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Today's News

BPL DRAFT to be readied by OET for Commission meeting in Oct., says Deputy Chief Franca. State report in Nov. (P. 1)

COPYRIGHT DEBATE rages in Geneva as interest groups propose actions for future WIPO work. (P. 2)

CAPITOL HILL: Thornberry and Lofgren offer bill to promote cybersecurity position at DHS... CARP reform bill again passed over in Senate committee... Music activist group stages congressional call-in to protest copyright inducement legislation. (P. 3)

AGENCIES: Fraudulent Internet computer auctioneers settle FTC charges. (P. 4)

INTERNATIONAL: Australian report faults Internet governance. (P. 4)

INDUSTRY NOTES: High-tech jobs down 200,000 since recession's end, CWA says. (P. 4)

OET to Have BPL Draft for Oct. Commission Meeting

The FCC's Office of Engineering & Technology is "working hard" to complete its broadband over power line (BPL) work for consideration at the Oct. Commission meeting, Deputy Chief Bruce Franca said. At the United Power Line Council's (UPLC) annual meeting in Arlington, Va., Tues, he said "we are real confident that we are going to have an item for October." State regulators, however, told utility executives they still had "limited" knowledge of the technology, and said it was up to the industry to educate them so they have a better grip on regulatory issues. They said the BPL task force set up by NARUC would issue its findings in Nov.

Franca said the FCC has received some interference complaints from amateur radio operators, but to BPL's credit tests conducted by the OET showed that BPL equipment largely complied with the rules and "notching" techniques for avoiding certain frequencies were very efficient. BPL operators and equipment manufacturers have done a good job of eliminating potential interference, he said, adding that the OET considers BPL interference risk very limited.

BPL raises 2 interference issues, said Tom Sullivan, chief of NTIA's Spectrum Engineering Branch. One is local interference complaints from amateur radio operators at the "neighborhood" level, the other a "large-scale" problem below the 30 MHz band when hundreds of thousands of BPL devices could raise radio noise levels worldwide, he said. The NTIA isn't "fearful" of interference at the local level because it's confident BPL operators will fix it when complaints arise. However, the agency will fully address ionospheric interference, he added. Acknowledging the agency differs with the FCC on interference issues and solutions, Sullivan said, however, that "we will fully support whatever rules the FCC comes out with."

Commissioners from 3 state PSCs said they needed to be better "educated" on BPL. States are looking at "light-touch" regulation for BPL, said N.J. PSC Comr. Connie Hughes. Regulators need hands-on demonstrations from BPL operators to have a better grip on regulatory issues, she said. The difference between federal regulators, such as the FCC and Federal Energy Regulatory Commission, and state counterparts is that the latter are responsible for both energy and telecom issues, she said. They must tackle the "synergies" between BPL and electricity industries as well as cross-technology concerns: "So it's extremely important that state regulators are at the table." Security and reliability of networks are among issues state regulators will consider, she added.

The NARUC BPL task force was intended remove any barriers to the industry, not create them, said Mich. PSC Comr. Robert Nelson, who heads NARUC's telecom committee. The task force is working to get 3 white papers on

regulatory, technical and security issues released in Nov., he said. It's also planning a meeting in Oct. before the broadband summit to fine-tune the white papers, he added. Cross-subsidization and rights-of-way questions are issues the industry can help regulators address up front, he said. Most states have laws to promote broadband deployment, he said, but state regulators are concerned about regulatory parity. Responding to questions about the likely classification of BPL, Nelson said NARUC may weigh in on the issue in the cable modem case pending in the Supreme Court.

Cross-subsidization, pole attachment and Universal Service Fund contributions are some of the BPL state regulatory issues, said N.Y. PSC Comr. Tom Dunleavy. From state regulators' perspective, state policy for any industry must be stable and "we have to figure out a way to provide certainty" for the BPL industry: "It's a very easy thing to say but a very difficult thing to do." With the Supreme Court ruling recently that states may erect barriers to municipal entry into the telecom business, telecom and cable providers are sure to go to state legislatures or PUCs to policy hurdles against municipal utility BPL, said Dick Geltman, gen. counsel of the American Public Power Assn. (APPA). "We have both political and legal problems going forward." The density of population in rural areas can be a barrier to entry for cooperative electrical utilities, said Tracy Steiner, gen. counsel for the National Rural Electric Cooperative Assn. However, cooperatives see BPL as a community service rather than a business venture, she added. -- *Dinesh Kumar*

BPL Notebook...

