Submission of the

THE SOFTWARE & INFORMATION INDUSTRY ASSOCIATION

in Response to the Notice of the Federal Trade Commission of October 7, 2009: Public Workshops And Roundtables: "From Town Crier To Bloggers: How Will Journalism Survive The Internet Age?"

"NEWS MEDIA WORKSHOP COMMENT" (PROJECT NO. P091200)

November 6, 2009

The Software & Information Industry Association ("SIIA") respectfully submits these comments in response to the Federal Trade Commission's ("FTC") Federal Register Notice published on October 7th announcing the December public workshops and roundtables titled "From Town Crier to Bloggers: How Will Journalism Survive the Internet Age?"

I. Introduction

SIIA is the leading trade association of the software and digital information (S&I) industries, with members ranging from start-up firms to some of the largest and most recognizable corporations in the world. SIIA member companies[1] are leading providers of various content publications, including books, newspapers, magazines, and newsletters; software publishing, graphics, and photo editing tools; online legal information and legal research tools; and many other products and services in the digital content industry. Because many SIIA members publish informational and creative

[1] A list of the more than 500 SIIA member companies may be found at: http://www.siia.net/membership/memberlist.asp

content in the form of journals, magazines, newsletters and newspapers, they play a significant role in the future of journalism and the "news media" in the Internet age, and in particular the discussions taking place at the FTC workshops.

SIIA notes that the breadth of questions and wide focus in the Notice and workshops is extraordinary. Any one of the topics identified by the FTC could easily take up a multi-day workshop. This is particularly the case with regard to studying the economics and government policies outlined in the questions in the Notice. Inevitably, the information gathered will only scratch the surface of the complexities underway in journalism and the changing markets and models of newspapers, magazines, online business information sources, data aggregators, etc. As such, we urge the FTC to tread carefully in making any conclusions regarding government policies, particularly those involving the First Amendment, as US Government interests cross a wide range of agencies and long-standing policies.

II. The Internet and Software-driven Information Products and Services Provide for Innovation, Economic Growth and Enhanced Consumer Access

The Internet and other new digital distribution technologies have permanently changed the relationship between public and private consumers of information and the organizations and individuals who provide this information. The digitization of content is improving access to information, while also enabling value-added aggregation, synthesis and customization. Newspapers, magazines, newswires, databases market research, financial data and reference materials have all migrated to the Internet, where information can be fluidly recombined, personalized and delivered anywhere and at anytime. Software-powered mobile devices are liberating individuals by providing real-time access to communications and information from the field, accelerating most tasks to improve productivity.

As the convergence of software and information have combined to transform the way that consumers access news and information, the S&I industries have become strong drivers of the U.S. and global economies, and they are also driving the digital revolution across virtually all sectors of the economy. Well-known firms as well as new, emerging start-ups—many of which are members of SIIA—create transformative products and services at the leading edge of innovation. In January 2008, SIIA published a report that measures the substantial economic impact of the S&I industries, demonstrating the critical role that these industries play in a vibrant and dynamic U.S. and global economy.[2]

The SIIA Report concludes that the S&I industries are among the fastest growing and most important for creating jobs and propelling continued U.S. economic growth. For instance, in 2005, S&I industry growth was up nearly 11 percent, compared with 3.2 percent for the economy as a whole, while software and information generated $564

[2] *Software and Information: Driving the Global Knowledge Economy*, SIIA, January 2008, pg. 11: http://www.siia.net/estore/globecon-08.pdf

billion in revenue. Also notably, the newspaper, periodical, book and database publishing industry segments sold nearly $7 billion through overseas affiliates in 2005, up by 24 percent from 2000.

Even as various segments of printed information medium have struggled, growth in digital products and services have continued to increase steadily. In most cases, increased access to digital information products and services has provided consumers with more options, more alternatives and greater access to information and creative content than ever before. By using the Internet and other digital delivery technologies to transmit digital content, both content publishers and consumers can take advantage of the lower transaction costs, simplified delivery systems, direct interaction with the provider, and minimal time-to-market.

