

Before the  
Federal Trade Commission  
Washington, D.C. 20580

In the Matter of )  
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DRM Town Hall ) FTC Project No. P094502  
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To: Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex A)  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

COMMENTS

of

AAP: ASSOCIATION OF AMERICAN PUBLISHERS  
ESA: ENTERTAINMENT SOFTWARE ASSOCIATION  
MPAA: MOTION PICTURE ASSOCIATION OF AMERICA  
RIAA: RECORDING INDUSTRY ASSOCIATION OF AMERICA

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Four leading copyright industry trade organizations – the Association of American Publishers (“AAP”), the Entertainment Software Association (“ESA”), Motion Picture Association of America (“MPAA”), and Recording Industry Association of America (“RIAA”) – are pleased to submit these comments in response to the Commission’s announcement, dated December 23, 2008, of an “FTC Town Hall to Address Digital Rights Management Technologies.” See <http://www.ftc.gov/opa/2008/12/drm.shtm>. By request also filed today, we are asking that our counsel, Steven J. Metalitz, be included as a panelist at the Town Hall event in Seattle, Washington on March 25, 2009.<sup>1</sup>

### **Introduction and Context**

For purposes of the Town Hall event, the Commission has defined digital rights management, or “DRM,” as “technologies typically used by hardware manufacturers, publishers, and copyright holders to attempt to control how consumers access and use media and entertainment content.” *Id.* On behalf of the wide range of creators, copyright owners, and U.S. copyright-based industries that are represented by our organizations, we believe this definition is at best incomplete. DRM should also be viewed as the technologies that facilitate broader consumer access to copyrighted works, and that reflect the parameters of the bargains entered into between owners of content and consumers who purchase access to it. DRM also offers greater flexibility, allowing copyright owners (and their licensees) to tailor their offerings to the specific distribution rights they possess, to offer more granular options to consumers, to experiment with different price points, different roles for advertising, and different time limits for use – in short, to better meet the diverse needs of diverse audiences. As a result, DRM technologies undergird business models that have enabled copyright owners to make more creative works available to more consumers, through more distribution channels, in more formats, under more flexible terms of use, and at a wider range of price points, than ever before. This comment provides many illustrative examples of products and services that make use of DRM to facilitate and broaden consumer access to these works. We urge the Commission to keep this context firmly in mind as it explores the many complex and challenging issues listed as topics for the Town Hall.

As noted in the list of potential topics for the Town Hall, the enactment of the Digital Millennium Copyright Act of 1998 (DMCA) has had a significant impact on the legal landscape for DRM.<sup>2</sup> It is worth stressing that, in enacting the DMCA, Congress specifically considered the role of DRM in facilitating the access of consumers to creative works. As stated in the House Manager’s Report, a key element of the legislative history of that enactment:

The technological measures – such as encryption, scrambling and electronic envelopes – that this bill protects can be deployed, not only to prevent piracy and other economically harmful unauthorized uses of copyrighted materials, but also to support new ways of

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<sup>1</sup> A brief description of each of the four commenters is included as an appendix to these comments.

<sup>2</sup> The phrase “digital rights management” was not in common usage in 1998 when Congress enacted the DMCA. But whatever the precise definition of DRM technologies, there is clearly a great deal of overlap between that category and the “technological protection measures” that are the focus of 17 USC 1201, as added by the DMCA.

disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those materials by individual. These technological measures may make more works more widely available, and the process of obtaining permissions easier...Use-facilitating technological protection measures such as these would simultaneously protect the legitimate interests of copyright owners while enabling the kinds of uses by individuals that have been so important in the past in promoting the access of all Americans to the bounty of creative works available from our writers, artists, musicians, composers, film makers and software developers.<sup>3</sup>

Congress's 1998 prediction has come true. The use of DRM systems has proven to be "use-facilitating," and consumers have been the beneficiaries of the broad and expanding range of consumer uses of copyrighted materials that DRM makes possible.<sup>4</sup> The remainder of this comment provides some illustrative examples from all the copyright industry sectors represented by the commenters.

