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Today's News

.FREE DOMAIN proposed to help cut Internet piracy. (P. 1)

U.S. INFORMATION INFRASTRUCTURE must be improved through R&D efforts from govt., industry and academia, former NSA dir. says. (P. 2)

LURING TOP TALENT is top priority for CEOs in telecom, other high-tech sectors, Deloitte & Touche say. (P. 3)

AGENCIES: U.S. trade officials say progress is being made in global intellectual property arena... (P. 4)

COURTS: Freelance writers settle for \$18 million with *N.Y. Times*, other defendants, in online copyright case... Mass. man indicted for online Super-bowl ticket scam... New Media Strategies switches to D.C. court system for trade secrets suit. (P. 4)

PRIVACY: New phishing reports slightly up in Feb. Financial services sector most popular target, anti-phishing group says. (P. 5)

INTERNATIONAL: Industry groups divided over including non-negotiated contracts in Hague cross-border treaty. (P. 5)

Idea of New TLD for Free Content Seen as Unworkable

Retired computer/networking professional Virginia Metze floated an idea last weekend for addressing online copyright infringement. In a message on Cyberia-L -- a listserv focusing on computer communications law and policy -- Metze suggested creating a new top-level domain (TLD) for content free for copying and distribution. Reaction to ".free" included feedback such as, "noble idea but it won't work," and "wouldn't affect peer-to-peer (P2P) piracy." Metze didn't respond to a request for comment.

Under Metze's idea, content posted on .free or linked from there would "be free for the copying and the author is not reserving distribution rights. No one but the author can put anything on the domain and that is secured in some way, like with a signature authentication," she wrote. Metze noted several potential problems. "One would almost have to give up distribution rights to some extent because some of the people will give the item to their friends," she wrote. Moreover, she said, each item's source would have to be identified.

The TLD could help content owners defuse consumer anger at over-protection of copyrights by offering "freebies," Metze said. For instance, she said, a company might "make an object or item that would appeal to people who otherwise would have to purchase a similar thing from a competitor [though the content couldn't violate anyone's copyright], or just put items there made by the company that really ought to be in the public domain if they aren't," such as old movies or older or lesser known music compositions.

.Free is a "noble effort," but the state of copyright "is too broken" to make the idea feasible, said DigitaTech and DigitaEye Designs founder Drew Lehman. Content often is offered free on some sites without anyone checking to see if it's actually free, he said. Finding owners to get permission can be a nightmare, he said -- though many, once located, are delighted to share their work, leading to more than one movement to revamp the copyright system.

Merely offering a .free TLD “would only confuse the issue by clouding the copyright issue,” Lehman said. Since most people don’t understand how copyright works, any item posted on .free would be assumed to be free. “It would take only one or 2 people posting MP3s and stock photos to make people feel justified” in copying such works, he said. Without copyright police to patrol .free domains, removal of copyrighted works that found their way onto them would be left to litigation, making the domain expensive to maintain even if content was posted in good faith, Lehman said.

Metze’s idea seems to be aimed at educating users about good copyright manners, said Richard Gooch, International Federation of the Phonographic Industry deputy dir.-technology. Most users are “generally honest, law-abiding folks,” he said, but they still take commercial content uploaded by “hard core” P2P networkers, though maybe “not always with a clear knowledge that it is wrong to do so.” Because P2P doesn’t use any domain, moving instead directly between computers, .free wouldn’t affect infringement at all, Gooch said.

It’s a “really silly” idea, said Cory Doctorow, Electronic Frontier Foundation European public affairs coordinator and himself an author. For one thing, Doctorow said, .free could mean he and other authors who now give their works away would destroy the goodwill they’ve built with their own Web sites by doing that very thing via .free. And what about the authors of the 10 million Creative Commons-licensed works? Doctorow asked.

The TLD raises many issues, among them fair use, Doctorow said. “If I’m in the U.S., I have the unlimited right to make noncommercial adaptations of written works in formats used by blind people, and distribute them for free. Can they go in .free?” And what about varying copyright laws? In Australia, George Orwell is in the public domain, Doctorow said – but in the U.K. he’s not. “Does the Gutenberg Archive edition of *1984* go in .free or .com?” Finally, he said, what technology would ensure that whoever posts content on .free had the legal right to do so? U.S. Supreme Court judges now “argue about this stuff for months in order to figure it out,” he said. “How would you replace hard, substantive legal questions” about whether someone has the right to distribute specific content for free “with machine-based determinations?”

Instead of .free, it might be worth considering separate Internets, one for pay, one for free, said Cryptome Web site operator John Young. Copyrighted material would go on the paid version, he said, “and with any luck such locked property would be banned on the free version.” The U.S. govt. has created several classified nets to avoid security breaches of the original open range, he said, but it’s unclear whether they really protect data because “nobody can test the systems who does not have a stake in hiding vulnerabilities.”