Motorola is in a "decision-making process" regarding entry into the broadband over power line (BPL) market, Tom Rigsbee, sales team mgr., told the United Power Line Council meeting late Mon. He said the company believes BPL has the same kind of potential as cable modems and set-top boxes, but "challenges" include uncertainty about federal and state regulations, customer commitment, technical issues about deployment, and competition: "We are now seeing customer commitment and that's why we are moving forward." Giving the ISP perspective, Craig Newman, EarthLink's senior product mgr.-broadband services, said his company was looking for scalable pipes and speeds and value added services such as home networking, VoIP and video-on-demand. Speed is crucial, he said, but consumers often focus on price. He also called for standards for BPL home plugs and CE integration. Ron Boillat, pres. of Current Communications -- teaming with Cinergy to provide BPL in Cincinnati -- said Ohio was seeing "real deployment with paying customers." The company is providing up to 3 Mbps symmetrical speeds, a "story for competing not just with dial-up but also with cable and DSL," he added. Current is poised to provide additional services such as VoIP, video and gaming to its customers, Boillat said. VoIP will be deployed first quarter 2005, he said.

Collaboration, Not IP Protection

IP Debate Said to be Hindered by Lack of Agreement on Terms

GENEVA -- Participants in the copyright debate are "talking past each other" by using terms -- such as "intellectual property (IP)" and "public interest" -- that mean different things to different people, said Time Warner Vp-Assoc. Gen. Counsel-IP Shira Perlmutter Tues. Copyright used to be a fairly esoteric subject, particularly at the international level, she said, but digital developments and globalization have led to an "explosion" of the debate, as well as the number and types of participants. Their mutual misunderstanding is hampering their ability to move forward, Perlmutter said. Her comments came at the Transatlantic Consumer Dialog on the future of the World Intellectual Property Organization (WIPO) here.

Contrary to some claims, the IP community has traditionally focused on balance, users' interests, access to information and other issues at the center of the IP debate, Perlmutter said. While one can disagree on the policy decisions made on those issues, she said, people must recognize what WIPO and others have tried to do, and understand the decisions before trying to change them. She also stressed that WIPO isn't the arbiter of international IP policy, but the voice of govt. consensus where it exists. WIPO, Perlmutter said, can't be blamed for every problem in the IP system. She said WIPO should help bridge the communications gap between IP debate participants.

WIPO's mission purportedly is to protect "works of the spirit," said Rishab Ghosh, a founder of First Monday, an Internet journal. However, he said, protecting IP may limit that spirit by reducing the incentive to create

based on earlier works. WIPO should foster “dynamic innovation” by lowering barriers to collaboration on such things as free software and Internet journals, he said. The “worth of collaboration is not counted” in the copyright debate, but it’s very high, Ghosh said.

Chile’s copyright adviser to the Education Ministry urged WIPO to consider it a priority to harmonize the exceptions and limitations to copyright infringement laws. Chile agrees that creators must have incentive to create, but the public must also have access to works for new creations, said Luis Villarroel. And, he said, users’ rights must be as clearly defined as authors’ rights. WIPO’s 1996 Internet treaties fail to provide needed clarity, he said. The lack of harmonized exceptions is more problematic now because of the heightened emphasis on IP enforcement, Villarroel said. Govts. can’t persuade citizens to obey copyright laws if they can’t explain the system and if user rights are lacking.

Like it or not, for now copyright is a property right, said Richard Owens, WIPO dir.-copyright, e-commerce, technology & management div. Much of the current discussion revolves not around what IP rights are but about how they are and will be exploited in peer-based collaborative systems, he said. WIPO may want to consider the issue of exploitation to see whether there are flexible ways of exercising IP rights, he said.

Owens warned that harmonizing copyright exceptions won’t be easy in today’s political climate. Nations are already deeply divided over the proposed broadcasting treaty, he said, and active consensus is “extremely difficult” everywhere in the world. The idea of harmonizing exceptions and limitations -- particularly concerning digital rights management and the Internet -- is a valid one, he said, but “if you want to be talking about this in 20 years, this is a good way to start it.” -- *Dugie Standeford*