This has resulted in consumers now having unprecedented choice, convenience and access to informational, as well as creative content and new high-tech products that simplify their lives. Today's consumers benefit from access to a range of information products — the likes of which have never been seen before. Newspapers; magazines; newsletters; economic and statistical data; collections of laws and court decisions; health and medical information; stock and commodity market quotes; directories of names and addresses; geographical and meteorological information; catalogs; commentaries and criticisms, are just a few of the information products routinely available to consumers over the Internet and other digital delivery mechanisms. These products come in a variety of formats, ranging from multimedia to the more traditional, and from different perspectives, ranging from new, informal bloggers and user comments to traditional journalists and reporters. Quite simply, we live in an era when anyone can be a publisher and the public has simple, diverse and inexpensive ways of accessing a variety of different information content anywhere and at anytime.

III. Changing Advertising and Business Models Present Real Financial Challenges to the News Industry

However, the FTC is correct to recognize that financial challenges and changing revenue models are endemic to news organizations, particularly the traditional "newspapers" that are probably undergoing the greatest, and most challenging, transformation of the larger information industry. Outsell, Inc, a leading research and advisory firm focused on the publishing and information industries, goes so far as to state that the "news industry has so far failed to make the digital transition."[3] Outsell's research on this segment concludes that it continues to remain substantially dependent on print revenues, standing as "the biggest laggard in the information industry overall," with only 11% of its revenues generating from digital in 2008.[4]

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[3] *Top 15 News Companies Print-To-Digital market Size and Share*, Outsell, Inc., July 21, 2009, pg. 5.
[4] Ibid, pg. 5.

According to Outsell's News Providers & Publishers Market Forecast and Trends Report, the (News) segment will drop 19% in overall revenues in 2009.[5] This drop would bring revenues below $100 billion for the first time in many years, to $97.4 billion, according to their estimates. This follows a 7.5% decline in 2008, to $123.3 billion, following a period of flat growth in 2007, as the industry began to feel the tipping point of internet-driven marketing and audience change. Outsell's analysis concludes that future revenue growth in this industry will depend largely on how quick and successful news companies are at transforming sales forces to sell state-of-the-art advertising and marketing packages—and to sell them to a wider array of customers than they've traditionally pitched.[6]

In this context, the economic importance of advertising goes beyond sustaining existing news organizations. Internet advertising has been an essential source of financing for many start-up companies that are working toward longer-term (including subscription-based) revenue models or seeking to get new products and services into the market. The reality today is that digital information content businesses are blending a variety of revenue streams in order to stay competitive and, in some cases, to remain viable.

The monetization of information content (whether through traditional online or paper-copy subscriptions, tiered access to online databases, one-time or premier use of archival material, re-dissemination through aggregator or syndication channels) is part-and-parcel of more sophisticated strategies that seek to maximize the dollar invested by advertisers in reaching targeted readers in an increasingly competitive marketplace for getting the attention of consumers with new products and services, or simply to maintain brand loyalty.

IV. Intellectual Property Protection Remains Paramount in the Internet Age

Of critical interest to SIIA and its members' ability to succeed in the Internet age are the questions posed by the FTC relating to copyright protection for information content. SIIA has been a leading voice of the industry on critical intellectual property issues in the software and content industries for many years. One of the most significant threats today is digital content piracy. Indeed, in many ways, the transition from print to digital information content has increased the incidence of copyright infringement. The fact that everyone can be a publisher means that everyone can also be an infringer. And because it is so easy for the public to access content, these infringements can often have a significant adverse affect on the value of the content and the ability of the content publisher to continue providing that content.

