



One Pager on “**Digital Rights Management: Whose Rights Are We Managing?**”

Prepared for the Congressional Internet Caucus Advisory Committee

Contact: Jim Halpert, 202-861-3938, jim.halpert@piperrudnick.com

WHY SERVICE PROVIDERS OPPOSE S. 2048

- S. 2048 should not apply to service providers or their networks. The Digital Millennium Copyright Act, 17 U.S.C. § 512, contains compromise language that adequately addresses all S. 2048 issues concerning service providers. This compromise passed overwhelmingly and was agreed to by all segments of the service provider and copyright owner industries. The compromise specifically provides for voluntary private sector consensus negotiations—not government mandates—to establish copyright protection standards applicable to Internet networks. 17 U.S.C. § 512(i).
- Voluntary, consensus negotiations agreed to in § 512(i) of the DMCA are the right way to achieve the goals of S. 2048. There is no failure of negotiations between service providers and copyright owners. Service providers recognize the importance of implementing protection standards and are prepared to help address the concerns prompting this bill. However, the companies and organizations supporting S. 2048 have been pursuing negotiations with other industries.
- S. 2048 would shift the costs and responsibility for protecting digital content from copyright owners to the ISPs and consumers forced to buy the government-mandated hardware and software. It limits these costs only to the extent that they are “not cost prohibitive,” § 3(d)(1)(I), and does not limit any way burden the mandates impose on service provider networks. By contrast, the DMCA prohibits imposition of substantial costs or burdens on service provider networks. § 512(i)(2).
- S. 2048 would give copyright owners virtually limitless control over transmission of their content on ISPs’ networks, which must “implement[] **directions** of copyright owners” even if the directions do not prevent infringement. § 3(f). This system of private law dictated by copyright owners would depart radically from both existing copyright law and the operation of the Internet.
- S. 2048 would also impose massive liability against service providers totally at odds with the service provider liability limitation in the DMCA. 17 U.S.C. § 512. Because of the enormous volume of communications across service providers’ networks, ISPs would face multi-million dollar liability simply for operating their networks and sites. The bill provides civil penalties against them roughly 10 times greater than those for software and equipment manufacturers. Criminal penalties, including prison and fines up to \$1 million, could also be imposed. § 7(a)(2).
- S. 2048 would impose a strict liability affirmative obligation upon service providers to store and transmit without any alteration every security feature that anyone associated with the government standard. § 4. Even non-intentional, non-negligent failure to satisfy the § 4 mandate would trigger massive liability. This liability against service providers is totally inappropriate.