### **The Digital Cornucopia –How Widespread Use of DRM Benefits Consumers**

The digital marketplace is replete with new and innovative services that provide copyrighted works to consumers in quick, inexpensive, efficient, flexible and secure ways. While we cannot possibly cover all of them, we provide below some examples of the cornucopia of digital material that is available in America today through legitimate services, facilitated by DRM.

#### **A. Motion pictures and television programs**

Some of the most exciting developments of the last three years in terms of the availability of copyrighted material are in the motion picture and television sector. Even the traditional method of viewing motion pictures, going to the theatre, is being transformed by DRM. Through the Digital Cinema Initiative,<sup>5</sup> MPAA member companies are making deals to equip thousands theatre screens with digital cinema equipment that improves the viewing experience while also protecting content.

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<sup>3</sup>Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998 (Comm. Print 1998) 6-7, *reprinted in* 46 J. COPYRIGHT SOC'Y 635, 639-40 (1999).

<sup>4</sup> The U.S. Copyright Office, in carrying out its DMCA rulemaking responsibilities related to DRM, has also recognized this. See, e.g., the Notice of Inquiry initiating the current rulemaking:

Another consideration relating to the availability for use of copyrighted works is whether the [DRM] measure supports a distribution model that benefits the public generally. For example, while a measure may limit the length of time that a work may be accessed (time-limited) or may limit the scope of access [scope-limited], e.g., access to only a portion of work, those limitations may benefit the public by providing "use-facilitating" models that allow users to obtain access to work at a lower cost that they would otherwise be charged were such restrictions not in place.

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 73 Fed. Reg. 58073, 58076 (Oct. 6, 2008).

<sup>5</sup> <http://www.dcmovies.com/>.

DRM is also revolutionizing at-home viewing of audio-visual material. On-demand viewing of television programs and movies has increased through cable and satellite providers thanks to innovative new services.<sup>6</sup> And IPTV, which is provided over the Internet, is becoming a viable alternative to cable and satellite.<sup>7</sup> Moreover, websites that encrypt some content, such as Hulu<sup>8</sup> and abc.com,<sup>9</sup> have dramatically increased the number of consumers viewing programs and movies through digital streams. Nielsen Media Research reported in October of 2007 that one in four U.S. Internet users streamed full-length television episodes online during a three month period.<sup>10</sup> This has led to an increase of millions of viewers for certain shows.<sup>11</sup>

Television programs and movies are also increasingly available for download and viewing on mobile devices, including wireless telephone handsets.<sup>12</sup> For example, AT&T is debuting its MobileTV service with channels from various television programming providers as well as a new movie channel, PIX, from Sony.<sup>13</sup> Television programs and movies can be accessed through services such as Amazon.com Video On Demand,<sup>14</sup> the Sony Playstation Network,<sup>15</sup> StarzPlay,<sup>16</sup> Netflix,<sup>17</sup> TiVo,<sup>18</sup> Sling.com,<sup>19</sup> the Zune Marketplace<sup>20</sup> and iTunes,<sup>21</sup> which is now offering rentals and downloads that become available the same dates as DVD

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<sup>6</sup> See, e.g., Mansha Daswani, *ABC Unveils Fast-Forward-Disabled VOD Model*, WorldScreen, Feb. 25, 2008, <http://www.worldscreen.com/newscurrent.php?filename=abc022507.htm>.

<sup>7</sup> Marguerite Reardon, *AT&T to Ramp Up IPTV's Expansion*, CNet, Jan. 25, 2007, [http://news.cnet.com/ATT-to-ramp-up-IPTVs-expansion/2100-1037\\_3-6153354.html](http://news.cnet.com/ATT-to-ramp-up-IPTVs-expansion/2100-1037_3-6153354.html).

<sup>8</sup> <http://www.hulu.com/>.

<sup>9</sup> <http://abc.go.com/player/index?pn=index>.

<sup>10</sup> Brian Stelter, *Serving Up Television Without a TV Set*, N.Y. Times, Mar. 10, 2008, [http://www.nytimes.com/2008/03/10/technology/10online.html?\\_r=2&ref=bus](http://www.nytimes.com/2008/03/10/technology/10online.html?_r=2&ref=bus).

