

**PUBLIC HEARING OF U.S. COPYRIGHT OFFICE AND
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
ON REPORT TO CONGRESS PURSUANT TO SECTION 104 OF THE DIGITAL
MILLENNIUM COPYRIGHT ACT
NOVEMBER 29, 2000**

**SUMMARY OF TESTIMONY BY NIC GARNETT, VICE PRESIDENT OF TRUST
UTILITY, INTERTRUST TECHNOLOGIES CORPORATION**

InterTrust Technologies Corporation is a developer and provider of sophisticated Digital Rights Management (DRM) technology and solutions, which have been the subject of comments by a number of organizations participating in this study. As a DRM provider, InterTrust can lend insight into the state of DRM technology and its deployment by our customers – copyright owners and aggregators and disseminators of copyrighted works – in electronic commerce.

Electronic commerce in copyrighted works has noticeably lagged due to the lack of a trusted and consistent environment that neutrally supports the rights of both owners and users of copyrighted works. For the digital economy to continue to grow and flourish, creators, publishers, and distributors of digital content, as well as service providers, governments and other institutions, and users, must have the ability to create digital content secure in the knowledge that their ownership rights can be protected, and to associate rights and rules regarding ownership, access, payment, copying, and other exploitation of the work. By providing the means to do so, DRM is making an essential contribution to the development of electronic commerce.

Effective DRM solutions, such as those provided by InterTrust and its partners, comprise technological measures as well as a trusted neutral third party administrator to protect the integrity of the technology and manage its continual adaptation – including the development of rights and permissions practices - to changing technology and user needs. The purpose of DRM solutions is thus three-fold – (i) to enable copyright owners to manage their exclusive rights effectively throughout the electronic commerce value chain, (ii) to provide flexibility in the arrangements struck between copyright owners and their customers, and (iii) to provide a trusted environment in which technology guarantees these arrangements. The promise of such sophisticated DRM solutions is to instill confidence in electronic commerce among copyright owners and users of copyright works alike.

Thus, sophisticated DRM solutions are entirely consistent with the underlying balance of copyright law – to protect the rights of copyright owners as a means of promoting wider dissemination of and greater access to copyrighted works. Because digital delivery and DRM appear to be improving the dissemination and use of copyrighted works, concerns about their effect on the first sale doctrine – Section 109 of the Copyright Act – appear to be at best premature. Indeed, great caution should be exercised in considering proposals to alter such a fundamental tenet of copyright law because doing so could unsettle long established legal rights, thus making electronic commerce more uncertain. Moreover, such changes could constrain the development and use of sophisticated DRM technologies and solutions, which remain in their formative stages. The unfortunate result would be to discourage the lively experimentation necessary to develop viable, sustainable electronic commerce in copyrighted works.