BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY AND THE INTERNET

OF THE

HOUSE JUDICIARY COMMITTEE

HEARING ON

THE ROLE OF VOLUNTARY AGREEMENTS IN THE U.S. INTELLECTUAL PROPERTY SYSTEM

SEPTEMBER 18, 2013

TESTIMONY OF

RANDALL ROTHENBERG

PRESIDENT AND CEO

INTERACTIVE ADVERTISING BUREAU

I. Introduction

Thank you for the opportunity to testify at this hearing of the House Judiciary Committee's Subcommittee on the Courts, Intellectual Property and the Internet. I would like to thank Chairman Coble and Ranking Member Watt for holding this important hearing.

My name is Randall Rothenberg and I am the President and Chief Executive Officer for the Interactive Advertising Bureau (IAB). IAB is the trade association for ad-supported interactive media in the United States. IAB's more than 500 member companies account for 86 percent of the interactive advertising sold in the United States. Our members include the great names of the online and offline media world – AOL, CBS, Facebook, Google, Microsoft, The New York Times, Time Inc., Walt Disney, and Yahoo! among them – as well as scores of smaller publishers, advertising networks, and specialists in such areas as digital video advertising and mobile advertising.

Prior to joining the IAB, I spent many years a journalist at the *New York Times* and *Advertising Age*, a magazine on marketing and media. I am also an author and a frequent guest contributor to various publications. Having spent my career promoting the creation of quality, original content, I firmly believe that meaningful protection of intellectual property rights is the foundation on which the U.S. economy depends. As the framers of the U.S. Constitution understood, if we wish to remain as the world's leader in innovation and entrepreneurship, we must reward hard work and risk-taking through the protection of intellectual property.

On behalf of our member companies, IAB is dedicated to the growth of the interactive advertising marketplace. IAB drives toward this end by educating marketers, agencies, media companies and the wider business community about the value of interactive advertising, and

recommending standards and practices for this evolving marketplace. I believe that in order for the online advertising industry to continue growing, advertisers and marketers must have confidence that their brands will be protected in the digital ecosystem. We are proud of our efforts to bring together the most significant representatives of this digital marketing supply chain to develop strong protections for intellectual property and greater trust in the online advertising marketplace.

Mr. Chairman, my testimony will describe how the IAB, in partnership with both buyers and sellers of online advertising, has helped to create safeguards and enforcement mechanisms against online copyright piracy and counterfeiting. IAB's enforcement mechanisms are important tools in reducing the economic incentive of intellectual property theft, and illustrate the broad support and adoption for self-regulation in online advertising.

II. Interactive Advertising Is Important to the U.S. Economy

Before explaining the online advertising industry's efforts to combat intellectual property theft, let me first explain the role of advertising in today's digital marketplace.

In 2012, a study commissioned by the IAB and conducted by researchers at the Harvard University Business School found that the ad-supported Internet contributed over $530 billion to the U.S. economy, making it one of the most dynamic sectors in the U.S. economy.[1] Over 5.1 million, or roughly 3 percent, of American jobs are directly or indirectly created by the Internet. These jobs are highly dispersed across the U.S., with more jobs being created in small businesses across every state than in large internet companies.

[1] Professors John Deighton and Harold Brierley, Economic Value of the Advertising-Supported Internet Ecosystem (October 1, 2012), available at http://www.iab.net/economicvalue.

210 million people in the United States spend, on average, 38 hours a month on the Internet for work and leisure. This is unsurprising, for the Internet offers original creators of news, business information, entertainment, maps, and self-help resources, an ability to connect directly with consumers around the world. For example, education and information-gathering tools, including search engines, have helped to remove geographic and economic barriers and democratized the availability and accessibility of educational content. The Web is a communications lifeline for an enormous number of people. There are an estimated 1 billion users of free email services worldwide. Over 72 percent of Americans keep in touch with family and friends through social networking sites. In July, 187 million Americans viewed 48 billion videos online that were uploaded by others.

Nearly all of these services, information, and entertainment are free. Although, as you and I know, they are not really free: They are supported by advertising.

This is not surprising. For centuries, advertising has been at the center of a vital value exchange between businesses and consumers. We provide quality news, information, entertainment, and other services, in return for which consumers give us their time and attention. That time and attention, in turn, allows businesses to communicate the availability of goods and services to consumers and customers. Advertising is the heart of the U.S. consumer economy.

III. Self-Regulation is Combatting Intellectual Property Theft

The vibrant online advertising ecosystem that was created by innovative and legitimate individuals and companies has gained the attention of nefarious actors who wish to undercut the market for creative content through the illegal activity of copyright infringement. This abuse

hurts the brand integrity of advertisers and slows legitimate growth and job creation in the Internet economy.

IAB strongly believes in the importance of intellectual property protection for a functioning economy and the sustainability of the online advertising industry. This is one reason the IAB developed the Quality Assurance Guidelines ("Guidelines").[2] The Guidelines were created to help establish trust between buyers and sellers in a complex and ever-changing digital advertising ecosystem. The program helps promote the flow of advertising budgets into digital advertising by establishing industry principles that offer a framework for increasing brand safety. We consider piracy of intellectual property antithetical to the concept of brand safety: Consumer brands depend on the integrity of their own copyrights, trademarks, and patents, as well as on their distinctive brand reputations, and would not want to be associated with digital environments that persistently pirate others' intellectual property. For that reason, the IAB Guidelines provide specific prohibitions against selling certain types of advertising inventory, including ad inventory on sites involved in intellectual property violations, such as websites hosting and streaming infringing copyrighted content, torrent sites, and peer-to-peer sites.