<sup>11</sup> Brian Stelter, *Online Streaming Adds Millions of Viewers for 'Heroes,' 'The Office'*, N.Y. Times, Oct. 17, 2008, <http://tvdecoder.blogs.nytimes.com/2008/10/17/online-streaming-adds-millions-of-viewers-for-heroes-the-office/>. abc.com has had over 500,000,000 episode starts since September of 2006.

<sup>12</sup> Cynthia Littleton, *Networks Nab Mobile Deals*, Variety, Mar. 31, 2008, <http://www.variety.com/article/VR1117983247.html?categoryid=14&cs=1>.

<sup>13</sup> Mansha Daswani, *Sony Launches Film Service for Mobiles*, WorldScreen, Mar. 31, 2008, <http://www.worldscreen.com/newscurrent.php?filename=spt033107.htm>.

<sup>14</sup> [http://www.amazon.com/b/?ie=UTF8&node=16261631&tag=googhydr-20&hvadid=2421641721&ref=pd\\_sl\\_15356wjtq3\\_b](http://www.amazon.com/b/?ie=UTF8&node=16261631&tag=googhydr-20&hvadid=2421641721&ref=pd_sl_15356wjtq3_b).

<sup>15</sup> <http://www.us.playstation.com/PSN>.

<sup>16</sup> <http://www.starz.com/channels/starzplay>.

<sup>17</sup> <http://www.netflix.com/NetflixReadyDevices>.

<sup>18</sup> <http://www3.tivo.com/tivo-tco/cds/index.do>.

<sup>19</sup> <http://beta.sling.com/>.

<sup>20</sup> <http://social.zune.net/video/>.

<sup>21</sup> [http://www.apple.com/itunes/home/includes/itunesmodule\\_movies.html](http://www.apple.com/itunes/home/includes/itunesmodule_movies.html).

releases.<sup>22</sup> The flexible DRM used by iTunes enables consumers to enjoy the audiovisual works they download on multiple computers and portable devices. And DRM allows Amazon.com Video On Demand to establish flexible delivery models for some titles that enable customers to try content on-demand at rental prices and later convert their rentals to permanent downloads or DVDs if the customers decide they like the movie enough to retain a copy.

DVDs themselves continue to represent a successful DRM based platform,<sup>23</sup> and Blu-ray Discs are grabbing an increasing market share.<sup>24</sup> Some DVDs are being sold with digital copies of movies included for use on computers and portable devices.<sup>25</sup> Some Blu-ray Discs include BD-live features that enable consumers to enjoy interactive features and extra content on Internet enabled BD-Live players, such as a Sony PlayStation 3.<sup>26</sup> And consumers can increasingly purchase and burn DVDs at kiosks in retail outlets.<sup>27</sup>

This avalanche of new viewing choices for consumers is possible only because DRM technical measures are available and becoming increasingly sophisticated. The most basic DRM tool is encryption, which enables the secure delivery of programming to consumers who wish to purchase it. Encryption made possible pay-per-channel business models like HBO and Showtime in the 1970s, and is the basis of the most successful consumer electronics product in history -- the DVD. These business models that have so vastly expanded consumers' viewing options could not function without DRM technologies, which serve to implement the terms and conditions of the bargain made between the owners and the users of entertainment programming. Thus, DRM is providing consumers with a plethora of choices when it comes to how, when and where they view movies and programs.

## B. Entertainment Software

The entertainment software industry continues to grow at a rapid pace due in part to the successful use of DRM. During 2007-2008, publishers of entertainment software released over

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<sup>22</sup> Diane Garrett, *Studios in Tune With iTunes*, Variety, May 1, 2008, <http://www.variety.com/article/VR1117984935.html?categoryid=20&cs=1>.

<sup>23</sup> One MPAA member company, Warner Bros., released 616 DVD titles and sold 159 million units in 2008.

<sup>24</sup> Rick Hodgin, *Blu-ray Sales Quadrupled in 2008*, TG Daily, <http://www.tgdaily.com/content/view/41003/98/>. One MPAA member company, Warner Bros., released 107 titles and sold 7.1 million units in 2008.

