

Testimony of

# Mr. Dan Glickman

June 21, 2006

Testimony of the  
Honorable Dan Glickman  
Chairman and CEO of the  
Motion Picture Association of America  
Before the Senate Judiciary Committee Hearing

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

June 21, 2006  
Testimony of the Honorable Dan Glickman  
Chairman and CEO of the Motion Picture Association of America  
Before the Senate Judiciary Committee Hearing  
"The Analog Hole: Can Congress Protect Copyright and  
Promote Innovation?"  
June 21, 2006

Chairman Specter, Ranking Member Leahy, members of the Committee:

On behalf of the member companies of the Motion Picture Association of America, I thank you for the opportunity to talk to you about the analog hole and how the Congress can protect copyright and promote innovation by removing the current disconnect between our analog past and our digital future.

Intellectual property has consistently proven to be this country's greatest export. In the marketplace of imagination, America's innovators and creators are unsurpassed. However, the viability of this creative output is reliant upon our ability to protect it from being devalued by theft. In a time where America is working to remain competitive in the global marketplace, this nation will prosper or it will fail in large part based upon how we protect our nation's greatest assets...the skill, ingenuity and creativity of our people.

The American film industry, like all of the creative industries, combines capital and talent to produce intellectual property. It is not easy to create a movie. It requires lots of money, lots of skilled workers, and lots of hard work. In fact, four out of ten movies don't make back their investment. So the movie industry is fraught with risk. Despite these hurdles, the American film industry is the most successful in the world. Our industry has a positive balance of trade with almost every country in the world and is one of our best job creators.

The member companies of the MPAA are excited about the future of our industry and are working hard to make a successful transition to the digital world. This digital future will ultimately allow viewers to watch virtually any movie, at any time, at any place, at prices dictated by a competitive and thriving marketplace. While there are many hurdles to overcome in making this vision a reality, our member companies are responding to the consumers who are their constituency and are committed to meeting this need.

Studios and networks are expanding their distribution channels to harness new technologies to deliver content in a variety of new ways. New ventures and offers are being announced in rapid fire succession. These are a sampling:

- ? Warner Brothers partners with Free Record Shop using P2P distribution
- ? Universal partners with LoveFilm in UK, offering downloads
- ? CBS and Verizon FiOS TV partner to carry select programs

- ? Disney offers feature length film on iTunes
- ? CBS delivers college basketball "March Madness" online
- ? ABC offers free streaming of shows at ABC.com
- ? Disney re-launches MovieBeam as a new digital VOD distribution channel
- ? NBC Universal launches Aeon Digital set top box
- ? MTV Networks partners with Microsoft to offer digital music and video downloads via URGE.
- ? MTV Networks offers thousands of free on-demand videos via its broadband channels, including MTV Overdrive, Nick Turbo, V-Spot and Motherload
- ? CBS offers select programs on demand
- ? Warner Bros. launches P2P service In2Movies in Germany
- ? Fox announces VOD and DVD windows collapsed
- ? NBC Universal announces Peer Impact deal
- ? Disney announces download-to-own deal for full-length feature films with CinemaNow
- ? Google Video beta launched - essentially is going with a wholesale reseller model - creating an iTunes-like store.

However, while the industry embraces the many opportunities of the future, it also must confront the ever present threat of theft.

The pilfering of our films costs our industry approximately \$6.1 billion dollars a year. On the Internet front, it has been estimated that as much as two-thirds of Internet bandwidth in this country is consumed by peer-to-peer traffic, with much of that volume attributable to movie theft.

And it is only getting worse. Pirating DVD's is more lucrative than selling heroin for many criminal gangs. A recent study showed that 62 percent of our industry's piracy is attributable to illegally produced DVDs. New technologies enable criminals to acquire movies, burn them onto DVD discs, and then sell them on the streets or through a global storefront on the Internet with amazing speed.

The MPAA works very effectively with the U.S. Department of Justice, the FBI, Customs and local law enforcement to crack down on these gangs. We also are providing more and more legal alternatives for on-line movies. We are working to help our schools teach kids that stealing on the Internet is as wrong as stealing from a store. We are investing in the future to find cutting-edge technologies that will get movies to consumers while protecting copyrights. And we are working with our colleagues in the consumer electronics, computer and online service provider industries on the development and implementation of digital rights management ("DRM") technologies to offer consumers a wider array of choices for enjoying the content we produce.

But commercial piracy is not the only challenge we face in the new digital environment. We also must develop secure delivery systems so we can offer consumers the viewing options they desire while maintaining a sound fiscal base to sustain our industry. We are embracing DRM technologies so that we can offer consumers more choices at a greater variety of price points: one consumer may want to purchase a permanent copy of a movie while another may want to watch it only once--and at a lower price. To sustain the viability of this array of different offers, however, we must be able to maintain the distinction among them. Thus, we need to provide technical safeguards to ensure that the consumer who opts to take advantage of a time-limited viewing option at one price is not, in fact, getting the benefit of the sale option. Otherwise the price of the time-limited model will naturally migrate toward the sale model, all to the detriment of the honest consumer. In using the phrase "technical safeguards" I do not mean to imply that we seek absolute protection against unauthorized use of our movies. We understand that committed pirates will break any security measures we can devise and these pirates will have to be dealt with by way of criminal and civil legal remedies.

