

# **U.S. Copyright Alert System and Other Voluntary Initiatives**

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# Agenda



- Where We Are .... Setting the Context
- Copyright Alert Program
- Other Voluntary Initiatives

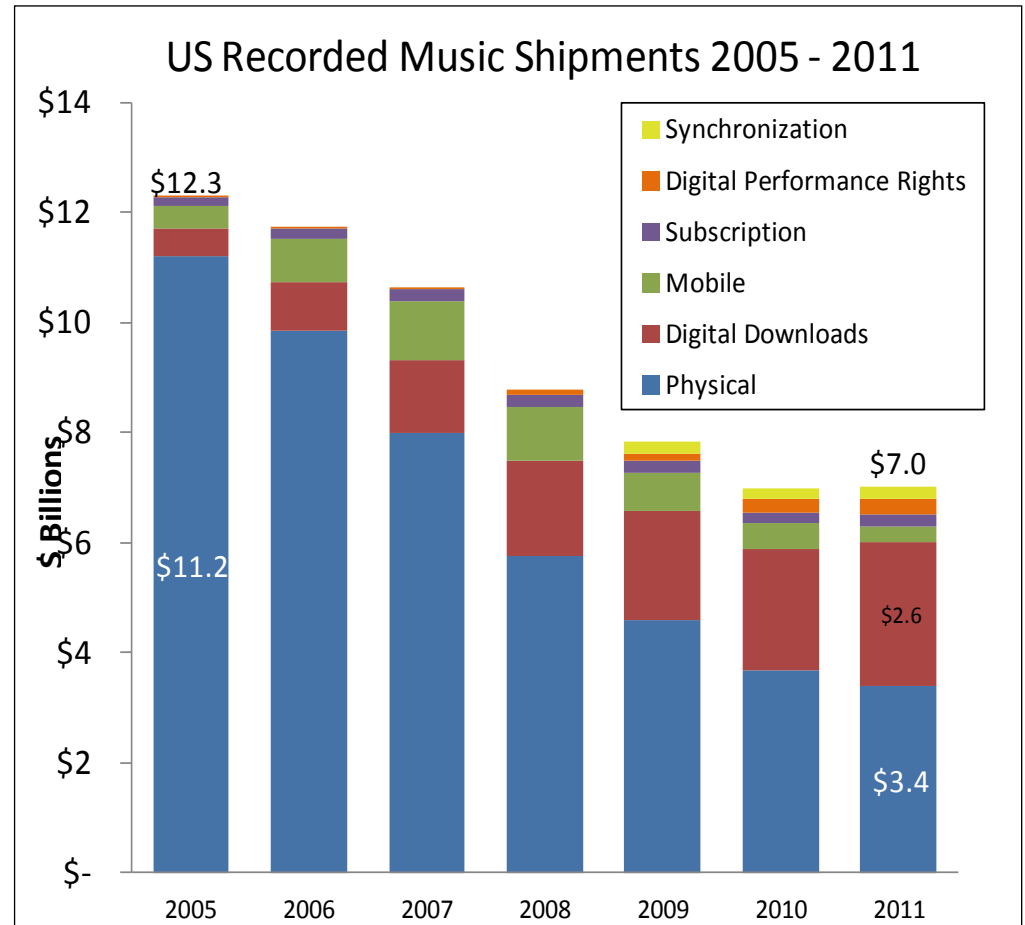
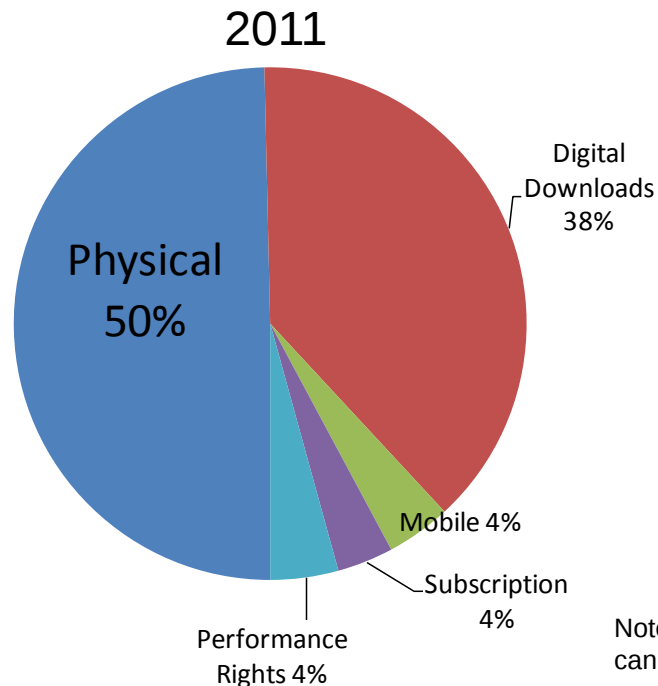