Many traditional publishers have business models that include myriad checks and balances to prevent infringement from occurring in the (print or web) pages of their publications. Unfortunately, many new online content sites often run afoul of the

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[5] *News Providers & Publishers: 2009 Market Forecast and Trends Report*; Outsell, Inc., October 26, 2009, pg. 5.
[6] Ibid, pg. 5.

copyright law by either willfully ignoring the law or willfully flouting it. This makes it extremely difficult for traditional publishers to change their business models to take advantage of the Internet and new digital delivery technologies by making their publications available online (either solely or jointly with their print publications). It is one thing to battle rival publishers for eyeballs, but it's another thing entirely for a publisher to compete against itself. And that is exactly the dilemma caused by online content piracy. For instance, many publishers try to create new revenue streams by licensing their content to online sites exclusively or on a limited basis. This has proven difficult, however, because the very same content they are trying to license is available illegally on numerous sites and potential licensees are reluctant to pay for content to draw users to their sites when the content they are licensing is so widely available.

Similarly, just as publishers in the past (and present) draw readers to their print publications through their content, these publishers are now attempting to draw readers to their websites. Instead of, or in addition to, making money through print ads associated with the content, they often attempt to recoup their investments by surrounding the content with banner ads on their website. But it is difficult for these publishers to make this business model work when their content appears illegally on other sites or is distributed illegally offline in ways that often results in less traffic on their site.[7]

Among a variety of tools, content publishers, to some extent, rely on the copyright law to protect their copyrighted content from infringement. Depending on numerous factors, such as the type of infraction, the type of content, and the state in which the litigation is talking place, publishers may also attempt to avail themselves of other federal and/or state laws relating to trademark and unfair competition, hot news misappropriation, fraud, hacking, and trespass to protect themselves against those who steal the fruits f their labor. The copyright law, in conjunction with these other state and federal laws, are all extremely important because they protect the investments made by content publishers. Without such protections they would, in many cases, be unable to continue to create and/or disseminate their content products and services to the public.

While SIIA believes these issues are outside the scope of the FTC's jurisdiction, it should be noted that although these protections afford important protection to content publishers and journalists, there are still numerous loopholes and gaps in these laws. These loopholes and gaps make content particularly susceptible to piracy and make it risky for publishers to offer their valuable content online. In particular, because illegally copying and disseminating content can be so easy and so destructive, the pursuit of cases of

[7] Online piracy is not the only concern of content publishers. Content publishers are also adversely affected by infringements taking place within organizations. We often refer to this as "corporate end-user piracy." Corporate end-user content piracy occurs when content is copied and/or distributed by an organization without the proper license from the publisher. For example, an employee may circulate copies of news, magazine, or newsletter articles by e-mail or hard copy within the company or may post news, magazine, or newsletter articles on the company website without a license from the content publisher. These routine infringements prevent publishers from realizing licensing revenue, thereby making it increasingly difficult for them to sustain their businesses and to continue to provide content at the high-level they have been.

infringement has become a continuous and expensive proposition for many content publishers.

When copyrighted content is infringed, whether online or within an organization, the publisher is effectively deprived of income—either directly or indirectly—that could be put to use to develop new or better content. Every year the content industries lose millions due to copyright infringement—depriving the public of new creative works, costing industry jobs, and hurting the economic growth of this country. These consequences would be substantially limited if consumers and users of content took time to understand and respect the law, and the cumulative adverse effect of their actions. Certainly, copyright infringement is not the sole or primary threat to journalism in the Internet age, but it is a significant factor effecting the ability of content publishers to move to online business models.

V. Closing

As one analyst in the industry concluded, looking at the changes underway in the news marketplace, "One thing is certain: the 2015 landscape won't much resemble that of 1995."[8] Because this is very much an evolving process, whatever static snapshot that can be taken of the current economics and revenue models today is likely to shift dramatically in the years ahead.

Again, we would like to once again thank the FTC for providing us an opportunity to file these comments. If we can prove any supplemental information or clarify any of our comments please do not hesitate to contact us.

[8] *News Providers & Publishers: 2009 Market Forecast and Trends Report*; Outsell, Inc., October 26, 2009, pg. 8.