Young said if a totally free Net was set up away from the paid and classified versions, “the free version would win the great majority of users, and the bandits and spooks would eventually come sneaking back into the informative fold after a few years of dried up sales and worldly ignorance -- and a bad war or two. Just like what was happening before the copyright and national security clampdowns.” -- *Dugie Standeford*

Protecting Information

U.S. Intelligence Community Must Rally Around Innovation

Technological threat to the U.S. intelligence community is a key issue govt., industry and academia must address, said former National Security Agency/Central Security Service Dir. Kenneth Minihan. Of U.S. technological preparedness, Minihan said he’s “not certain we have a full set of [golf] clubs in our bag.” American R&D superiority is fading and the U.S. routinely underperforms in technology development, heightening risks of traditional and cyber attacks on the U.S. information infrastructure, Minihan told the 4th Annual Govt. Convention on Emerging Technologies Wed. in Arlington, Va.

Internet threats fall into several categories with which the intelligence community must contend, Minihan told *Washington Internet Daily*. Purposeful, illegal misuse is one, he said: “That’s a law enforcement issue and the

technologies are by and large there for law enforcement to forensically find people who are misbehaving and catch them.” The 2nd type is a “purposeful adversary who has substantially more capability.” That’s the main challenge for industry, govt. and service providers, Minihan said: “We’ve had no real operational exercise which let all 3 see the dependencies together.” Enemies are “intending to take substantial advantage of our lack of attention to that,” he said.

Daunting work awaits, Minihan said. The effort should begin with a national exercise offering all parties a chance to examine vulnerabilities, as the Defense Dept. did with 1997's Eligible Receiver program. That was the first large-scale, no-notice test of the nation’s response to an attack on the U.S. power and communications infrastructure. “After that, you had an well-informed leadership,” he noted. Minihan urged industry to push innovation in 2 ways: (1) The private sector should invest more in “wacky, far-out stuff” that could lead to technological breakthroughs. (2) Companies need to reestablish the pipeline that carries discoveries made in academia to industry.

Minihan, now principal at the Paladin Capital Group’s Homeland Security Fund, said the intelligence community is trying “to do the best they can with what they have,” but using infrastructure that is 10-15 years old. “Our people are still working in a technology ghetto,” he said, noting that existing systems can’t satisfy demands of the analytical and technological future: Today’s infrastructure lets enemies “hide in plain sight.” When it comes to secure technology, “we’re playing soccer, not football,” he said. “We don’t have an offensive team and a defensive team. We don’t have information solutions to consider the vulnerability internally and externally [and] think about nature of the threat.” Minihan said the country’s adversaries are “pretty smart” and know the right technology is not yet on the table. -- *Andrew Noyes*

‘ All About Their People ’

High-Tech CEOs Rank Personnel as Their Top Issue

High-tech CEOs are re-emphasizing their need to attract top talent, said Deloitte & Touche. CEOs surveyed said they care more about assembling the right staff than anything else, including winning product lines. CEOs also reported more optimism about the economy and their chances for success. “For CEOs, it’s now almost all about their people,” Deloitte said. “They’re of the opinion that high-quality employees are the greatest contribution to the growth of their businesses.”

“There’s a lot more competition suddenly for talent and without that talent they can’t maintain that innovative edge,” Tony Kern, deputy managing partner of Deloitte’s Technology, Media & Telecommunications Group, told *Washington Internet Daily*: “If you spent time in Silicon Valley there were a lot of engineers out of work. They’re not out of work anymore.” Kern said the professions in most demand include software engineers, electrical engineers and programmers. Kern expects the concern with talent to stay high.

Asked what figured most in their success, 25% of CEOs said personnel, compared to 19% in 2004; 21% said a sound business strategy, up from 16%. Tied for 3rd, 13% said leadership and 13% offering exceptional or unique products. The latter priority was ranked #1 by 24% of the CEOs last year. Given the premium on personnel, 27% said finding, hiring and retaining staff was their top operational challenge. In the #2 spot was developing a strong sales and marketing strategy.

The CEOs voiced growing confidence about the economy’s direction and their companies’ futures. In 2004, 70% said they were confident or very confident. This year, that figure rose to 74%. They’re less likely to look for help from D.C. Cutting taxes was an issue for 36% of the CEOs in the survey, down from 52% in 2004. However, CEOs reported increasing concern about pricing pressure. Twice as many worry about competitive pressure on pricing -- 13%, compared to 6% last year.

“Margins are starting to collapse,” Kern said. “That’s why it’s so important to keep that strong talent base. They’re all of a sudden concerned that without talent it’s hard to maintain that competitive edge.”