TACD Notebook

Because there’s a “crucial difference” between software and other fields, software shouldn’t be patented, GNU developer Richard Stallman said Tues. at the Transatlantic Consumer Dialog conference in Geneva on the future of the World Intellectual Property Organization (WIPO). Developing software is fundamentally easier than other intellectual-property processes, he said, and software developers can assemble “tremendous combinations” of ideas. If every one of those ideas must be the subject of a business method patent (BMP), Stallman said, there’s gridlock. Patents hamper software development, which involves “incremental innovation,” he said. Many continue to view patents in their context for mechanical devices in the 19th century -- one patent per product -- but software is far removed from that paradigm, he said. A software designer may find that 50 or 100 others have patents on his product before he’s finished. Stallman criticized the U.S. for pushing other countries to adopt software patents. For a few, the patent system means getting patents and suing others, he said, but for most people the system means being sued for infringement. WIPO’s agenda is “pretty good over all,” he said, and he stressed he’s not calling for the abolition of all patents. But he said patents must be based on a proper foundation -- serving the public interest. WIPO is alone among other international and national bodies in failing to see patents in economic terms, said U. of Mich. Prof. Brian Kahin. The FTC, the U.S. Patent & Trademark Office, the Organization for Economic Cooperation & Development, the European Patent Office and the European Commission are all taking an economic approach to patents, he said. He recommended that WIPO: (1) Serve as clearinghouse on patent policy, including economic policy. (2) Collaborate with the OECD and others to obtain economic expertise. (3) Develop its own economic capacity by hiring a chief economist. (4) Develop economic, accountability, transparency, understanding and participation principles. (5) “Get a process going” for taking an economic approach to patents.

Capitol Hill

The federal govt.’s top cybersecurity official would get a promotion under a bill introduced Mon. House Select Homeland Security Cybersecurity Subcommittee Chmn. Thornberry (R-Tex.) and ranking Democrat Lofgren (Cal.) said HR-5068, the Dept. of Homeland Security Cybersecurity Enhancement Act, would make it clear how important cybersecurity is. At numerous hearings, they and other members of the subcommittee have expressed concern that cybersecurity is overlooked at DHS; the top official, the National Cyber Security Div. director, is 3 levels removed from Secy. Tom Ridge on DHS’s organizational chart. The bill would promote the dir., currently Amit Yoran, to asst. secy., on a par with his current boss, Asst. Secy.-Infrastructure Protection Robert Liscouski. Both would be directly under Undersecy. Frank Libutti, who oversees the Information Analysis & Infrastructure Protection Directorate. Liscouski and Libutti have testified that cybersecurity isn’t neglected at DHS, and it appropriately is part of the Infrastructure Protection Office run by Liscouski.

But Thornberry in a statement said DHS needed a more coherent framework: “As threats to the cyber infrastructure increase, it is clear that the United States must pay closer attention and do more to protect our cybersecurity.” Lofgren said giving the cybersecurity chief more authority would make it easier “to get the job done” at DHS. Before DHS was created, the cybersecurity chief worked for the White House and ran the President’s Critical Infrastructure Protection Board (CIPB). CIPB no longer exists, and the lower profile of the DHS job reportedly led several high-profile figures to turn it down. The last CIPB dir., Howard Schmidt, declined to enter DHS and left for industry, as immediate predecessor Richard Clarke had done months earlier as DHS legislation was drafted. Business Software Alliance Pres. Robert Holleyman in a statement urged Congress to pass HR-5068 before the Nov. election. “Cybersecurity and physical security are inextricably linked in today’s security environment,” he said: “One is not possible without the other, nor should one be more important than the other.” He said the assistant secretary position would highlight the issue’s importance while “providing a single, visible cybersecurity point of contact at the federal level.”

Music activist group Downhill Battle led a phone campaign against legislation in the Senate Judiciary Committee that would create liability for inducing copyright infringement, claiming it would punish technology innovators and independent musicians. Callers targeted House and Senate leaders, whose aides reported call volumes slightly higher than usual. Downhill Battle organized the campaign out of concern S-2560 by Chmn. Hatch (R-Utah) and ranking Democrat Leahy (Vt.) or similar legislation would be shoved through the Senate “with parliamentary fancy footwork,” according to co-founder Holmes Wilson.

Agencies

Internet auctioneers accused of fraudulently promising laptop computers to the highest bidder, taking victims' money, and never delivering the laptops settled FTC charges by agreeing to pay \$35,000 this week. The auctioneers, Brian Silverman and John Engholm, were accused of using several Internet auction sites, including eBay, to defraud consumers of about \$450,000, almost all of which the FTC made them return to avoid jail time. The defendants are permanently banned from certain kinds of auctioning and subject to FTC monitoring.