# Current Economic & Legal/Policy Environment

# Where We Are: By the Numbers

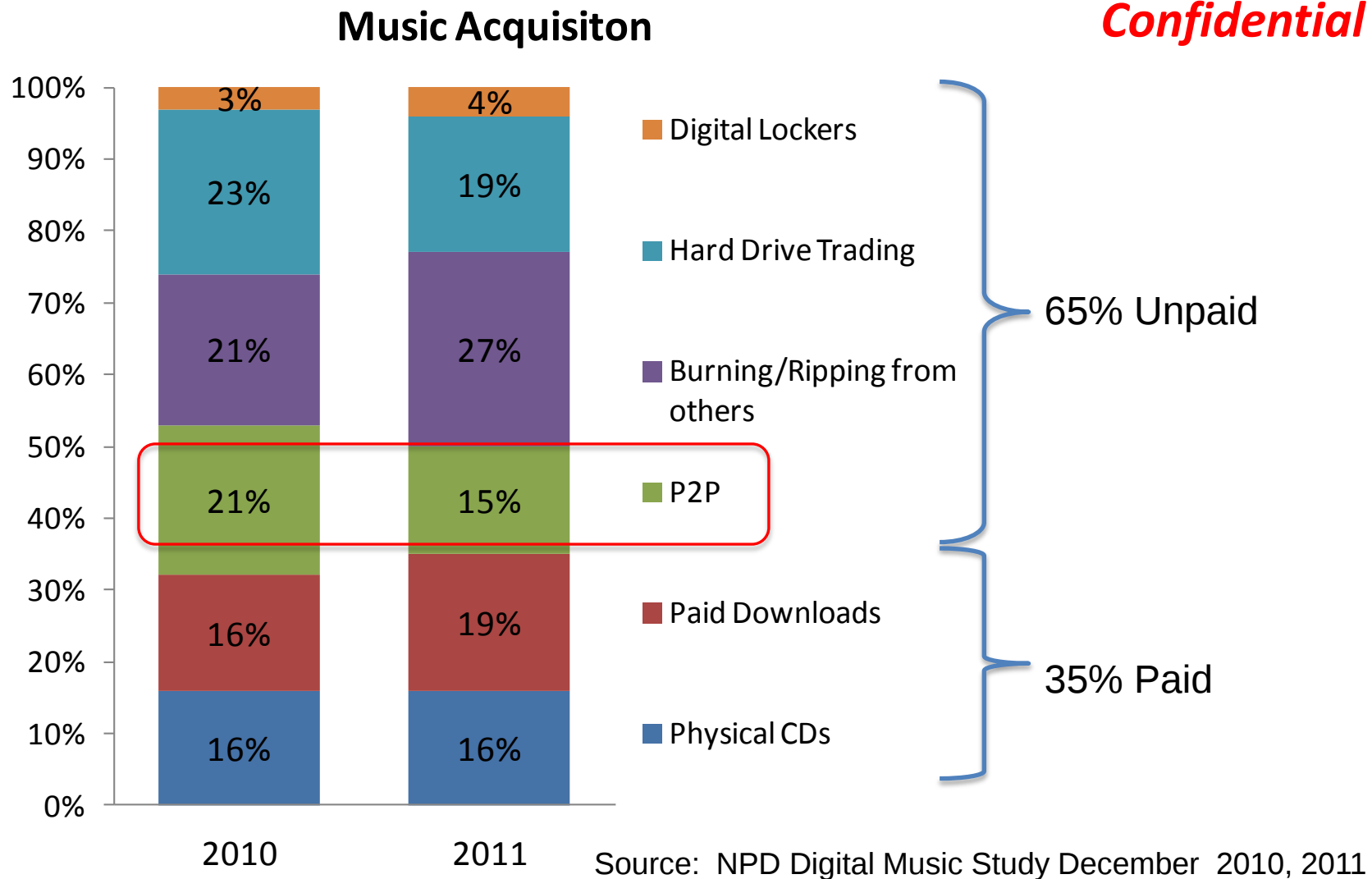


- After 4 years of significant decline, U.S. shipments essentially flat Y-o-Y in 2011
  - Physical down 8%
  - Digital Downloads up 17%
  - Subscription up 13%
  - Mobile down 38%
  - Digital Performance Royalties up 17%
- Going into 2012, have crossed 50% digital sales threshold