CEOs were asked how IP-based applications were impacting corporate strategy: 61% considered IP applications very or extremely important, compared to 47% last year, in the context of the Internet and eBusiness. The rise isn't surprising, given high anticipation in the tech industry of IP as a growth leader, the report indicated. "As companies look for a competitive edge, IP-based applications are taking on an increasingly more important role in facilitating transactions," officials noted: "These applications dominate in the area of communications and bringing co-workers across the country or the world together to collaborate. And, reflecting greater customer dependence on technology to meet their needs, technology companies are heavily invested in IP-based applications in the areas of sales and distribution and customer support." -- *Howard Buskirk*

Agencies

A "discouraging upward trend in piracy and counterfeiting" continues worldwide but progress is being made, U.S. Trade Representative (USTR) officials said in a conference call with reporters upon release Wed. of the 2005 National Trade Estimate Report on Foreign Barriers. The USTR said in the past year several countries have been encouraged to bolster IP protection, including Brazil, India, Taiwan and China, though copyright enforcement and patent protections in those nations remains weak. The USTR is reviewing China's IP practices; a report is in the works, officials said. The USTR is working with China and Korea to assure that those countries don't adopt a unique standard for encryption for wireless networks that would shut out U.S. technology developers.

Courts

Unions for freelance writers settled claims for online copyright infringement with the *N.Y. Times*, Lexis-Nexis and other defendants for \$18 million, the groups said late Tues. The American Society of Journalists & Authors (ASJA), Authors Guild and National Writers Union claimed articles by freelance writers for various media were added to online archives and databases without writers' consent going back 12 years. The 2001 Supreme Court ruling in *Tasini v. New York Times* established the right of writers to control their work's online distribution. The unions expect preliminary approval from the U.S. Dist. Court, N.Y.C., within a month. Under the settlement, publishers and database companies will pay writers up to \$1,500 for articles they appropriately registered for copyright under federal law, and up to \$60 for articles not registered for copyright. "I wouldn't be surprised if there are many writers who did not register their copyrights who will earn thousands of dollars from the settlement because they have so many claims," said ASJA Pres. Lisa Cool. Newspaper analyst John Morton, who said the settlement "wasn't a huge amount," predicted few freelance claims for copyrighted work: "Most writers don't bother to copyright things... I suspect the vast majority [of affected freelancers] will be getting the \$60" maximum for each uncopyrighted article. But newspapers may start rewriting freelance contracts to reserve the right to publish freelancers' works however they want for the same payment, Morton said. He said he doesn't expect newspapers to cut back on posting material online, especially since print and online operations are more integrated than ever and extra costs are marginal, he said: "I don't think we're talking about big bucks here." -- *GP*

A man who used eBay to sell Super Bowl tickets he didn't have was indicted Wed. by the U.S. Attorney in Boston. The indictment said Michael Deppe of Hudson, Mass., persuaded 41 customers to pay more than \$255,000 for tickets he promised to obtain through a ticket agency contact. His business partner, unaware Deppe had no access to tickets, received buyers' payments and gave them to Deppe, the indictment said. The business partner hasn't been charged. The indictment also alleged Deppe previously e-scammed customers for merchandise he didn't have, including Rolex watches.

New Media Strategies (NMS) will pursue a trade secrets suit against Pulpfree in the D.C. court system, the online brand promotion company said late Tues. A Va. judge ruled D.C. has jurisdiction in the case because the Arlington-based company had hq in D.C. at the time of Pulpfree's alleged violation. The firms shared trade secrets in 2000 talks about NMS acquiring Pulpfree, but Pulpfree pulled out, saying it had new funding for its personal portal technology. NMS said it learned in 2003 Pulpfree had relocated to N.Y.C., renamed itself BuzzMetrics and started a "substantially identical" online intelligence business to that NMS disclosed to Pulpfree in 2000.

Privacy

Reports of new phishing e-mails rose 2% in Feb. to just over 13,000, the Anti-Phishing Working Group (APWG) said Wed. in its monthly report. Active phishing sites increased just under 2% to 2,600 from Jan., but the average monthly growth rate since July 2004 is 26%. The financial services sector continues to be the main target for phishing, representing 78% of all hijacked brands in Feb., a slight decrease from Jan. The U.S. share of hosted phishing sites rose to 37%, a 6% increase, followed by China at 28%, an increase of 10%. “Phishing without a lure” -- malicious code that modifies host files to redirect from common to fraudulent sites or logs keystrokes -- and instant message-based phishing also are growing in frequency, APWG said.