International

“If there is a problem in Internet governance, it is in the gaps between the competencies of existing governance bodies and the needs of the Internet industry, governmental and community users,” a new report claims. “Internet Analysis Report” by Australian consultant Ian Peter faults the Internet Engineering Task Force, the ITU and ICANN for failing to cope with the Internet’s growth. The World Summit on the Information Society (WSIS) isn’t a solution, he argues, because the debate will rage another year there, and that will determine only where to begin developing future governance structures. Proper governance is critical, Peter said, as usage increases from about 600 million users worldwide to several billion. Growth is hindered by viruses and worms, fraud, spam, “slowness” in assessing sites, affordability and the use of English in text and in ASCII format for domain names. Of existing models, he said: (1) IETF with no board, members or dues, is too informal to handle controversial issues or move beyond modest problem-solving. (2) ITU has the strongest governance structure, but the telecom industry has been slow to recognize the Internet’s potential, so ITU might not be nimble and forward-looking enough. (3) W3C “effectively addresses issues” concerning the Web but has a narrow focus. (4) ICANN is “eccentric in nature, illogical in scope, and incomplete in terms of Internet governance.” Peter doesn’t engage in wholesale criticism of ICANN as some foes do, but he does say its odd origin in NTIA’s charter put it in an awkward position. It and IETF “are continually operating in areas outside of their level of competence in order to keep things afloat” because of the lack of any true governance body, Peter said. WSIS will be a good forum for future discussions, he said, but solutions are more complicated than removing ICANN from NTIA’s influence. It will take at least 3 years to work out governance reform, he said, but it must be done within 7 years, because the Internet is evolving to new technologies and platforms such as IPv6 -- www.internetmark2.org.


Industry Notes

The U.S. high-tech industry has lost 200,000 jobs since the recession was officially declared over in Nov. 2001 by the National Bureau of Economic Research, according to a study released by CWA Tues. The report -- conducted by the Center for Urban Economic Development at the U. of Ill. -- said despite recent growth in overall job numbers, there was

“little evidence of significant job expansion in the IT industry,” which lost “a whopping 403,300 jobs” between March 2001 (when the recession began) and April 2004. “We are asking how can economic recovery be declared when there are no new jobs being created,” WashTech Pres. Marcus Courtney said in a call with reporters. He predicted the trend of IT job losses would continue. The report said national IT unemployment rates had been “steadily increasing” since 1998, peaking at 5.7% in 2002. Nik Theodore of the U. of Ill. said the IT industry lost 197,000 jobs during the 9-month recession — more than 9% of IT employment. The report, which analyzed key high-tech markets in the U.S., said the employment situation was “particularly bleak” in the San Francisco metropolitan area, which it said had a 49% IT job loss March 2001-April 2004 and 25% since Nov. 2001. It said between the recession’s official end in Nov. 2001 and April 2004, the IT industry nationwide lost 206,300 jobs (11%), with Boston losing 12,200 (21%), Chicago 10,200 (18%), Dallas 10,700 (21%), San Jose 14,000 (19%) and Seattle 1,700 (3%). It said since the recession’s official start in March 2001, the IT industry nationwide lost 403,400 (19%) jobs, with Boston losing 24,300 (34%), Chicago 16,400 (26%), Dallas 17,000 (30%), San Jose 30,600 (33%) and Seattle 6,400 (11%). The study said Washington, D.C., was the only metropolitan area examined, that -- after losing 8,300 (5%) during the recession -- added 4,100 jobs (2.5%) after the recession. CWA, which has donated 250,000 to a Media Fund organized to defeat President Bush, blamed the absence of a job recovery in the U.S. IT industry on wrong Bush Administration policies, especially on offshore outsourcing. Courtney said IT workers were “definitely beginning to organize and get active at the levels that historically we haven’t seen... Politically, they are starting to get engaged.” Courtney told us release timing wasn’t tied to the Presidential campaign but to “when the study was completed.” Courtney said H1B and L1 programs and offshore outsourcing were among major reasons for American IT job losses. He called for reforms, saying it was necessary to ensure that “employers are actually hiring employees domestically and are not using loopholes in those laws to directly replace best workers.” But a Va. immigrations attorney told us the visas made “an easy target for those looking for a scapegoat for high unemployment among U.S. tech workers.” He said H1B visas allocated for FY 2004 numbered 65,000, compared to 195,000 per year fiscal 2001, 2002 and 2003. According to a report by the U.S. Dept. of Homeland Security, in 2002, about 38% of H1B approvals went to persons in computer-related fields, down from 58% in 2001. -- SP

Internet People

Tom Wheeler, ex-CTIA and NCTA, joins Core Capital Partners as special partner... **Daniel Berninger**, ex-AT&T, named senior analyst at Tier 1 Research... New technology/IT partners at executive search firm Highland Partners: **Mercedes Chatfield-Taylor**, ex-iCOM Consultants, and **William Swartz**, ex-Swartz & Assoc.

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