Note: Synchronization not included in market percentages because it can be either physical or digital

# But the Majority of Music Acquired Still Comes From Illegal Sources



(US Internet Pop. Age 13+)

# Recent Legal/Policy Developments

- Rogue Sites - SOPA/PIPA Debate
  - Legislation intended to deter infringements on foreign sites by obligating/encouraging intermediaries to take action
  - Important principle regarding intermediary responsibility, but legislation not likely to have been effective tool for music
  - Opposition to bills, activated by Google, went viral & bills are essentially dead
  - Anti-SOPA sentiment in netizens being used by opponents to oppose other copyright protection measures
  - Has companies on heightened alert

# Recent Legal/Policy Developments, cont.

- Lockers - MegaUpload Indictment/Shutdown in January 2012
  - Caused several other locker or pirate sites to change their practices or shut down
  - RapidShare recently felt need to publish best practices for lockers
  - Seeing some backlash against indictment
- P2P / Graduated Response
  - LimeWire shutdown October 2010
  - Hadopi implemented October 2011
  - NZ process being tested/implemented now
  - IINET case



# Copyright Alert Program

# Copyright Alert Program - Overview

- ISP and Content Industry Memorandum of Understanding (“MOU”) signed July 6, 2011
  - Landmark agreement between 5 major ISPs and the music/film/TV content creators
  - Set up framework for an enhanced education, notice and enforcement program to deter P2P infringement over ISP networks and promote legal sources for content
  - Creates and provides support for the Center for Copyright Information (CCI)
    - Focuses on educating the public about copyright protection and lawful ways to obtain content online
    - Will develop and confirm best practices for a system of Copyright Alerts
    - Will measure impact/effectiveness of the program
  - Provides for technical validation of process plus independent review to challenge Copyright Alerts
  - Applies only to residential wireline P2P activity
- Supplements existing P2P programs



