each other. It's no secret, for example, that the government of Iran didn't really like the fact that Facebook was readily available to a lot of people in Iran. But that's too bad. I mean -- so I think that that's an interesting challenge. The other question that you raised, look, businesses -- this is very interesting because more -- we're still at the beginning of this, that people are trying to figure out how to inject

themselves, whether a business or government, into a stream of information that's not coming from the University of Ottawa, but from Michael Geist and people who are -- people who know him or people who are interested in the work that you're doing, and they're communicating within a community. So it's interesting that to some extent, you see microclimates of community standards all around the social web. It's an exciting, but also a little bit scary, too.

>> Steven Metalitz: Yes. I just felt I really should respond to Professor Geist because like many of the things that he says on his blog which is very -- makes for very interesting reading about copyright, what he just said about the three strikes proposal has a much higher proportion of rhetoric than reality. If three strikes is -- first of all, three strikes is something that we're going to get more experience with it. We don't have very much at this point. But it's become the law in France. It is the law in Korea in a different fashion. Certainly we're also going to see more and more different experimentation with ways to try to enforce copyright and other laws on the Internet. But to say -- people are kicked out of social networks all the time for violating terms of service, and for inappropriate activities and we had some good discussions here about how that's done at Youtube and Tripadvisor. They do rely on the community to do that, to a great extent. But they don't totally rely on community to do that. There are circumstances in which they terminate people's access to those networks. The idea that illegal behavior, such as for example what the screens that Patrick -- Patrick Ross put up for services that increasingly are finding Canada a safe haven because of its totally inadequate copyright laws, the idea that people couldn't be kicked off networks or have some consequence for doing that when they could be kick off or have consequences for engaging in other inappropriate behavior which may not even be illegal, I just think that is -- that shows a lack of proportion been lack of a sense of proportion in dealing with a serious problem that exists on the web. I think you're absolutely right that we have to be aware of threats to the web as well as threats from the web. But I don't think it is that helpful to minimize the latter and in order to exaggerate the former.

>> Professor Geitz: Since the Canadian embassy did such a nice job hosting us and feeding us this afternoon -- or many of us, I guess it is worth noting a couple things. First off, if we're going to talk about rhetoric, I don't think there is anything that's better characterized as rhetoric that the claims that Canada -- Canadian copyright laws are somehow so inadequate that Canada is this

piracy haven. Canada has our own minister of industry, and many others have recognized, is fully compliant with its current international obligations. That's certainly what they'd tell you at the embassy if you asked, and it is the full reality. This notion that somehow Canada is now a big piracy haven is simply wrong. Now I think what Steven just gave us was this nice slip from on the one hand the sorts of websites that we saw from Patrick Ross to on the other hand the activity by millions and millions of people around the world. I don't think anybody would suggest that going after the kinds of websites that Patrick Ross displayed is problematic. In fact, the law should be able to address those issues, and in fact Canadian law, as many other countries, can deal with those issues. But that's not what three strikes is all about. It's not about targeting a particular website that offers up illegal streaming services. You want to go after those, by all means, go after them. Many are located in China. If you were serious about going after them, include countries like China in the anti-counterfeiting trade agreement discussions where you are trying to reach these standards, where you actually go after countries where there may be some of that activity taking place but instead those countries have been fully excluded. Instead going after the countries where much of this activity simply doesn't take place. We are not looking for solutions it seems as even part of the discussions, we are just looking for more rhetoric in many respects. And so the three strikes doesn't deal with those sites. It deals with millions and millions of people, and that isn't as simple as saying surely there ought to be appropriate protections in dealing with that kind of issue. It's something far more serious.

>> Daniela Battisti: We do have a question from the audience. For all the other people, since we have only five minutes left. Okay, five minutes left. So very short question, just to the point. Okay? Thanks.

>> Female Speaker: This is a question largely for Victoria and Youtube. You spoke, Victoria, about the processes for dealing with inappropriate content. And I'm wondering about content that may not be inappropriate, but that people are complaining about because it's about them and they have what we might define as a privacy concern. They simply want to control the information about them that is distributed to the world through Youtube, and they don't want it to be distributed. How do you deal with -- what proportion of complaints are of that type, how do you deal with them, and what should we be doing?

>> Victoria Grand: Great question. I think that the issue of scale is always foremost in our minds as we are tackling these problems. Obviously pre-screening content on Youtube would be impossible. It would be like asking the telephone company to pre-screen calls before they're made. But I think in terms of privacy specifically, we have a safety center and a help and safety tool where users can go and file privacy complaints, and if you are recognizable, readily recognizable in a video, or that video is disclosing your personally identifiable information, we will go ahead and remove that video based on a first-party privacy complaint. Defamation is quite different not only because laws vary by country to country, but also because of the CDA, and the fact that you really need to be able to prove falsity there, and we're just simply not positioned to do that at Youtube. We're not a court. We're not able to be an arbiter of truth, and so for us we will respond to obviously to a court order, but again we're not able to -- we encourage users to take it up with one another and to go ahead and use a formal legal process if they are inclined to do so. But I think also just in general in terms of privacy, we continue to work on privacy protections and just not allowing users to control the content that people view about them on Youtube and to really be able to moderate their own experience.

