

**REPORT OF THE DELEGATION OF THE INTELLECTUAL PROPERTY LAW  
SECTION OF THE STATE BAR OF CALIFORNIA TO WASHINGTON, D.C.**

May 5 - 7, 2014

For the last dozen years or so the Executive Committee of the Intellectual Property Law Section of the State Bar (“IP Section”) has sent a delegation to Washington, D.C. to visit officials and other persons in the federal government of importance to intellectual property law. The delegation does not lobby or take positions on any issues. The purpose of the delegation is to establish and maintain contacts that will assist the Section in carrying out its educational mission and to gather information and encourage the dissemination of information on an ongoing basis that will enable the Section to carry out its functions and inform its members. Continuing this practice, the Section sent a delegation in May 2014 that met with selected legislators, and officers and staff of the federal government involved in intellectual property in Washington D.C. and Alexandria, Virginia.

The 2014 delegation consisted of the following representatives from the Executive Committee:

1. Andrew Stroud, Chair of the Executive Committee of the IP Section;
2. Mark Leonard, Immediate Past Chair of the Executive Committee of the IP Section, Chair of the Delegation;
3. Derrick Brent, Vice-Chair of the IP Section’s In-House Counsel Interest Group;
4. Anne-Marie Dao, member of the Executive Committee of the IP Section;
5. Elizabeth Rest, incoming Secretary of the Executive Committee of the IP Section;
6. Matthew Spark, member of the Executive Committee of the IP Section.

**May 5, 2014**

**House of Representatives**

The delegation’s first meeting was with senior staff for the House Judiciary Committee – Jason Everett (Counsel, Ranking Member Rep. Conyers), Stephanie Bell (Sr. Counsel for the Committee), and Linda Shim (Counsel, Rep. Judy Chu of California) – to discuss the legislative agenda for intellectual property issues.

Patent reform legislation has consumed a considerable amount of time and energy for House Judiciary staff, even after passing a version of the bill in December 2013. The Senate decided to pursue its own version of the bill, which meant that if the Senate passed a bill, the House would have to consider the Senate bill, or create some variation to send back to the Senate. Thus, House members and staff remained on alert and continued to be lobbied during the Senate considerations.

House staff noted there has been significant difficulty getting consensus amongst the various stakeholders with an interest in the patent reform bill. There was agreement on the goals, but disagreement on the methods to achieve the goals. Nevertheless, Staff noted that consensus on patent legislation is a priority because the system is important to a diverse array of users.

In addition to patent reform, the House Judiciary Committee has undertaken an ambitious and comprehensive review of the Copyright Act. The Chair and ranking member of the committee have held several hearings so far on discrete parts of the statute, and plan to hold more hearings throughout the year. More information on this issue is available below in the discussion of the delegation's meeting with the Copyright Office.

The goal of this review is to gather issues, information, and suggestions from copyright stakeholders regarding the impact of technology advancements and potential updates to address new issues since the last major legislative action, more than a decade ago. The Copyright Office has been assisting the committee with its review, providing technical information and operational feedback. Other aspects of the copyright review will deal with the interaction between U.S. and international copyright laws, and resources for the Office.

Staff also indicated that the House Judiciary Committee was in the process of considering a bill to reform aspects of the National Security Agency (NSA) data collection programs. The bill is designed to require more targeted collection methods, more justification for collection, and more transparency for the FISA court that approves the warrants. The bill had the support of the White House, and passed by a large margin in the House just two weeks after the delegation's visit. That bill and the issue of NSA reform are now under consideration by the Senate.