<sup>25</sup> See, e.g., Ned Berke, *Lionsgate, Apple to Deliver iTunes Copy on DVD and Blu-ray Offerings*, WorldScreen, Mar. 10, 2008 ("Just like movies purchased from the iTunes store, an iTunes Digital Copy can be transferred to iTunes and then viewed on a PC or Mac, iPod with video, iPhone or streamed to a television set with devices such as the Apple TV. The transfer from disc to computer requires a unique code that can only be used once, meaning each DVD and Blu-ray disc will only transfer to one iTunes library.").

<sup>26</sup> The Dark Knight, <http://thedarkknight.warnerbros.com/dvdsite/event/index.html>; Sony Pictures, BD-Live, <http://thedarkknight.warnerbros.com/dvdsite/event/index.html>.

<sup>27</sup> Jennifer Netherby, *Visions of an MOD World*, Content Agenda, <http://www.contentagenda.com/info/CA6535979.html>.

1,300 console game titles, 800 portable game titles, and 1,250 PC game titles in North America.<sup>28</sup>

Trial software that enables a “try before you buy” experience is one example of DRM benefiting consumers. Some trial software is time-limited, while other trial software permits play in limited areas of a game’s universe. Trial software is an important aspect of Xbox LIVE Arcade, an online marketplace that features downloadable casual and arcade games for play on the Xbox and Xbox 360 consoles for Xbox LIVE subscribers. To date, gamers have downloaded 110 million trial copies of games using Xbox LIVE Arcade.<sup>29</sup> Importantly, trial games not only benefit consumers but also enthusiasts and small, independent game developers. Beginning in late 2008, Microsoft began offering both trial and for-purchase versions of independently-created casual and arcade games through the “Community Games” section of Xbox LIVE Arcade. Creators share in the revenue from the sales, and DRM serves to protect their interests as well.<sup>30</sup>

Today’s entertainment software DRM continues to become more flexible.<sup>31</sup> For example, new download services enable greater portability of game content. Valve Corp.’s Steam service tethers downloads to an online account rather than to a particular computer or device.<sup>32</sup> This enables a consumer to access games at convenient times and locations (such as when traveling).<sup>33</sup> And Microsoft now makes a tool available to Xbox 360 users that enables the users to “migrate” licenses and associated content to a new console in the event of hardware malfunction or failure, or the purchase of a new console.<sup>34</sup>

In the past, users of PC-based games had to insert the game disc into the PC drive bay to access the game. Publishers are experimenting with more convenient systems, such as online authentication, which allows more portability by permitting consumers to install and authenticate a game on more than one computer and play on those computers without requiring the disc in the

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<sup>28</sup> The source of these numbers is a proprietary study by the NPD Group.

<sup>29</sup> *Tis the Season to be Jolly: 2008 a Stellar Year for Xbox LIVE Arcade*, Xbox 360 Press, [http://gamerscoreblog.com/press/archive/2008/12/22/Bst\\_Of\\_09\\_XBLA.aspx](http://gamerscoreblog.com/press/archive/2008/12/22/Bst_Of_09_XBLA.aspx).

<sup>30</sup> *New Xbox Experience Bringing Community Games Channel*, <http://www.1up.com/do/newsStory?cId=3170751> and [http://creators.xna.com/en-US/play\\_detail](http://creators.xna.com/en-US/play_detail).

<sup>31</sup> One example of this flexibility is an innovative new use of DRM to encourage consumers to try games recommended by friends and family. For example, *Sacred 2: Fallen Angel* is a role-playing game (“RPG”) available for the PC and other platforms. Users may pass along their PC game disc to friends and family. Subsequent installs of the game will revert to a “trial software” mode that allows the user to play the game for one day before requiring purchase. Andy Chalk, *Sacred 2 DRM: Try Before You Buy*, *The Escapist*, Nov. 17, 2008, <http://www.escapistmagazine.com/news/view/87292-Sacred-2-DRM-Try-Before-You-Buy>.

<sup>32</sup> <http://store.steampowered.com/>.