>> Mozelle Thompson: I have one other thing here. One of the reasons this area is the hardest is that while I'm willing to concede that there are -- there is some differences about the web and everywhere else. We have to really be careful about creating a whole set of different expectations and of what happens online and offline. Because having rules that actually make sense, and approach what people's expectations are no matter where they go is really, really important. And so the line between -- we see this -- I've worked with the Facebook safety teams. There's a line between what's inappropriate and what's illegal. And what's inappropriate varies from place to place. And look, Facebook in and of itself has a lot of technology. You aren't allowed to have nudity on Facebook. They have an algorithm that really judges how much skin is in a picture or whatever. No, there is not a group of people who are sitting down, looking at every naked picture that someone tries to post. Even though people have applied for that position. But that's a very interesting and challenging -- because I'll give you an example. An idea of cyber bullying. People say things, and it's a judgment call about when someone complains that someone called them a bad name, and what really may constitute a pattern of abusive behavior. And we can't divorce that from

the real world because what we're also saying is that one of the ways to approach cyber bullying, an important way, is not just looking at whether they are on a particular website. The people who are at risk and the people who are conducting this behavior are also conducting it offline. They are not -- they're not dissimilar. And so looking at effective ways to deal with that problem is not just looking at a basic rule making, it's a lot more granular and nuanced than that.

>> Daniela Battisti: Yes, quick question. One minute left.

>> Female Speaker: I think Professor Geist will not be surprised by what I shall say because to say that the three strike is a legal threat for the UGC sites is completely out of question. It's not the problem. The problem is that the three-strike law is against illegal material, whatever site it is. And I would say that Youtube and other UGC sites have adopted the UGC principles which is sort of guidelines to draw the line between what is UGC user-generated content where all freedom is there. There is no rights attached to user-generated content and the content which is illegally through those means going on the web. And for that there is no neutrality. Sorry. You have used these words in the wrong way, but I would return to you, there is no neutrality. Whatever support, if there is illegal material circulating, there is a legal answer. That is what we try to apply in France, and I hope be a part of next OCG guidelines. Thank you.

>> Daniela Battisti: Well, thank you to our panelists. I think we can continue this discussion tomorrow because some issues are still open. I hope we can come back to this notion of scale because I think that really makes the difference. I mean even in cyber bullying, I mean one thing is if you are bully in your classroom, and only your classroom knows. Another thing if the entire world is watching you. I think that has a different effect on the individuals. So that's actually very interesting. And also is a problem with responsibility. So who is responsible?

>> Mozelle Thompson: But most bullying actually occurs within a small group of people. That's the way it's effective. People want to terrorize one person. It's a small group of people who do it. That's why it's effective. I'm saying to you that this is an interesting challenge that has to take place across not just whether it's on the Internet, but to talk about what parents have to do. Like one of the interesting challenges that I see all the time is -- this is one for the OECD -- is that there are

behaviors that may be illegal or inappropriate that appear on the web, but it is amazing how many people actually don't report it. And that we have not created a climate that makes it easier for people who feel like there is a real problem to report real wrongdoers. I'm not talking about people who are on the edge but people who are engaged in spam or people who are data scrapers or all sorts of other people. That's one of the interesting challenges for all of us, is to make the climate so that those people can't hide out.

>> Daniela Battisti: This is the last question. My last question. But we will come back to this tomorrow. What about responsibility? Who is responsible? Like in the case that Professor Geist raised. I mean that's a real case, like he is not responsible because two people got into a fight or let's say into a disagreement. Was not really a fight. So who is responsible? He shouldn't be responsible.

>> Mozelle Thompson: I agree. I mean, look. You're lucky you're not in California. Because you would probably have had 150,000 lawsuits by now. Look. I think that -- I think those who do have a platform have some responsibilities. But I think that the responsibilities here are shared among a lot of people, and I think part of it is -- one of our big faults, all of us in this room, is do we educate -- how do we educate how people can use their rights more wisely? Because it's not a matter of just whether something's intelligent. It's like when I see people post things, there is a big difference between what looks good when you post it at 16 than when you're 26. It's not illegal. You know, I talk to a lot of young people about this. I said if a person has actually gone through a senate confirmation process, you should think about what you post.

>> Male Speaker: Okay, well, thank you, panelists. Everybody. I have noticed that as we've gone on, we've become a lot more discursive and perhaps a little edgier perhaps but we're turning it into a bit of a debate, which is a good thing. Maybe tomorrow will be quite lively. Peter, you have some announcements?

>> Male Speaker: Yes. Thanks this afternoon has been very, very interesting. I think it's helped us in many ways to think what about the work we have to do on the guidelines. Turning now to a couple of announcements. Please remember we do have the children's panel, moderator would like

to meet with the panelists right now for several minutes. Also, tomorrow at the lunch break, when we are breaking for lunch we would like to meet with the moderators for 10 or 15 minutes. What we'll try to do is send you a note tonight to remind you of this and maybe give you some things to think about that we could discuss and resolve tomorrow. Thank you. See you at 9:00am tomorrow.