International

For the first time, industry groups are split over whether a Hague treaty covering choice of law in business-to-business (including e-commerce) contracts should include non-negotiated instruments such as online click-through agreements, Consumer Project on Technology Dir. James Love said Wed. On Tues., the Secy. of State’s Advisory Committee on International Law met to try to resolve intellectual property (IP) issues raised by the convention -- which seeks to harmonize jurisdiction and enforcement of judgments in cross-border civil cases -- before a June 14-30 diplomatic conference. Several groups said their members are uncomfortable with mandatory choice of forum clauses in non-negotiated contracts, particularly in a treaty any country can join, Love said. Movie and software lobbyists were “on the defensive,” he said, with software firms claiming it’s impossible to draft language distinguishing between negotiated and non-negotiated agreements. But other businesses disagreed, Love said, saying drafters could look to the distinction in the Uniform Computer Information Transactions Act or the N.Y. convention on arbitration. They also suggested building in language that looks at whether each party actually can change a contract’s terms. The American IP Law Assn. and the International Trademark Assn. wanted to make sure participants were discussing only negotiated contracts, said Manon Ress, CPT dir.-information technology projects: “The expression ‘contract between consenting adults’ to define what kind of contracts we were hoping we were talking about came back again and again.” Love said he told the group “a convention that combined both negotiated and non-negotiated contracts would end up being weaker for negotiated contracts and have less support overall.” Consumer groups have long pushed to exclude non-negotiated contracts. The current slimmed-down version of the treaty no longer deals with business-to-consumer contracts, but consumer groups worry consumers may be deemed businesses with regard to take-it-or-leave-it contracts in some circumstances (WID March 14 p4). The exchanges at Tues.’s meeting were “very valuable” said a source close to the talks, confirming the industry split: “There was common ground expressed on the approach to IP rights in the convention, even if the details were not all agreed or worked out.” Ress said it was “more or less agreed” that the negotiated-vs.-non-negotiated issue would be on the agenda of a May 9 meeting devoted to a more general discussion of the treaty. Sadly, she said, it’s not on the Hague drafting committee’s agenda for a new draft. -- DS

Domain Names

ICANN unveiled a revised 3-year strategic plan it said addresses criticism of its first attempt. Reacting to Internet feedback and an independent review of those comments (WID March 30 p5), ICANN said Plan 7.0 better reflects differences between country-code top level domains (TLDs) and generic TLDs in terms of education and compliance. And the plan is clearer about what issues relate to the names and numbers communities, ICANN said. The new version takes a different approach to ICANN’s security and developing countries funding initiatives, creating clearer accountability through the board governance structures, ICANN said. The revised draft -- stratplan-revision@icann.org -- is up for comment, with a public discussion session on the document at next week’s meeting in Mar del Plata, Argentina. Following that event, a final version will be sent to the board for adoption, ICANN said. Also Tues., ICANN opened a public forum on Telcordia’s report ranking contenders for .net -- net-rfp-general@icann.org.

Industry Notes

Time Warner is making fast progress with its VoIP service, with demand so great it’s not marketing VoIP except via customer call-ins, Chmn. Glenn Britt told analysts at a Banc of America Media conference Wed. “We’re still adding

about 10,000 customers a week,” he said, “and there’s more demand than we can fulfill. It’s either a good problem or a bad problem, depending on how you look at it.” Relationships with Sprint and MCI to buy long-distance minutes and assist with interconnection are going well, Britt said. MCI’s potential acquisition could pose a problem, but Britt said he thinks MCI’s potential buyer would be interested in retaining the business because it is profitable for MCI. If not, he said, “we’ll have to look at alternatives.” To get VoIP going, Time Warner is hiring workers, adding trucks and improving its administrative operations to make sure it can offer good customer service. -- AV

Plans for commercial development of peer-to-peer (P2P) file-sharing will be announced by members of the Distributed Computing Industry Assn. (DCIA) Fri., following the U.S. Supreme Court’s hearing of oral argument in the *MGM v Grokster* case this week (WID March 30 p1). New strategies and tactics for P2P business models, content origination, licensed content distribution, digital rights management and payment solutions will be unveiled by a handful of DCIA member companies at the Digital Hollywood Spring conference in L. A., officials said. DCIA CEO Marty Lafferty said Wed. the High Court hearing made it “abundantly clear” that the entertainment industry “will be much better off working with industry-leading P2P firms” to develop a commercial distribution channel than continuing to boycott it.

Movies.com launched a review section specifically for parents in cooperation with Grading the Movies, an online movie resource for parents. Parent Previews will exclusively offer all new and archived content from Grading the Movies, which is adopting the Parent Previews brand. The section will highlight “family-friendly” content and grade each film with a letter.

Talisma acquired KnowledgeBase.net, a provider of hosted and on-site knowledge management software for customer support. The multi-channel customer relationship management (CRM) provider has collaborated with KnowledgeBase on products and services for 18 months.

Personals

SEC promoted **Scott Friestad** to assoc. dir., Enforcement Div.



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