## **Senate**

The delegation met with counsel for the two California Senators – Kaye Meier (Sr. Counsel, Sen. Boxer) and Neil Quinter (Chief Judiciary Committee Counsel, Sen. Feinstein). At the time of our trip, the patent reform bill was being considered by the Senate Judiciary Committee, so all energy and attention was focused on that bill. The House bill contained a number of litigation reforms for the federal courts. However, the initial Senate bill introduced did not contain litigation reforms, instead focusing on demand letters, tweaks to some provisions passed in the America Invents Act in 2011, and transparency in ownership. As consideration of the Senate bill progressed in the Senate Judiciary Committee, the litigation reforms moved back into prominence through proposed amendments to the bill. At the time of our trip, there had been a five-week impasse in the Senate Judiciary Committee negotiations on the bill. On May 21, Sen. Leahy, Chair of the Senate Judiciary Committee, issued a statement that the patent reform bill would be pulled from consideration due to a failure of the stakeholders to reach consensus and compromise on the provisions.

The Senate counsels stated that they are following the House's work on reviewing copyright law. The Senate has conducted a few hearings on copyrights, but there are no plans at the present to introduce new copyright legislation.

The Senate has held hearings on data breach and cybersecurity issues, primarily related to significant

breaches that have been in the news lately (major retailers like Home Depot and Target, health care companies, and other institutions). Cybersecurity legislation, including a federal data breach law, has been on the table in the Senate since 2011, but there are no current plans to move pieces of legislation.

A federal trade secret law was introduced by Sen. Hatch and Coons. The bill would provide for a federal cause of action for misappropriation of trade secrets, but still allow for some enforcement at the state level. There will likely be a hearing on this bill this year, but movement in the Senate is unlikely until next year.

**May 6, 2014**

### **Copyright Office**

The delegation's first meeting on Tuesday was at the Copyright Office and included David J. Christopher, Chief of Operations; Maria Strong, Senior Counsel for Policy and International Affairs; and Douglas Ament, Director of Information Technology.

New Fees: The meeting began with a discussion of the new fee schedule that went into effect on May 1, 2014. The Copyright Office explained that it studied data from the 2011 fiscal year to create a fair and equitable fee structure. The stated policy objective is to make registering a copyrightable work accessible to everyone. The Office calculated the estimated cost to perform each task that is involved in the processing of a copyright application, both for electronically filed and paper-filed applications. Based on this information, the Office was able to determine a "per unit" cost, which was used to create the new fee schedule. One important change is the discounted fee for filing a "single application." A single application is defined as a work that is authored and owned by the same living individual. A single application cannot include a work for hire, nor can it be for a collection, or a series of works. The Office expects that fees will increase approximately every three years. The new fee schedule can be accessed at: <http://1.usa.gov/lrgxgAm>.

State of the Copyright Office: The Office reported that it has lost approximately 100 employees since 2008 due to budget cuts, and is very short staffed. Even with its limited staff, the Copyright Office processes approximately 550,000 applications per year. Processing times for applications are approximately 3 – 4 months for electronic applications, and 7 – 8 months for paper applications. The Office reports that approximately 90% of applications are filed electronically. However, oftentimes electronic applications require supplemental paper filings, such as for best edition submissions. The Office requires additional staff in order to more efficiently process applications and other filings. Recently, hearings in Congress have been held with the hope of providing additional resources to the Office. The House of Representatives has approved additional resources be delegated to the Copyright Office; the Office is hopeful that the Senate will agree.

Compendium: The *Compendium of Copyright Office Practices* is the general guide on registration, recordation, and related practices consulted by Copyright Office staff and the public. The Office reported that the Compendium has not been amended since 1984, and is currently a top priority of the Office. Review and amendment of the Compendium has been a two- and-a-half-year project. A

public draft was released on August 19, 2014 and is available here: <http://1.usa.gov/1rhPB1i>

E-Filing, Digital Documents: The Office reports that there have been no major changes to the e-filing system. However, the Copyright Office is trying to phase out certain outdated forms.

