Testimony of

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STATEMENT OF
LeVar Burton
On Behalf of the Directors Guild of America
Before the
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Hearing on

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

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Chairman Specter, Ranking Member Leahy and Committee members, my name is LeVar Burton and I thank you for inviting me to appear before you today to discuss the problem posed by the technology gap known as the analog hole and its impact on the creative community.

I am here today on behalf of the Directors Guild of America (DGA), of which I am a National Board member. I know there are others testifying who will speak to the technical and related issues on the analog hole. I hope today I can provide the "voice" for those of us who make films and televisions programs and who are directly impacted by the kind of piracy the analog hole makes possible.

Founded in 1936 by the most prominent directors of the period (including King Vidor, John Ford, and Howard Hawks), the Directors Guild today represents over 13,500 directors and members of the directorial team who work in feature film, television, commercials, documentaries and news. The DGA's mission is to protect the economic and creative rights of directors and the directorial team -- working to advance our artistic freedom and ensure fair compensation for our work.

Film is truly an indigenous American art form, and the work of filmmakers -- in collaboration with other creative artists in our industry - has documented, reflected upon and portrayed the American experience for almost 100 years. Motion pictures played a very unique role in popular culture during the 20th Century -- and they continue to be enjoyed daily by billions of people around the world. Those of us who work in film feel lucky and privileged to earn our living contributing our talents to a craft we love.

The process that goes into making a film is understandably unknown to those outside our industry. During the making of a film, directors are actually running a multi-million dollar business--a business involving hundreds of people and a myriad of details and decisions that have to made each day to keep the production on schedule and on budget. Whether it is the crafting of a single scene or the visual creation of a character from the written page, the director is always working to tell the story. This is not an effort we take lightly--it is not uncommon for a director to put years of work into one production.

It is exactly because of what we do that I am here today. DGA places the highest priority on the prevention of widespread pirating of movies, television programs and other creative works. Indeed, the entire film production industry - from studios, to independent production companies, directors, writers, actors, and the tens of thousands of below-the-line workers, both skilled and unskilled - has a tremendous stake in the ever-growing problem of piracy.

One handicap our industry--and directors who work in it--face when we discuss piracy is a fundamental lack of understanding of who we really are. It is an attitude born out of "People magazine"-like stories and the box office receipts which every paper in the country now seems to publish. When the film industry is mentioned, what first and foremost comes to people's mind is the popular image of the glitz, glamour, and wealth of Hollywood.

The reality, however, is very different. Yes, our industry is concentrated in Los Angeles and New York, but in fact the film industry exists in every state in the country. Yes, there are some stars known the world over who are fabulously wealthy. But in fact, most of the directors and others who work in our industry are unknown to the public. We work behind the camera. And the overwhelming majority of jobs in our industry are held by what we call "below-the-line" workers - the people whose names scroll by at the conclusion of a film - including such jobs as set designers, carpenters, sound technicians, set painters, drivers, foley artists, lighting technicians, make-up artists, seamstresses, and so many other jobs, often amounting to hundreds of workers on a film. They are no different than workers in other industries whose jobs are understandably important to Members of Congress.

And those are just the employees of the production company. The filming of a movie and a TV program also generates substantial employment for scores of small businesses that provide supporting services and equipment for the filming of a movie - from highly skilled computer technicians and artists at special effects companies, to caterers, dry cleaners, security personnel, and others who work for companies that support film production.

Films and television shows are not created by the snap of a finger; nor do they materialize out of thin air. For directors, writers, actors and the many craftspeople we work with, film and television production involves years of creative effort and hard work to put a vision on the screen. For the studios and investors it involves tens, if not hundreds, of millions of dollars to make that vision a reality. Today, the average studio film costs nearly $100 million to make and market.

This involves high risk for almost everyone involved, and it means that it is never easy to get a film financed - a reality faced by everyone who is in this business. Consider that many films do not retrieve their investment from theatrical exhibition.

Almost all films made for theatrical release require large capital investments--and these are highly risky investments since the return can not be known at the outset. Yet today, theatrical receipts account for less than 20% of the revenue received from studio films. That means sales in ancillary markets - from DVD sales, and pay and free television which are most at risk from unauthorized copying - are critical if films are to recoup their investment. Quite simply, without the revenue from those ancillary sales, many pictures would not get made today.

When film and television producers make money, the revenue can be put back into new productions that enable us, as directors, to create that film or television show. And our ability to do that in turn both employs many people and generates income not only for our industry, but also for the U.S. economy. Clearly, the willingness and capacity of producers to invest in film and digital television is undermined when our creative works are illegally copied, whether in analog or digital form, by casual users or mass produced production facilities, over the Internet or by hard disc. When a greater share of potential income is siphoned off - stolen as a result of piracy - risk rises, financing becomes more difficult, we are not able to make our films ... and American jobs are lost.