<sup>33</sup> In November of 2008, Valve Corp. introduced new functionality to its service that will afford consumers further convenience when accessing games from multiple computers. The new “Steam Cloud” service will store user changes to game options (such as keyboard/mouse configurations and multiplayer settings) and will apply those across all computers that the gamer uses to play that game. See Press Release, Steam News, Steam Cloud Rolling in This Week, Nov. 3, 2008, <http://store.steampowered.com/news/1968/>.

<sup>34</sup> Transferring Content Licenses to a New Console, <http://www.xbox.com/en-US/support/systemuse/xbox360/licensmigration/>.

drive.<sup>35</sup> This move is particularly timely given the rapid growth of netbook laptops, some of which do not include optical drives. Some download services offer additional consumer-oriented benefits, such as automatic software updates, free or minimal-cost re-downloads, and embedded community features. These benefits will continue to multiply during the coming years.

### C. Music

While the past year has seen a movement towards the commercial sale of permanent audio downloads in DRM-free formats,<sup>36</sup> DRM nonetheless still plays a large part in facilitating the legal digital music marketplace. Indeed, as consumers continue to seek out digital music products and services in record numbers, copyright owners and their third party licensees continue to rely on various forms of DRM to make it possible to bring to market new and exciting digital music products and services that provide consumers with affordable access to large catalogs of music in return for terms of service that place some sort of limit on their use of or access to the music (*e.g.*, limited or “timed out” downloads, on-demand streaming services). Thanks to DRM, today’s music consumers are able to access music at a greater variety of price points, on a greater variety of devices, from a greater variety of locations, and under more varied terms of service than ever before.

Millions of consumers currently enjoy subscription services from companies such as Rhapsody,<sup>37</sup> Napster<sup>38</sup> and Microsoft.<sup>39</sup> For a low fixed monthly fee, these services (and others like them) allow subscribers to obtain access to millions of songs,<sup>40</sup> stream or download them on demand and even transfer these files to a wide variety of portable devices. Without DRM and the ability to ensure that these files are no longer available if a subscription lapses, such a product offering simply would not be possible, certainly not for a price that the average consumer would be able to afford.

Satellite radio (*i.e.*, Sirius XM) offers consumers yet another way to access large quantities of music by providing subscribers with access to a large number of professionally programmed, commercial-free music channels that cover a vast array of musical genres and subgenres that offer something for nearly everyone. Satellite radio, too, uses DRM to ensure that only paying subscribers are able to listen to a huge variety of music channels on a 24/7 basis. No subscription service would be commercially viable if the service provider did not have a means of preventing non-subscribers from accessing the service (and the copyrighted works that are made available through the service).

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<sup>35</sup> See EA Customer Support, Frequently Asked Questions, [http://support.ea.com/cgi-bin/ea.cfg/php/enduser/std\\_adp.php?p\\_sid=dJ6rS9pj&p\\_faqid=20763#more](http://support.ea.com/cgi-bin/ea.cfg/php/enduser/std_adp.php?p_sid=dJ6rS9pj&p_faqid=20763#more) (noting that users may install and authenticate the game on up to 5 computers).

<sup>36</sup> See, *e.g.*, Dawn C. Chmielewski, *iTunes Embraces 3-tier Pricing, Will Remove Anti-copy Software*, L.A. Times, Jan. 7, 2009, <http://www.latimes.com/business/la-fi-itunes7-2009jan07,0,4241351.story>.

<sup>37</sup> <http://www.rhapsody.com/home.html>.

<sup>38</sup> [http://www.napster.com/index.html?darwin\\_ttl=1232979505&darwin=1208ABBY](http://www.napster.com/index.html?darwin_ttl=1232979505&darwin=1208ABBY).

<sup>39</sup> <http://www.zune.net/en-US/>.

<sup>40</sup> For example, Rhapsody offers access to 6 million songs.

One variation on the subscription model is a model where consumers pay a monthly fee to “rent” unlimited amounts of protected music but receive a fixed amount of unprotected music as part of their monthly subscription. Another variation beginning to emerge is where a portable device or handset “comes with music” such that the consumer automatically gains access to a library of music, either through rental or permanent downloads tied to a particular device.