Technical Upgrades: Although technical upgrades are a priority of the Office, it has had limited resources to accomplish a complete upgrade. Over the past year, the Office has completed a thorough review of the technical aspects of the Copyright Office. It has engaged in the gathering of high-level data in order to assist in its review. Additionally, it has met with approximately 18 different groups to discuss the needs of the Office's users, and received about 30 responses to Notices of Inquiry. The Office acknowledges that its user interface is not intuitive and is difficult to navigate. There are also limits on how much data and information can be uploaded. In connection with these matters, the Office has identified the following as its biggest technological issues:

- (1) the Office would like to improve its data and offer greater services through its web portal. For instance, it would like to offer the ability to e-mail a completed application to another party for signature, much like the process available through the United States Patent and Trademark Office;
- (2) the Office would like to implement an automated recordation system, and upgrade its search system;
- (3) the Office would like to substantially revise its user interfaces so that they are easier to use, and so that users can locate information and file documents more seamlessly; and
- (4) the Office acknowledged that the current records system can be difficult to use, and that there are holes in the data. The Office would like to be able to provide the public with more robust information. For instance, it would like to implement a system whereby a user could see or hear a snippet of the work to confirm that the work identified is, in fact, the work searched.

The Copyright Office plans to bring in outside web designers to leverage the existing systems on the back end until they have the funding to develop new systems.

An additional issue that the Office identified is that, unlike the USPTO, which is independent, the Copyright Office's data is located on the Library of Congress' computer servers. Because the Library of Congress is run directly by the government, rather than by the Office itself, this creates internal complications that the Office is working to overcome.

Digitization of Records: Another priority of the Office is the digitization project, which is proceeding. There are three categories of documents that will be imaged: registrations, renewals, and assignments. The Copyright Office's card catalog is considered to be the largest in the world, with approximately 40 million cards. The Office was pleased to report that the imaging of its historical records (1870-1977) will be finished this year. The Office is exploring options to extract data from

these imaged cards, build an index, and then integrate these records with the post-1977 records that are currently online.

Skills Training: The Copyright Office desires to keep its employees up-to-date on changes to Copyright Law as well as advancing employees' training with regard to the processing of applications. In furtherance of this desire, the Office has begun a "Copyright Academy" for all of its employees.

Efforts to Streamline Group Registrations and Registrations for Online Works: The Office is actively working on streamlining the process of filing group applications and applications for online works. The Office expects that group registrations for periodicals and databases will be available online within the next year. Currently, applications for database copyright registrations must be filed by paper application.

Domestic Legislation Update: The Office reported that the House of Representatives is currently engaged in a comprehensive review of the Copyright Act. The House is reviewing the Act section-by-section. Hearings on each of the sections have been ongoing. To date, there have been approximately ten hearings. Most recently, a hearing was held on section 108 (copyright exceptions for libraries and archives). A hearing on Section 109 (effect of transfer of particular copy or phonorecord) is expected shortly. Additionally, on May 8, 2014, the House Subcommittee on Courts, Intellectual Property, and the Internet held a hearing on The Satellite Television Extension and Localism Act of 2010 ("STELA") and compulsory video licenses of Title 17. The Register's testimony can be accessed at <http://1.usa.gov/1rhPGC9>. A listing of other legislative developments expected in the next year can be found at: <http://1.usa.gov/Z9VvHo>.

Orphan Works: On orphan works, there have been two rounds of public comments, which resulted in numerous comments. A new round of public roundtables on the issue were held March 10 and 11, 2014. A transcript of those roundtables is available here: <http://1.usa.gov/1dd1W02>.

"Making Available" Study: On May 5, 2014, the Copyright Office held a public roundtable on the rights of "making available" and "communication to the public." Information, including those public comments that were submitted, can be found at: <http://1.usa.gov/1oDKrM5>.

