



CPTWG MEETING #104

June 20, 2007

Legislative/Litigation Update

Jim Burger

jburger@dowlohn.com

Overview

n Legislative Issues

u Intellectual Property Protection Act

n Litigation

u *Perfect 10 v. Google*

u *Twentieth Century Fox v. Cablevision Systems*

u Other Recent Copyright Litigation

u *U.S. v. ASCAP*

u Finnish CSS Case



An aerial photograph of the United States Capitol building in Washington, D.C. The building's white dome and neoclassical architecture are prominent. The surrounding area includes green lawns, trees, and other government buildings. The sky is blue with scattered white clouds.

Legislative/Regulatory Issues

Intellectual Property Protection Act of 2007

- n Proposed by Dept. of Justice**
- n Key Provisions**
 - u Attempted Copyright Infringement**
 - u Increased Penalties**
 - u Wiretaps for IP Crimes**
 - u Reporting to RIAA**



Litigation



Perfect 10 v. Google (9th Cir. May 16, 2007)

n Facts

- u Perfect 10**

- u Linking/Cache**

- u Thumbnails**

n Direct infringement

- u Fair use defense**

- F Purpose**

- F Nature**

- F Substantiality**

- F Market effect**



Perfect 10 v. Google (cont.)

- n Secondary infringement**
 - u Contributory liability**
 - F Distributing product**
 - F Inducing infringement**
 - Specific infringing material
 - Failure to purge
 - u DMCA safe harbors**
 - u Vicarious liability**

*Twentieth Century Fox v.
Cablevision Systems*

- n Cablevision sued over Remote Storage DVR system
 - u District court: RS-DVR is infringing
- n Cablevision appellate brief
- n Oral arguments week of Aug. 6
- n Amicus briefs filed
 - u Law Professors
 - u EFF



Other Recent Copyright Litigation

n *Viacom v. YouTube* Update

u Google files answer

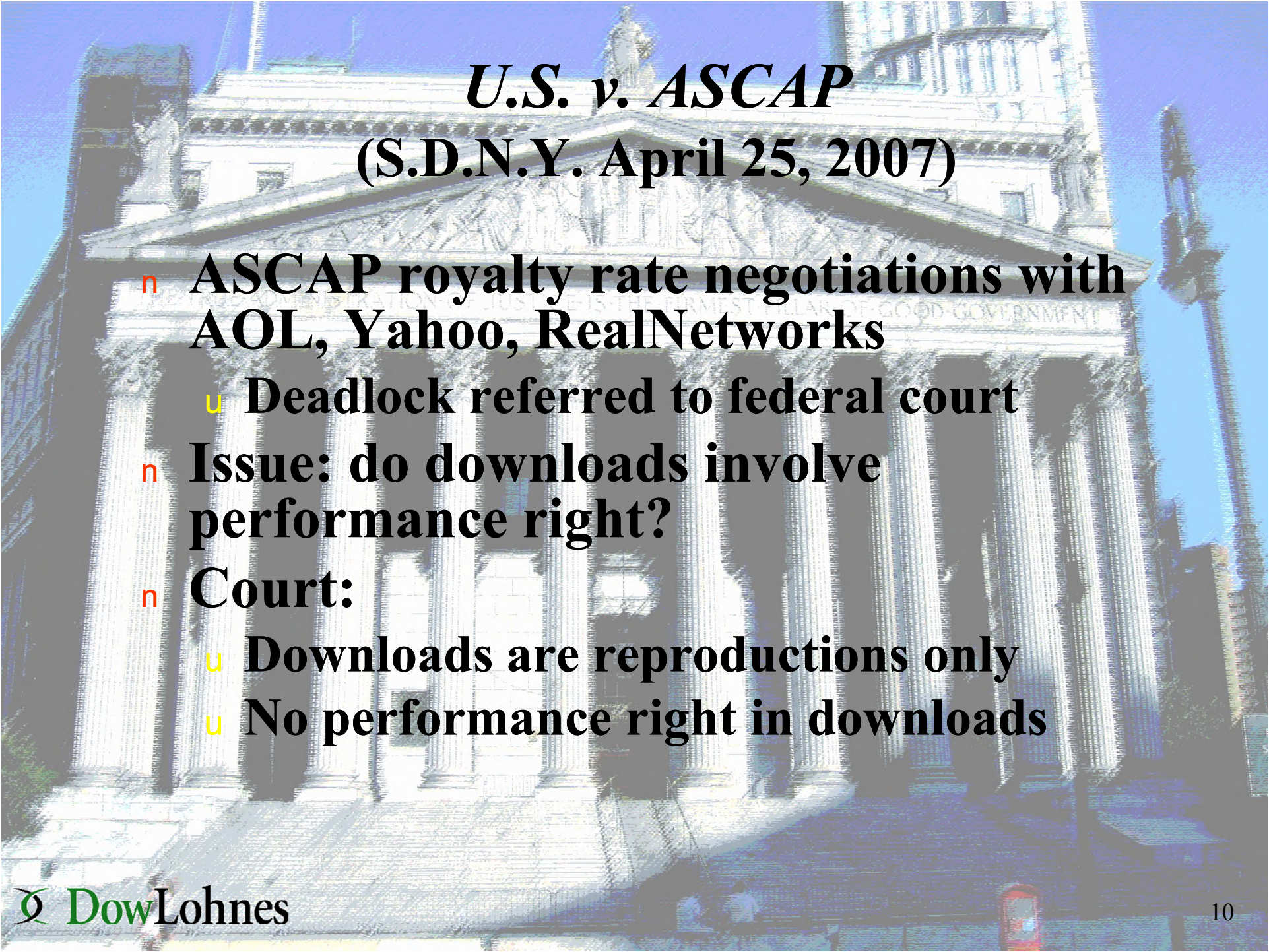
FDMCA “hosting” safe harbor

u Amicus brief in *Tur v. YouTube*

n *Football Assoc. Premier League v. YouTube*

n *Grisman v. YouTube*

n *Warner Music Group v. Imeem*



U.S. v. ASCAP

(S.D.N.Y. April 25, 2007)

- n ASCAP royalty rate negotiations with AOL, Yahoo, RealNetworks**

- u Deadlock referred to federal court**

- n Issue: do downloads involve performance right?**

- n Court:**

- u Downloads are reproductions only**

- u No performance right in downloads**



Finnish CSS Case

(Helsinki Dist. Ct. May 25, 2007)

n Facts

- u Finland implements EU Copyright Directive**
- u Defendants post CSS circumvention info on web**
- u “providing a service to circumvent an effective technological measure”**

n Decision

- u CSS no longer “effective technological measure”**

n Impact

- u Prosecutor has appealed**