

Testimony of

The Honorable Arlen Specter

June 21, 2006

Opening Statement of Chairman Specter
Senate Judiciary Committee

"The Analog Hole: Can Congress Protect Copyright and Promote Innovation?"

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Good morning ladies and gentlemen and welcome to today's Judiciary Committee hearing titled, "The Analog Hole: Can Congress Protect Copyright and Promote Innovation." The Committee has convened today's hearing to revisit, for the third time this Congress, the inherent tension created by our copyright laws in protecting creative works while encouraging technological innovation. The Committee examined these competing concerns during the Grokster hearing last September and most recently during an April hearing to cast the public spotlight on digital radio services. Today, we look at the so-called "analog hole" -- a term that describes an existing technological loophole that may undermine copyright protection efforts against the piracy of this country's visual creations.

The emergence of digital technologies presents the owners of movies, television programs, and other visual content with exciting opportunities to reach a truly global marketplace. Consumers can rent the last 3 seasons of the television hit "24" over the mail, watch feature films on their computers via the internet, or purchase classic sports match-ups with the click of a button over satellite networks. Digital technology has translated into greater access for consumers and unlimited market opportunities for a creative commodity that has helped defined American culture in the past century.

But some argue that a darker side has possibly emerged with this same digital technology. Today, intellectual property thieves can duplicate near perfect copies of movies for sale in open black markets throughout the world. While content owners have developed anti-copying technologies, the "analog hole" enables thieves to circumvent these protections. The so-called "analog hole" creates a loophole in copyright protection by stripping protected digital content of its copyright protections in the analog conversion process necessary for consumers to view the video programming on their television sets. When the analog content is reconverted to a digital format, it no longer contains the original copyright protections, thereby allowing for the unauthorized mass distribution of digital content. This presents an obvious problem for the content holders and yet another obstacle in our country's fight against global piracy.

Efforts to close the analog hole have brought content owners together with the computer software and consumer electronics industry in search of a solution. Although both sides continue in their discussions, the content owners have recently enlisted the help of Congress in the form of legislation introduced in the House last December by Chairman Sensenbrenner. This bill would compel manufacturers to implement a technological "fix" mandating the recognition and preservation of content protections in the analog reversion process. I am always weary of the government mandating a technological fix and believe that the parties should be brought together to come up with a mutually palatable solution. As such, I have sought to encourage negotiations by holding an initial stakeholder roundtable on this issue earlier this month. It is my hope that the stakeholders will find a way to unentrench themselves from historical positions and work with me and the members of the Committee to reach a mutually agreeable solution in such future meetings.

We hope today's hearing will shed light on the underlying problem and competing concerns raised by proponents and opponents about a measured solution to close the analog hole. I want to thank all of you for coming today and I look forward to your testimony. I now turn to the Ranking Member, Senator Leahy, for his opening remarks.

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