International: In April of 2014, the White House issued a *2014 Special 301 Report*. The Copyright Office stressed that the Report serves an important function by identifying opportunities and challenges facing the United States' innovative and creative industries in foreign markets, and by promoting the job creation, economic development, and many other benefits that effect intellectual property protection and enforcement support. The Report identifies positive advances as well as international areas of concern. In 2014, ten countries appear on the Priority Watch List, and 27 countries are on the Watch List. For instance, the Copyright Office specifically mentioned India as a country of concern. The Office relayed that India has substantial problems regarding patent protection and trademark filing delays, and stressed the importance of improving protection with regard to patents, trademarks, and copyrights. Additionally, the Copyright Office is traveling to Vietnam to meet with its Copyright Office and advise on copyright issues in that country. The *2014 Special 301 Report*, in its entirety, may be viewed online at: <http://1.usa.gov/XN52me>.

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled: The Office is actively reviewing the U.S. copyright laws to determine if the U.S. can comply with, and therefore accede, to this Treaty. Before ratification of the Treaty, U.S. law must be in place that complies with the terms of the Treaty.

## **United States Patent and Trademark Office**

### **Deputy Under Secretary of Commerce and Deputy Director of the Patent and Trademark Office**

The delegation's first meeting at the United States Patent and Trademark Office ("USPTO") was with Deputy Director Michelle Lee and Commissioner for Patents Peggy Focarino.

We first discussed the USPTO's current priorities. Deputy Director Lee discussed the current backlog and how the USPTO plans to focus on patent quality. As part of the initiative to increase patent quality, Director Lee discussed enhanced training for examiners, particularly in 35 U.S.C. § 112(f). Examiners will also be encouraged to make more notes so that terms are not construed multiple times. Further, a pilot program on the use of glossaries is being implemented. The goal is to provide clarity on the record, clarity of terms, and consistency of examination by the USPTO examiners.

Director Lee also spoke about legislative patent reform that came out of the House in December and was introduced in the Senate during that same month. The bill is now being considered by the Senate Judiciary Committee, and the USPTO is working closely with Congress on it.

There was also a discussion about the IP5 conference, which is a conference of the world's five largest intellectual property offices. The IP5 includes the USPTO, the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), and the State Intellectual Property Office of the People's Republic of China (SIPO). The USPTO's goal is to try to streamline the paperwork and access points and work sharing so that eventually there can be one portal entry for users to cross-file.

Director Lee next updated the delegation on the USPTO's education and outreach efforts. She noted that USPTO staff had recently completed an eight-city roadshow, including San Jose, which had over 200 attendees. On the education front, Director Lee and Commissioner Focarino told the delegation about the Patent Examiner Technical Training Program ("PETTP"). PETTP is a program for patent examiners to learn about new technology from technologists, scientists, engineers, and other experts from industry and academia who serve as guest lecturers and provide technical training and expertise to patent examiners regarding the state of the art. Section members, or their clients, who are interested in potentially serving as guest lecturers can obtain more information about PETTP here: <http://1.usa.gov/1r0gVIL>

Finally, the delegation touched upon the topics of USPTO Satellite Offices in San Jose and the fact that examiners will be hired in the San Jose office. Crowdsourcing to identify prior art was also discussed, with the idea being to make it easier to submit prior art online and tap into technical

communities to get input and also to clarify and draft initial guidelines to examiners on how to use crowdsourced information. Director Lee also discussed lowering the pendency rate to a 20 month total review time (with a quicker turnover with expedited fees).

## **Patent Office**

For our discussion on patent examination policy and procedures, Ms. Focarino was joined by Andy Faile, Deputy Commissioner for Patent Operations, as well as the managers of several different groups, including Training, Reexamination, and MPEP. Mr. Faile reported that with regard to the size of the patent examining corps, there are currently about 188 design patent Examiners on top of an additional 8,233 patent Examiners. The USPTO is looking to hire 1000 more Examiners next year, and 1000 more the year after that, and then drop down to hire to match attrition levels.

### Training

Gary Jones, Director, Office of Patent Training and Debbie Reynolds, Deputy Director, Patent Training Academy informed the delegation regarding new patent Examiner training. New examiners are broken down into two groups for training: IP-experienced and IP non-experienced. The IP-experienced are on a shorter training track while the IP non-experienced are on a four month training track where they learn about the MPEP, practice & procedure, etc. so that they are ready to be integrated into the examining corps immediately upon graduation.

