

Testimony of

The Honorable Orrin Hatch

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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on

"Pornography, Technology, and Process: Problems and Solutions on Peer-to-Peer Networks"

In this hearing we continue our examination of an explosively popular and promising technology, which counts among its users millions and millions of teens and pre-teens worldwide: peer-to-peer file sharing networks.

At our last hearing on peer-to-peer networks, we examined some of the personal and institutional security risks associated with P2P usage. Today's hearing focuses on a different set of issues - and the questions they raise - that are equally pressing.

The first panel will address an issue that is very deeply disturbing to me, and I know to other lawmakers as well: the presence on peer-to-peer networks of enormous quantities of pornographic materials, including child pornography, and the great risk of inadvertent exposure to these materials by young P2P users. This is an issue of critical importance to parents, who must be educated about these risks and equipped to control or eliminate them.

The second panel will address the information subpoena provisions of the Digital Millennium Copyright Act, and I will have more to say about that issue after we hear from our first panel.

I know that we here in Congress, along with all upstanding Americans, agree on this: Child pornography is inherently repulsive, inherently victimizing, and intolerable in any form. It is both an effect and cause of sickness: perverts and pedophiles not only use child pornography to whet their sick desires, but also to lure our defenseless children into unspeakable acts of sexual exploitation.

My commitment, Senator Leahy's commitment and this Congress' commitment to eradicating child pornography was evident in the passage of the PROTECT Act, which Senator Leahy and I co-sponsored.

As we are about to hear, peer-to-peer networks provide a new and growing means for distribution of these disgraceful materials. They also pose unique challenges for law enforcement trying to combat child pornography and unique and unacceptable dangers to our children.

The following video presentation conveys the depth and urgency of these dangers. So I would like to complete my opening remarks with a showing of this video, which was produced by the RIAA, in collaboration with the Suffolk County, New York District Attorneys Office, which is represented here today, the Los Angeles Council on Child Abuse and Neglect, and Media Defender, a security company that has testified repeatedly before Congress and this Committee.

I should warn you that some of the language in this video is graphic, and the content is disturbing, but this is what our children are witnessing on peer-to-peer networks and we need to know about it. An edited transcript will be prepared for the record.

VIDEO PRESENTATION

Our second panel will address the ISP-subpoena provisions of the Digital Millennium Copyright Act, a critical part of a compromise that this Committee helped negotiate between the content and technology industries. This compromise was intended to permit both the development of Internet services and the enforcement of copyrights on the Internet.

This compromise is now codified in Section 512 of the Copyright Act. Section 512 creates so-called safe-harbor provisions that protect Internet service providers from secondary liability for copyright infringement. These safe-harbors protect ISPs regardless of whether their systems act as conduits, locators or hosts for infringing materials posted by third parties.

In exchange for these safe-harbors, Section 512 requires ISPs to provide specific assistance to content creators alleging that someone is using ISP services or systems to host, locate, or transmit infringing content. For example, Section 512 can require an ISP to remove allegedly infringing materials hosted by the ISP or to identify an allegedly infringing customer in response to a subpoena under Section 512(h). Recently, the subpoena provisions of Section 512(h) came under scrutiny when they were invoked by content creators trying to identify individuals allegedly trading infringing materials over peer-to-peer file-sharing networks.

Our second panel consists of three panelists who will discuss the legal and policy implications of the subpoena provisions that underlie both the Section 512 compromise and our broader system for reconciling copyright and the Internet. Mr. Cary Sherman is the President of the Recording Industry Association of America; his organization has served Section 512(h) subpoenas to obtain identifying information about individuals alleged to have trading infringing music files over peer-to-peer file-sharing networks. Mr. William Barr is the General Counsel of Verizon; his company provides ISP services and has received Section 512(h) subpoenas. Our last panelist, Ms. Marybeth Peters, is the Register of Copyrights; she brings to this narrow but important dispute about Section 512(h) subpoenas her unquestioned expertise with the broader issues of law and policy that underlie both the DMCA and the Copyright Act. She has also been gracious enough to help us streamline this large hearing by agreeing to appear on the same panel as our private-party witnesses and agreeing to go last in order to provide some perspective on the views of the two preceding litigants.