Like subscription services, fan clubs and “Connected CDs” both require some form of DRM in order to be commercially viable. Fan clubs generally provide password-protected access to premium content in return for a fee. Some Connected CDs provide users with a computer “key” that allows them to access bonus content such as additional audio, audiovisual and graphical materials.

Another use of DRM in the music sector enables digital cable and satellite television subscribers to enjoy dozens of genre-specific audio-only music channels from providers like Music Choice and Sirius XM, through their television sets. Because access to these music services is bundled with television programming, consumers are able to enjoy a wide variety of music channels at very little cost.

Many other services use a combination of DRM technologies to ensure that consumers are only able to use the music in the manner in which it is intended to be used. For example as ad-supported, on-demand streaming becomes more widespread, many content owners are looking to secure streaming technologies such as Flash Media Server 3.0 and Microsoft's Silverlight to help prevent streams from being permanently captured. Likewise, in the mobile space, music content is frequently protected by “forward-lock” technology, which prevents users from forwarding content to other unauthorized handset owners.

Newer business models – including some already being offered and some still in various stages of product development – almost without exception, require some form of DRM in order to be commercially viable. Many of these examples involve the mobile space, where music has long led the way. Examples of these newer business models include the following:

- Music streamed on handheld wireless phones, such as Verizon’s V Cast Music with Rhapsody;<sup>41</sup>
- Locked content models, such as SanDisk’s slotRadio<sup>42</sup> and Slacker;<sup>43</sup>

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<sup>41</sup> V Cast Music with Rhapsody, [http://products.vzw.com/index.aspx?id=music\\_vcast](http://products.vzw.com/index.aspx?id=music_vcast).

<sup>42</sup> slotRadio is a new product/service where the consumer buys a player for \$99 that comes with 1,000 songs preloaded onto a tiny microSD card with handcrafted playlists that include hundreds of handpicked artists. Like FM radio, songs are played in sequence and cannot be rewound or rearranged. However, the listener can skip individual songs, switch between playlists with a touch of a button or put all 1,000 songs on shuffle mode. Users can also buy add-on genre-specific memory cards with 1,000 pre-loaded songs that play in the same manner. <http://www.slotrдио.org>.

<sup>43</sup> See, e.g., Press Release, Slacker, Slacker Launches Personal Radio Mobile Application for iPhone, Jan. 14, 2009, <http://www.slacker.com/press/release/01142009-iphone>.



- Sampling services, “pay-per-play” and “try before you buy” models, such as 14-day trial memberships to the “Zune Pass” music subscription service for the Zune music player; and
- Home domain models, such as the initiative being developed by the Digital Entertainment Content Ecosystem (“DECE”) consortium.<sup>44</sup>

The fact that there are so many different business models, and that copyright owners and third party licensees are doing so much experimentation in the digital music space, demonstrate that consumers are continuing to benefit from the existence of DRM and the multitude of legitimate distribution platforms and devices that it makes possible.

#### D. Books

Audiobook sales have increased substantially during the last three years. Sales of audiobooks now account for over one billion dollars a year in revenue.<sup>45</sup> E-book downloads and purchases have also increased significantly during the last three years.<sup>46</sup> This increase is due in part to the release of exciting new portable reading devices, such as the Kindle<sup>47</sup> and the iPhone.<sup>48</sup> The success of these new readers has led to dramatic increases in the number of available titles, and projections indicate that these increases will continue.<sup>49</sup>

In addition, publishers such as Random House and HarperCollins have reached deals with libraries that enable library users to download digital copies of books from library websites that remain on the users’ computers or portable devices for a limited period of time (*e.g.*, one to three weeks) before becoming inaccessible.<sup>50</sup> Such innovative services increase affordable (actually free) access to a large number of titles in a manner that never would have been possible

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<sup>44</sup> Unlike current models that allow users to access their digital content on a single device or limited number of covered devices (*i.e.*, the current iTunes model of 5 PCs), the home domain model would make it possible for digital content to flow to any device in a single domain, typically a household, and the number of users or copies made would not be limited. *See, e.g.*, Gina Keating, *Media Group to Create New Digital “Eco-System”*, Reuters, Feb. 2, 2008, <http://www.reuters.com/article/technologyNews/idUSN1234778920080912>.

