

Testimony of

The Honorable Orrin Hatch

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Mr. Chairman, we have long worked together on legislation dealing with copyright and other intellectual property laws. We have often worked hard to balance all interests and done so in a bipartisan fashion. For an example, I would cite the landmark Digital Millennium Copyright Act, which clarified the application of copyright law to the digital world in a way that fostered the growth of technology and which sets the floor upon which today's discussion builds. Our intellectual property laws govern property rights that inhere in the creative work we enjoy over the internet, over the television, radio, cable and satellite systems. Copyright and other intellectual property laws give creators the incentive and protection they need to make their movies and music and stories and artworks available to us.

In making intellectual property policy, technology continues to challenge us, but we have attempted to meet those challenges. In passing the Digital Millennium Copyright Act just three years ago, we sought to ensure that copyright owners would make their works available on the Internet by clearly applying the protection of copyright law to the digital world in a way that also allowed technology to grow and develop. Our committee also worked with the Commerce committee to take advantage of new technology to make local television signals available over satellite in the Satellite Home Viewer Improvement Act - an advantage I hope will not be undermined by anticompetitive mergers.

This hearing today discusses issues related specifically to additional technological protections for copyrighted content transmitted over digital networks, and the government's role. There are precedents for legislation in this area. Specifically, the Audio Home Recording Act required all home audio recording device makers to conform to the Serial Copy Management System, which allowed unlimited first generation copying of music, but stopped second

Page 1 of 3

generation copying. The Digital Millennium Copyright Act included a provision adopting the so-called "Macrovision" standard for copy protection of analog videotapes in all video cassette recorders, while ensuring that certain programming continues to be freely available for copying by television viewers.

The lesson, I think, is we have been here before, and we have met the challenge when technology has thrown down the gauntlet. I think it is your preference, however, as well as mine, that the market work these issues out, if it can. On the other hand, when it cannot, Congress can facilitate a resolution that ultimately benefits consumers and creators, the studios and technology companies. With respect to market resolution of the specific issues at hand, there seems to be something approaching consensus on the technology and use of a so-called "flag" in digital broadcasts that can allow digital home recording of broadcast programming, but will stop further re-distribution of those recorded programs outside the home network to the general public via the

Internet. Plugging the "analog hole," as it is commonly referred to, is more problematic, but likely solvable. This is the problem that occurs when a digital file is converted to an analog signal for viewing or listening and loses any digital instructions that may have been included in original digital packet. Finally, there is almost no consensus on a technical or policy front with regard to internet file sharing or general internet distribution.

While philosophically we agree that the market, with its business and technical expertise, ought to try to solve these issues, I think there is a useful role for Congress, too, in reaching or implementing creator- and consumer-friendly agreements in at least three ways. First, we can help set deadlines and push for agreement where there may be deadlocks that ultimately hurt both artists and consumers; second, we can help set balanced objectives and priorities; and, third, we can codify consensus policies or minimum standards. The growth of broadband opportunities for many of our constituents has stalled, and it may be helpful for Congress to encourage all parties to get agreement when it is best for the markets, consumers, and artists. I also believe it is necessary for Congress to help ensure that consumer expectations will be more fully respected than they might otherwise be in private agreement. For example, I would like to be certain that as new controls are placed on digital content, that consumers are allowed to make legitimate personal copies as they have done before, and use those copies as they have been accustomed to doing. Music fans want to take their music with them in the car, on the beach, to a party. Movie and sports fans want to watch on their big screens, not just on their computer monitors.

Now, let me state clearly, as we discuss consumer rights and expectations, we all should not forget that consumers will have nothing to enjoy if there was not the incentive for artists and creators to develop entertainment content and share it with us. And, moreover, as the HDTV market has demonstrated, without digital content, there will not be sales of digital electronic devices. As with many things, this is a balancing act, but if there is one thing Congress does regularly, it is balance interests. Consumers want rich content. To get the creators of that rich content to share it in emerging interactive digital systems, they must be assured that destructive misuse will not undermine their businesses. On the other hand, consumers also want to use and enjoy that content with the advanced ease, superior quality, and enhanced enjoyment that the new digital systems allow.

In another context, Mr. Chairman, I have said that if the media and technology companies will focus on the people at the two ends of their networks, the artists and the audience, there can be benefit for everyone from end to end. We can all learn from the lessons of the Napster case. This has been a cautionary tale to those who would leave the issues to the law of the jungle and protracted litigation. And I should also say that you certainly don't want litigation right now, with our courts literally half-empty in certain circuits. But I sincerely hope the ongoing music industry conflicts will not be replicated in the video context, which has been avoided to some degree by the slow rollout of broadband. However the issues of the Napster case are resolved - and I have been calling for years to a market-based, fair resolution to those issues - that case may suggest that some involvement by Congress is necessary to ensure that technology and intellectual property work together for consumers and creators. Finally, we must remember that the internet is international. As Ranking Member of the International Trade Subcommittee on the Finance Committee, I know too well that intellectual property is our number one export, and that we need to do all we can to ensure that our trading position remains strong and that our trading partners

work with us in using digital networks as avenues for legitimate trade. We must continue to ensure that foreign countries will provide adequate and effective protection and that their laws are not eroded as they face new challenges posed by new technologies.

In conclusion, I also want to reemphasize Chairman Leahy's and my interest in and call for ongoing informational updates from the negotiating parties and for input from everyone who has an interest in these issues via our website. I want to encourage the parties - the content community and the information technology community - to continue and redouble your efforts to find common ground. These are complex issues and with the right resources, I am confident you can resolve these problems. I think it would be helpful for us to get a variety of views and regular updates on the ongoing private discussions.

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