For IP non-experienced, the training program is a year-long program. 2000 Examiners have been hired and trained within the last two years. The USPTO has a university-style training program that takes place in "labs" (cubicle-style rooms with a lecture area). The instructors are a blend of dedicated trainers and Supervisory Primary Examiners ("SPEs"). During training, new Examiners interact with their "home" SPEs (i.e., the Art Unit SPEs they will be working under when they graduate). The SPE trainers are experienced examiners from their technologies.

For the IP-experienced (i.e., those who have at least one year of experience in IP), training is shortened. IP-experienced new hires are being sought for hiring in the satellite offices. Once the experienced new examiners are hired, the satellite offices are open for hiring entry-level types. After graduation, new examiners are up to speed by the end of the first year, with most of them at production level within four months after graduation. The new training program produces dividends in that it produces consistency in examination.

### Classification

The USPTO is switching to a new classification system. The preliminary classification will be in our current system for our purposes, but have a secondary classification along the lines of the EPO.

### Interviews

The delegation was told that there have been a record number of interviews with applicants recently.

## Communications with USPTO

Communication with the applicant needs to be properly recorded. WebEx-based interviews are available (contact the Examiner to set one up). Be mindful that proposed amendments **will be** made part of the official record.

## Reversal by PTAB

PTAB reversals may impact the Examiner's performance review as quality and error-rate are figured in. However, there is generally about a two-year lag between the Office Action rejections that were reversed and the performance review following the reversal.

## Revisions to MPEP/Examiner Guidelines

Robert Clarke informed the delegation that the latest revision of the MPEP included AIA provisions, and that updates to the Patent Law Treaty (PLT) will be incorporated in Fall 2014. Ideascale is a new tool for the MPEP that allows submissions seeking to clarify inaccuracies, etc. in the MPEP. Examination Guidelines have been updated regarding recent decisions from the U.S. Supreme Court.

## Pre-Appeal Brief Board of Review

USPTO management is negotiating with the Patent Office Professionals Organization (POPA), the Patent Examiner's union, to review the program. USPTO management believes that it has been successful but they are ready to tweak it. Part of the tweaking may include statistics on applicant wins/losses, providing reasoning in the decision, etc.

## Electronic Filing Cut-off

Patent practitioners in California, as well as other non-Eastern time zones, do not have until midnight (local time) to file a paper due "that day." Currently, there are no plans to provide non-Eastern time zone practitioners with the ability to file electronically until midnight (local time). USPTO management knows that it will eventually have to deal with the issue, especially with the rise of satellite offices, but there are presently no plans for doing so.

## **Patent Trial and Appeal Board (PTAB)**

Linda Horner, Vice Chief Administrative Patent Judge (Acting), and Grace Obermann, Lead Administrative Patent Judge, gave very comprehensive and informative slide presentations on the PTAB. The presentations included information on appeal pendency, AIA petition filings, petition dispositions, motions to amend, settlements, and final decisions.

Judge Horner and Judge Obermann discussed administrative patent judges (APJ), including hiring, allocation, and attrition, appeals, AIA proceedings (inter partes review and covered business method patent reviews), and Requests for Rehearing, and outcomes on review. There are currently 183 APJs, with the majority of them in Alexandria but there are 4-10 in the various satellite offices. They are

currently hiring and the goal for Fiscal 2014 is approximately 235 judges. The APJs comes from the USPTO, ITC, DOJ, private practice and industry. About 40% cover ex parte appeals, while another 39% cover AIA proceedings. The rest cover reexamination appeals, management, and interferences. The attrition rate of new hires is under 4%. There is some hoteling.