On April 18, 2013, IAB released an update to the Guidelines for public comment. This revision focuses on increasing the applicability, visibility, and influence of the program, as well as the advancement of other vital program elements. Principally, we expanded the program to include all buyers and sellers of digital advertising. Originally, the Guidelines were targeted solely to ad networks and exchanges. The program will now represent the full diversity of the industry and reinforce the role all parties play in building a more accountable, transparent, and safe marketplace. This means that any seller of digital advertising, including premium

[2] Interactive Advertising Bureau, Quality Assurance Guideline (July 25, 2013) Available at http://www.iab.net/QAG

publishers, can now certify to be compliant with the Quality Assurance Guidelines which allows them to more formally shape and strengthen the guidelines. Intellectual property protection remains a centerpiece of the expanded Guidelines. The updated Guidelines now explicitly include an option for the lodging of Intellectual Property Infringement complaints by rights holders to the IAB, who will then direct the complaint to the relevant contact at each company participating in the Guidelines. The IAB is committed to working with all parties to strengthen the protection of intellectual property rights and improving the Guidelines complaint process. In addition, the program was also strengthened with the introduction of the option of independent third-party validation of companies' certification to create a new level of trust in the marketplace.

This program is driven by consensus amongst the participating companies. Representatives from companies that are in compliance or have committed to becoming compliant with the Guidelines shape the process. With the expanded representation across the digital advertising supply chain, we recognize there will be challenges to reaching consensus; therefore we have incorporated several procedural changes to encourage swifter action on high priority issues. For example, IAB is working to expand involvement in the decision making bodies of the program to include a much wider array of companies, including rights holders and premium publishers as well as representatives of buyers. IAB is also establishing a working group to research and analyze technological solutions across the ecosystem. IAB strives to provide a fertile environment for the finding of majority-supported resolutions, and to then act promptly and diligently to bring them to market. Opening up the Guidelines program to content owners will allow for their direct influence in future iterations of the Guidelines. They will be

able to help define how the Guidelines protect their intellectual property. The program and their interests are now more closely aligned than ever.

IAB remains committed to further developing and expanding the Guidelines. We proactively educate our members and the public about the program through consistent promotion and outreach. Members learn about and are encouraged to adopt the Guidelines through email, attendance at events such as the IAB Advertising Tech Marketplace, and regularly scheduled committee and board meetings. We inform the greater industry and the public about the Guidelines through social media and press outreach. I have spoken often at our events, including our IAB Annual Leadership Meeting this year, which drew nearly 1,000 senior industry executives, about the importance of industry-wide action and individual company commitment to combatting intellectual property piracy.

Going forward, we will continue to drive adoption of the Guidelines through marketing efforts, as well as by our expansion of the program to involve more stakeholders. The program has received a tremendous amount of exposure because of recent acknowledgments by Victoria Espinel, former U.S. Intellectual Property Enforcement Coordinator. We would welcome additional public support from you and other members of Congress.

IV. IAB Continues to Explore New Solutions

IAB continues to explore other avenues to combat online piracy and counterfeiting. In July, 24/7 Media, Adtegrity, AOL, Condé Nast, Google, Microsoft, SpotXchange, and Yahoo!, in coordination with IAB and the Office of Management and Budget, agreed to participate in voluntary Best Practices and Guidelines for Ad Networks to Address Piracy and Counterfeiting

("Best Practices").[3] These eight companies are leaders in the advertising industry. By agreeing to the Best Practices, they have committed to "maintain policies prohibiting websites that are principally dedicated to selling counterfeit goods or engaging in copyright piracy and have no substantial non-infringing uses from participating in the Ad Network's advertising programs." Further, the advertising networks agreed to continue the dialogue with content creators, rights holders, consumer organizations, and free speech advocates, regarding the best practices for enforcing intellectual property rights. The Obama Administration's Office of the U.S. Intellectual Property Enforcement Coordinator recently offered support for the self-regulatory Best Practices, stating that it was "a good example of how the public and private sector can work to combat piracy and counterfeiting while protecting and, in fact, further encourag[ing] the innovation made possible by an open Internet." IAB is educating other ad networks about the Best Practices. We are also exploring the possibility of inclusion of the Best Practices in the next version of the Quality Assurance Guidelines. As you can see, Mr. Chairman, IAB continues to explore creative solutions to address the problem of intellectual property theft.

V. Conclusion

Thank you for considering the view of IAB on these issues. We greatly appreciate your focus on our work to protect the value of original content and the advertising industry that supports its creation. We welcome your observations as the Guidelines progress, and urge you to continue to engage in fruitful dialogue that will lead to truly implementable and successful outcomes for the creative industries impacted by online theft.

[3] Best Practices and Guidelines for Ad Networks to Address Piracy and Counterfeiting (July 15, 2013), available at http://2013ippractices.com/