



## **Summary of the Department of Commerce’s Internet Policy Task Force White Paper on Remixes, First Sale, and Statutory Damages**

Earlier today, the Department of Commerce’s Internet Policy Task Force (IPTF) released its long-awaited White Paper on Remixes, First Sale, and Statutory Damages. From our initial review, the White Paper is positive. It mostly reaches conclusions and makes recommendations that we have and would support. Below is a summary of the conclusions and recommendations relating to each topic.

### **Remixes**

The IPTF found that there was an insufficient record to support the creation of a compulsory license or a new exception for remixes uses and therefore rejected both ideas. The IPTF did recommend three goals to make it easier for remixers to understand when a remix use qualified as fair use and when a license was necessary. These goals include:

- Developing negotiated guidelines by a group of stakeholders to provide greater clarity in the application of fair use to remixes;
- Expanding the availability of a wider variety of voluntary license options; and
- Increasing fair use educational efforts

### **First Sale**

The IPTF recommended that there be no changes to the first sale defense in section 109 of the Copyright Act. The White Paper highlights the many benefits of the first sale doctrine and new licensing models and concludes that the record did not support expanding the first sale defense to digital transmissions at this time. The Paper does highlight one particular situation, ebook-library lending, and notes that the IPTF will continue to monitor the situation to ensure that library are not prevented from serving their patrons due to overly restrictive license terms imposed by publishers. Lastly, the IPTF, also recommend that a multi-stakeholder process be created to educate consumers about the terms in EULAs.

### **Statutory Damages**

Statutory Damages is the area where the White Paper suggests the most change. The Paper recommends three changes to the Copyright Act:

- Including a list of factors for courts and juries to consider when determining statutory damage awards;
- Expanding the innocent infringer standard to allow its application even when there is a copyright notice on the work; and

- Allowing courts to award damages on something less than a per-work basis in the case of online services offering large numbers of works.

In addition to these three proposed amendments, the IPTF also supported the Copyright Office proposal for creating a small claims process.