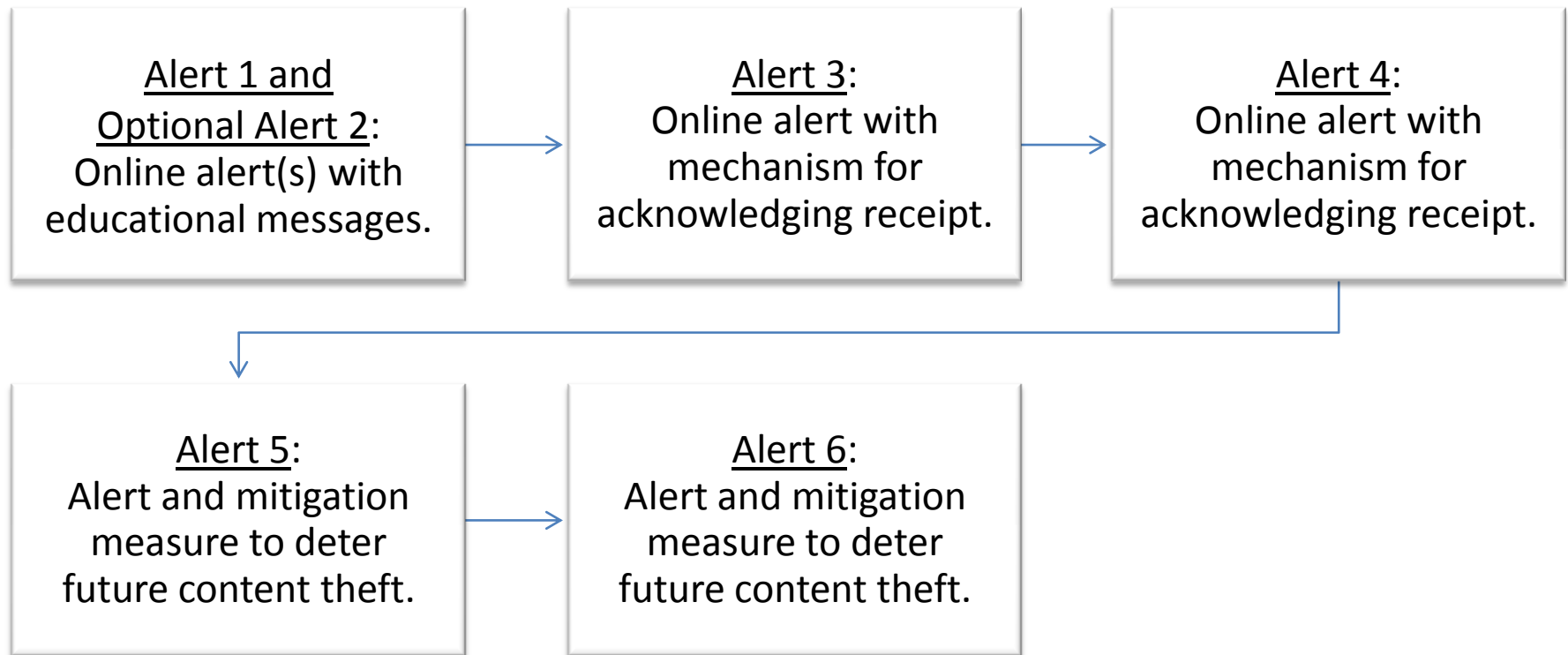
# Copyright Alert System: Impact



- Why – Anticipate Copyright Alerts will change consumer behavior to decrease infringing activity and increase sales
  - Evidence exists that most users would modify their behavior if alerted to the risks associated with using certain P2P services and/or made to believe they will face consequences if caught infringing
    - France: 69% said they would stop illegally downloading music or videos if the consequence was either loss of their Internet subscription or a €1,500 fine
    - New Zealand: 62% said they would probably stop illegally downloading movies if the ISP could suspend or terminate their Internet connection; 61% would stop if there was a fine; 71% would stop if they received a notice from an ISP
    - U.K.: 80% (45% definitely and 35% probably) said they would stop downloading unauthorized content under a “3 strikes model” (i.e., warning email, termination of Internet connection, and then 12-month blacklist by ISP)
  - Study concerning HADOPI/French system suggests system resulted in increased sales/decreased infringing activity
    - See Brett Danaher’s *“The Effect of Graduated Response Anti-Piracy Laws on Music Sales: Evidence from an Event Study in France,”* January 2012
    - Increased consumer awareness of HADOPI resulted in 22.5% to 25% increase in iTunes song and album sales when compared to control group

# Copyright Alert System - Steps

Contemplates a 5/6 step process



# Mitigation Measures



- Gives ISPs a range of mitigation measures and flexibility in selecting mitigation measures
  - Temporary reduction in speed
  - Temporary step-down in service tier
  - Redirection to landing page until subscriber contacts ISP
  - Temporary restriction of Internet access
  - Redirection until subscriber completes of meaningful education on copyright
- Does not require ISPs to terminate subscribers' accounts.
- However, a termination policy for “repeat infringers” ... “under appropriate circumstances” already exists as a condition of the DMCA safe harbor provision.
- And ISP's terms of service/acceptable use policies prohibit infringement and permit the ISP to terminate the account if it is used for infringing activity.

# Consumer-Friendly Approach

- Provide Information to Consumer
  - Consumers have a right to know that when their Internet accounts are being used for content theft
  - Will likely provide information on steps consumer can take to identify and stop such activity
- Multiple Alerts and Grace Period
  - Contemplates multiple alerts to give consumer time to change behavior before mitigation is imposed
  - Provides for Grace Period between alerts to give consumer time to change behavior before next alert is sent
- No Personal Information
  - No personal information about subscribers will be exchanged between content owners and ISPs without subscriber consent, and then only in connection with certain challenges under the independent review
- Essential Services Maintained
  - ISPs are not required to impose any mitigation measure that could disable a subscriber's essential services, such as telephone service, email, or security or health service