With regard to appeals, the number of appeals in the backlog waiting to be decided seems to be holding steady due to the influx of new judges, lower numbers of appeals, and efforts by current judges. However, that trend may not last if the number of ex parte appeals and AIA proceedings increase faster than hiring. About 30% of decisions result in reversal, with another 13% of appeals resulting in reversal-in-part. With regard to the AIA proceedings, Judge Obermann stated that it is too early to determine any trends.

### **USPTO Solicitor's Office**

Thomas W. Krause, Special Counsel for Intellectual Property Litigation, next met with the delegation. The Solicitor's Office (SO) has about 30 attorneys and its main function is to defend PTAB/TTAB decisions. It also handles Office of Enrollment and Discipline matters, and is involved with all intellectual property litigation involving the U.S. Government. Mr. Krause also described the process for appealing PTAB decisions under 35 U.S.C. § 145. He explained that while appellants may appeal to the United States District Court for the Eastern District of Virginia and introduce new evidence under that section, appellants are also responsible for all expenses of the proceeding including USPTO attorneys' fees. Mr. Krause said that there approximately eight to ten such appeals each year and given the costs of such proceedings amending claims in the patent at issue may be a more prudent course of action.

### **Trademark Office**

The delegation next met with officials from the Trademark Office, Deborah Cohn, Commissioner for Trademarks and Sharon Marsh, Deputy Commissioner for Examination Policy.

Commissioner Cohn first gave us an update on the pilot program for enhanced review of specimens submitted in connection with trademark registration renewals. She noted that the program is winding up and approximately 40-50 registrations examined under the program resulted in the deletion of goods or services from the registration. She then updated us on Next Generation implementation and stated that a number of Examining Attorneys have been involved in testing the new system and it is expected to be deployed by the end of 2014. One new feature of the system is that it will provide email reminders to both the applicant and attorney of record for Section 8 & 9 renewals that will include links to the appropriate renewal form.

We next discussed the proposed rulemaking regarding certification and collective marks. Commissioner Cohn noted that the rules are mostly codifying current policy and making the rules consistent with current trademark practice such as prohibiting material changes to certification and collective marks and applicants will no longer have to expressly assert use by a related company.

We next discussed the dissemination of USPTO announcements and information through IP Section

channels, e.g. *New Matter* and *Inevitable Disclosures*. Commissioner Cohn and Deputy Commissioner Marsh expressed their appreciation for the announcements that had been included over the past year and the delegation noted that such announcements are valuable to Section members as they have a high click-through rate. Commissioner Cohn and Deputy Commissioner Marsh also stated that they were looking forward to participating in the Section's 2015 Trademark Office Comes to California conference and the delegation thanked them for their continued participation in that conference.

They also informed the delegation of the results of a roundtable discussion in April 2014 on amendments to identifications of goods and services due to technology evolution, e.g. disc based software to cloud based service. Commissioner Cohn stated there will be further discussions, but they expect to potentially allow such amendments with a narrow scope at first and will likely be presenting a proposal that would provide for predefined allowable amendments.

The Trademark Office is also making progress on achieving goals set out in the USPTO 2014 Strategic Plan. Trademark first actions are now under three months for most applications and a little over ten months for final actions.

While there are presently no plans to have trademark employees available at USPTO satellite offices, the offices will allow remote access for hearings and will be used for public, legislative, and stakeholder outreach.

Commissioner Cohn further noted that they are aware of complaints from practitioners about an apparent increase in post-registrations issues and that the Trademark Office has assigned additional attorneys to the post-registrations unit and is developing better training for examining attorneys in that unit.

### **Trademark Trial and Appeal Board (TTAB)**

Our final meeting at the USPTO was with Gerard Rogers, Chief Administrative Trademark Judge for the Trademark Trial and Appeal Board. Judge Rogers began the meeting by distributing a very helpful and informative presentation on TTAB proceeding statistics for the prior year. Incoming filings are up, likely due to an increase in trademark filings, as are the number of appeals which is due to dealing with a caseload backlog the began a few years ago. Judge Rogers noted that the TTAB is trying to determine level of staffing commensurate with case volume to help address the backlog and will be hiring new paralegals.