<sup>45</sup> Press Release, Audio Publishers Association, *More American Are All Ears to Audiobooks*, Sept. 15, 2008, <http://www.audiopub.org/resources-industry-data.asp>.

<sup>46</sup> *See* Press Release, Association of American Publishers, *AAP Reports Book Sales Rose to \$ 25 Billion in 2007* (Mar. 31, 2008), [http://www.publishers.org/main/IndustryStats/indStats\\_02.htm](http://www.publishers.org/main/IndustryStats/indStats_02.htm) (“E-books saw a 23.6 percent increase from last year with \$67 million in sales and a compound growth rate of 55.7 percent since 2002.”).

<sup>47</sup> *See* Zach Pontz, *A Year Later, Amazon’s Kindle Finds a Niche*, CNN.com, Dec. 4, 2008, <http://www.cnn.com/2008/TECH/12/03/kindle.electronic.reader/index.html> (reporting that nearly 250,000 Kindles have been purchased since November of 2007, and e-book sales are now ten percent of Amazon’s book sales).

<sup>48</sup> Chris Snyder, *E-books Have a Future in iTunes*, Wired, Nov. 25, 2008, <http://blog.wired.com/business/2008/11/e-books-have-a.html>.

<sup>49</sup> *See id.* (reporting that Random House and Simon & Schuster are doubling the number of digital books offered and that ninety-five percent of textbooks published by McGraw Hill are also available as e-books).

<sup>50</sup> Paul Thomasch, *Libraries Step Into the Age of iPod*, Reuters, Aug. 7, 2008, <http://www.reuters.com/article/technologyNews/idUSN0729441420080807>.

without the DRM that prevents the copies loaned by libraries from replacing copies purchased from stores. Moreover, libraries save valuable shelf space and readers can learn from and enjoy their favorite authors on the go.

These improvements to library loaning of literary works supplement the educational access to books that DRM has facilitated for some time. DRM continues to constitute an important component of the provision of online access to and distribution of publications by university presses, scientific and other scholarly journals, and for a variety of educational publishers at all levels of elementary, secondary and higher education publishing. This is particularly true of the many variations of electronic subscription models that enable access and usage under diverse terms.

Even many of the benefits of the Google Books settlement<sup>51</sup> will depend on DRM to distinguish between various levels of access to millions of works that are otherwise unavailable. This example of DRM facilitating widespread use is demonstrative of the ability of technological protection measures to benefit consumers while also protecting authors and publishers.

### **Conclusion**

AAP, ESA, MPAA and RIAA appreciate this opportunity to present some information concerning the role of DRM technologies in benefiting consumers by facilitating a wide range of uses of copyrighted materials. The commenters would be glad to provide additional information to assist the Commission in its examination of DRM issues, and look forward to participating, through their counsel and otherwise, in the Town Hall event.

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<sup>51</sup> <http://books.google.com/booksrightsholders/>.

## **Appendix: Descriptions of the Commenters**

**AAP** is the principal national trade association for the U.S. book publishing industry, representing more than 300 commercial and non-profit member companies, university presses, and scholarly societies that publish books and journals in every field of human interest. In addition to their print publications, many AAP members are active in the vibrant, evolving markets for e-books and audiobooks, while also producing journals, textbooks, computer programs, databases, and a variety of other multimedia works for use in online, CD-ROM and other digital formats.

The **ESA** is the U.S. association dedicated to serving the business and public affairs needs of companies publishing interactive games for video game consoles, handheld devices, personal computers, and the Internet. The ESA offers services to interactive entertainment software publishers including a global anti-piracy program, owning the E<sup>3</sup> Expo, business and consumer research, federal and state government relations, and First Amendment and intellectual property protection efforts. For more information, please visit [www.theESA.com](http://www.theESA.com).

**MPAA** is a trade association representing some of the world's largest producers and distributors of motion pictures and other audiovisual entertainment material for viewing in theaters, on prerecorded media, over broadcast TV, cable and satellite services, and on the Internet. MPAA members include Paramount Pictures Corporation, Sony Pictures Entertainment, Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment, Inc.

**RIAA** is the trade group that represents the U.S. recording industry. RIAA members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States.