# Independent Review Process

- What It Is
  - Before mitigation measure is imposed, subscriber can request an independent review to invalidate alerts and avoid mitigation measures
  - Minimal cost
  - Non-exclusive process
- Who Is Administering It
  - Well-known arbitration outfit - American Arbitration Association
  - Guidance to be provided to neutrals by well-known copyright attorney
- Potential Challenges
  - Fair use
  - Authorized use of work
  - Pre-1923 work
  - Misidentification of account
  - Unauthorized use of account
  - Misidentification of file
- Streamlined Process
  - Should be all on papers/digital evidence
  - No oral argument
  - Have timelines to make process move efficiently

# Center for Copyright Information

- Separate Non-Profit Entity Formed Pursuant to MOU
  - Executive Director – Jill Lesser
  - Board – includes representatives from content owners and ISPs
- Mission
  - Educate public about copyright, and legal alternatives to consume content
  - Provide technical validation of copyright alert system and assist in its design/implementation
  - Measure impact/effectiveness of system
  - Help provide communication about the system
- Advisory Board to CCI
  - Includes notable consumer advocates, and privacy and Internet education specialists
  - Purpose to provide advice on implementation of the system

# Costs



- Identification and Processing alert
  - Content owners pay costs to identify infringements and send notice to ISP
  - ISPs pay costs to process notice, identify subscriber, and sent alert to subscriber
- Center for Copyright Information
  - Content owners and ISPs share costs to operate CCI on a 50/50 basis
- Independent Review
  - Content owners and ISPs share costs to operate independent review process on a 50/50 basis



# Other Voluntary Initiatives

# Voluntary Best Practices: Payment Processors



- Payment Processors
  - Finalized last year under auspices of IPEC with Visa, MasterCard, Amex, Discover and PayPal
    - Terminate relationship if site engaged in repeated “widespread and pervasive” infringement; payment for sales of infringing products
    - Since MegaUpload shutdown, some payment processors have expressed willingness to expand what constitutes infringing activity under their policies
  - IACC has developed portal to implement these best practices for its members
  - We also work with individual payment processors regarding individual sites

# Voluntary Best Practices: Ad Networks

- Industry. Ad network industry has voluntary ad network guidelines
  - But they are not clear regarding prohibition of ad placements on sites engaged in copyright infringement, and do not apply to exchanges/networks that don't have direct relationship with publisher site
  - Have seen mixed results to date
- IPEC. U.S. IP Enforcement Coordinator leading industry negotiations for broader approach
  - Includes Microsoft/Yahoo, AOL, and Google
- Google. Separately, Google has promised to remove advertising served with Google AdSense on sites we identify through notice program for infringing search results (pursuant to Google AdSense repeat infringer policy) . . . and suggested it will expand policy to “sell-side” DoubleClick exchange, too

# Voluntary Best Practices: Advertisers



- Content community encouraging the Association of National Advertisers (ANA) to issue guidelines for its members
  - Pledge not to advertise on infringing/rogue sites
- Awareness of issue has increased
  - Some advertisers being proactive to protect their brand
  - Some ad agencies being proactive in raising concerns

# Voluntary Best Practices: Search Engines



- Continue to work with Google to have more effective delinking, and tie delinking to termination of ad networks services to the corresponding site, where applicable
- Also exploring delinking of entire site when repeat delinking notices to the same site
- Still have caps on number of delinking requests that can be sent in one day with automated tool
- To date, Google has resisted voluntary best practices, but keep pushing

# Voluntary Best Practices: Mobile



- Mobile App Storefronts
  - Continue to push Google, Apple, Amazon and others to take action to screen and/or remove infringing apps from their store fronts, and to expand recognition of which apps are infringing
- Mobile Ad Networks
  - Exploring ways to make traditional online ad network policies apply to mobile space
    - Apps removed from storefronts
    - Apps not removed, but that facilitate infringement

# Voluntary Best Practices: Registrars & Registries

- Registrars/Registries
  - Lobbying for better “whois” practices generally and for proxy registration best practices
    - Require better diligence in whois data collection
    - Require termination of domain if whois is false/registrar doesn’t respond
  - For new gTLDs, working with content community and governments to publish enhanced safeguard guidelines for content-focused gTLDs
    - Require enhanced diligence, certification, and rapid takedown if site engages in infringing activity
    - Hope to use to set “norm” for these type of enforcement practices on new gTLDs and hopefully then back to existing gTLDs



Questions?

Thank You