For directors and the DGA, this is the fundamental concern with piracy: that the siphoning off of revenue from ancillary markets will result in fewer films being made which means less opportunity for us, as creators, to make films and television shows for the public.

Another concern is the effect that unauthorized use of our products has on our income and on our pension and health plans--a situation that is true for not only directors but also others who work in our industry. Our livelihoods are inextricably tied to what happens to our work after the first time it is shown in the theatres or seen on television.

That is because a significant portion of our compensation depends on residual payments. These are the fees paid for the reuse of motion pictures or television productions on free and pay television, and DVD and videocassette, in both the domestic and international markets. When movies and television programming earn revenues in these markets, a portion of that income is shared among the DGA members who work on that production.

My and my fellow directors' economic and creative rights are dependent on this premise - that our work will be protected from copyright infringement - whether from unauthorized editing of our work, or unauthorized copying and reuse that erodes residual revenues.

Why does this matter, you might ask? The importance of residual payments flows from the basic economic underpinnings of our business. The motion picture and television industry operates on the concept of freelance employment, meaning that our members are hired by a variety of different employers on a production-by-production basis. In other words, our members cannot count on a regular paycheck. What they can count on is ongoing income in the form of financial payments (residuals) when works they have created are re-broadcast in supplemental markets. They are in effect economic rights, which adhere to their work.

In other words, our industry's residual system - which in the DGA's case has existed for 50 years - is designed to provide appropriate compensation to those of us whose contributions to these works are so fundamental that without us they cannot be produced. That is why residual payments are part of our basic contractual agreements with the Motion Picture and Television Producers.

I hope this explanation underscores why I am here today. When movies and television shows are illegally copied and distributed, movie studios are being robbed of the revenue which will be used to keep production alive in our industry. This results in income - both directly and indirectly - taken from our pockets.

In the age of digital broadcast transmission and the analog hole gap, this income is at serious risk. I think I can help illustrate this in personal terms. I have been in this industry for 30 years. I am a director and I have also been an actor and a producer. One of productions I am very much identified with is Star Trek: The Next Generation. I have acted in both the television series and the movies, and I have directed numerous television episodes of different series. I don't believe it would be an exaggeration to say that Star Trek is a "rather" popular and financially successful "franchise" for both Viacom and CBS. It is valuable to them and it is valuable to me and other film industry workers who have been part of this production. And what brings the public to watch Star Trek is also what makes it a prime target for pirating.

And it has indeed been pirated. Sometimes the public knows it has a pirated work; other times they don't. For instance, the studio and network often get complaints from people about the inferior quality of a DVD they have purchased on auction websites. Well of course what they are purchasing, often without the knowledge of the website, is a pirated copy of Star Trek. And there are thousands of such auctions. CBS has sent out more than one thousand notices relating to thousands of auctions of bootleg copies of Star Trek. In 2004 Paramount Pictures Corporation had more then 20,000 unauthorized auctions of their copyrighted property--Star Trek among them. In 2005, Star Trek Enterprise, the latest television series, was registered with the MPAA for its auction site take-down efforts. That year they found over 13,000 auction sites of DVDs of movies and television shows which were offered online but not yet released in DVD--again, Star Trek among them. This represents significant financial losses for the network and all the individuals I work with who have been responsible for making Star Trek. Believe me, piracy is not an abstraction to filmmakers.

The ability to earn a living and take care of ones family, in both the present and the future, is a paramount issue for DGA members and their families, as it is for all Americans. We cannot afford to have our livelihoods weakened by individuals - or institutions - who think downloading and sharing our members' copyrighted work is their "right" without regard to the very real economic consequence of their actions.

We fully understand that the analog hole is a difficult problem that requires technologically complex solutions. But the digitization of content that can now be transmitted, converted to analog, and then converted back to digital "in the clear" provides a quantum leap in the potential for unauthorized redistribution of copyrighted work. That is why the threat to our economic livelihood is so much greater than anything that has come before. Ever growing numbers of individuals are uploading and sharing digital files with millions of users--with no remuneration to our members, the creators.

We create film and television productions that are enjoyed by millions of people around the world. That is possible because of the success of the economic structure on which these works are sold, a foundation that relies in large part on profits from resale rights both in the United States and abroad. Now that economic model is threatened.

The film industry and the viewing public have mutually benefited from technological developments that have enhanced viewing choices. But new technology also poses challenges that we must be prepared to deal with to protect copyright, not only for the benefit of film industry workers but also the viewing public.

In closing, I want to thank you Mr. Chairman, Senator Leahy and Senator Hatch for the leadership on the issue of piracy that all of you have shown over the years. We look forward to working with you on solutions to this very important problem. I will be happy to answer any questions you have for me.