However, we can, and must, implement basic technological measures to delineate for consumers the differences among our various content offerings and to discourage what I call "casual misuse" of our intellectual property. At the end of the day, the economic impact of a thousand otherwise law abiding citizens making an extra copy of a movie they purchased and "sharing" it with a friend has the same impact as a single commercial pirate selling a thousand copies of a movie on a street corner.

In many cases, the DVD being a prime example, we have worked with the technology companies to develop and implement secure delivery systems supported by technical measures and voluntary contractual relationships. However, there are some areas where private sector solutions alone will not work. The analog hole is an example of an area where such assistance is needed.

What is the analog hole?

Let me try to explain it as simply as I can.

While film content is increasingly arriving into American homes in protected digital form, such content must be converted into an analog format to be viewed on the overwhelming majority of television sets in U.S. households, which can only process and display an analog signal. When digital content protected by digital rights management technology is converted to analog form for viewing on legacy analog television equipment, the content is stripped of all its digital protections. This analog content can then be redigitized "in the clear," without any protections whatsoever. This redigitized and completely unprotected content can then be efficiently compressed, copied and redistributed without degradation. It can also readily be uploaded to the Internet for unauthorized copying and redistribution. Like a black hole, the analog hole sucks in all content protections, leading to two problems.

First, it eliminates the "lines" or boundaries among the different viewing opportunities we are trying to bring to consumers and makes it difficult to sustain the choices for consumers that digital rights management technologies otherwise help facilitate.

Second, it creates a significant loophole for our industry in the fight against piracy.

This is not an idle concern. While some manufacturers voluntarily design analog to digital conversion devices to respond to analog copy protection information such as CGMS-A, others market devices specifically designed to exploit the analog hole. We have a situation where bad actors are reaping a windfall at the expense of motion picture companies and ultimately consumers, and good actors are placed at a competitive disadvantage.

Movie studios are actively engaged in developing and offering innovative new business models to give consumers greater flexibility and more choices for how and where they access and enjoy movies and television shows. All of these models depend, however, upon a secure environment which protects this high-value content from rampant theft and redistribution. Devices that permit exploitation of the analog hole, whether by design or otherwise, undercut this framework and consequently limit the viewing choices that can be made available to consumers.

Because of the ease with which it can be exploited, the analog hole creates a gaping hole in digital rights management protections, allowing high value content to be copied and re-transmitted without limit. Of particular significance is the fact that exploitation of the analog hole requires no act of circumvention, nor any unauthorized circumvention devices prohibited by the Digital Millennium Copyright Act (DMCA). Instead, the analog hole can be exploited solely through the use of general purpose home equipment. In some cases such equipment is specifically designed to permit people to take advantage of the analog hole to defeat digital rights management measures. In other cases, analog inputs and outputs serve a legitimate purpose and the analog hole is a byproduct. Closing the analog hole would place these analog to digital conversion devices on an equal footing with all-digital devices by maintaining the integrity of digital rights management measures.

Narrowly focused and targeted legislation is required to implement an analog hole solution. Such a solution will create a level playing field for device manufacturers and allow content providers to tailor their offerings to consumer desires. Legislation will help ensure that good actors are not disadvantaged by companies who do not play by the rules and enable content owners to provide consumer choices without running an unacceptable risk of promoting theft.

The MPAA and its member companies have worked closely with representatives from the computer and consumer electronics industries to reach consensus on a technological solution for the analog hole. These talks have been productive and have shown positive movement. Virtually every major consumer electronics and information technology company as well as a number of self styled "consumer" groups, including the Electronic Frontier

Foundation, participated in an Analog Conversion Working Group where a broad consensus was reached on the need to address the analog hole problem and on the attributes a solution should have.

The technological solution provided in bipartisan legislation introduced in the House by Judiciary Committee Chairman Sensenbrenner and Ranking Minority Member Conyers reflects these multi-industry talks and is consistent with the consensus that came out of that process. It provides for a robust analog rights signaling mechanism that does not interfere with consumers' ability to fully enjoy the content they receive. Known as "CGMS-A plus Veil," Analog Copy Generation Management System (CGMS-A) coupled with the Veil Technologies Rights Assertion Mark provides a practical degree of protection from unauthorized reproduction and redistribution while not diminishing a consumer's viewing experience. Indeed, the honest consumer who does not attempt to violate her agreement with the movie distributor by making copies or redistributing the movie will have no reason to know that the analog hole has been closed.

I want to emphasize that the Analog Hole has been the subject of intense scrutiny by technology and content communities, as well as other interested parties, in open forums consuming literally thousands of man-hours of discussion. It is a documented fact that there is broad consensus that these are issues that need to be addressed. There is also broad consensus on the nature of the solutions that should be considered.

Chairman Specter, Ranking Member Leahy, members of the Committee, I appreciate this opportunity to discuss these matters of concern to our industry and I look forward to answering any questions you may have regarding what I have just discussed.