Judge Rogers informed us that as part of the TTAB's quality control, a number of interlocutory attorneys and externs reviewed histories on complex cases to determine where there might be problems. He also noted that while the TTAB had considered the use of templates for decisions to help reduce pendency, that is likely not going forward. However, he does expect decisions will have a more consistent look and structure and, for ex parte cases, some standard paragraphs.

With regard to Accelerated Case Resolution (ACR), the TTAB intends to pursue rulemaking to put together a package of rules and changes that need to be implemented. The intent is to adapt these

rules to case law changes and set best practices for ACR cases.

Judge Rogers also expressed enthusiasm for TTAB participation in webinars and other programs offered by the State Bar of California's IP Section. Judge Rogers is looking to put together a program on TTAB best practices and will share that with the Section by the end of the year.

Finally, Judge Rogers gave an update on the TTAB's initiative to achieve goals laid out in the 2014 strategic plan. Part of this initiative would be to standardize output measures. Another goal of the TTAB is to reduce overall processing time, which Judge Rogers is endeavoring to advance through rulemaking. The TTAB will also maintain and enhance the quality of all orders, decisions, and opinions. The TTAB's paralegals process tens of thousands of filings and Judge Rogers emphasized the critical need to make sure these filings are correctly processed. In furtherance of this goal, the paralegals will go through multiple training classes. Instruction will be provided to the paralegals through about a dozen classes, each lasting two to three hours.

**May 7, 2014**

### **Recording Industry Association of America (RIAA)**

The delegation's last meeting was with staff at the RIAA and was facilitated by former Executive Committee Member George Borkowski. The meeting included Mr. Borkowski, Senior Vice President, Litigation and Legal Affairs; Steven Marks, Chief, Digital Business & General Counsel; Michele Ballantyne, Senior Vice President Federal Government and Industry Relations; and Steven Gottlieb, Vice President and Counsel, Public Policy and Industry Relations.

Ms. Ballantyne stated that it is very difficult to get any copyright bills through Congress at present because patent reform has been the primary intellectual property law focus for the last few years and there is little interest from most legislators on pursuing additional intellectual property legislation. Because of that she noted there are increasing efforts to build consensus between content and technology providers through voluntary agreements, but that is becoming more difficult as the universe of stakeholders is expanding. She also stated that while there is broad agreement amongst content and technology stakeholders on the need to combat piracy, it has been more difficult to reach a consensus on how to do so. Ms. Ballantyne noted that as more technology companies are purchasing content companies the technology companies are becoming increasingly concerned about piracy.

The RIAA officials also informed the delegation of efforts to develop a copyright alert network with internet service providers ("ISPs"). Such a network would be primarily directed at educating users and would include warnings from the ISP sent to customers who had downloaded pirated content. As part of its educational efforts the RIAA has developed a consumer-focused website, <http://bit.ly/XN5yjZ>, to help inform consumers about authorized sources for online music. They noted that when illegal download sites are shut down many users of those sites migrate to authorized content delivery services. However, many piracy sites are now outside of the United States and it is more difficult to work with foreign ISPs to shut down such sites. The RIAA is also working with payment processors to develop best practices to help curtail piracy sites.

## **Conclusion**

As in past years, the opportunity for delegates from the IP Section Executive Committee to meet in person with executive, legislative, and stakeholder officials and staff that are at the forefront of federal intellectual property law proved invaluable. Maintaining the relationships that past year's delegations have formed with these persons allows the IP Section to offer unique speakers and content at our conferences that are generally not available from other CLE providers. As one of the only state bar organizations that make the effort to meet with these individuals and organizations, the DC meetings also reinforces the IP Section as one of the leading intellectual property law organizations in the country. Once again, the DC trip was highly successful and will provide great benefits to our Section's membership.

We thank everyone for taking the time from their busy schedules to meet with us and for their thoroughness in addressing the issues raised by the delegation.