

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
June 21, 2006

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Ranking Member, Judiciary Committee  
Hearing on "The Analog Hole: Can Congress Protect Copyright and Promote Innovation?' Antitrust Exemption"

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I thank Chairman Specter for holding this hearing today. We have devoted considerable attention in recent years to the important issue of protecting creative works in the digital age without stifling the innovative technologies that deliver those works to consumers. Today, we turn to another aspect of this problem - the so-called "analog hole."

Content owners are concerned over a gap in copy protection of their digital works. This gap, the "analog hole," opens up when digital input is converted into an unprotected analog form so it can be viewed clearly on the millions of analog TV sets in households across the country. That analog content can then be re-converted into unprotected digital form and put on the Internet; once digital content falls into that hole, it loses its digital protection.

The possibility that this digital-to-analog-back-to-digital transformation could facilitate the mass indiscriminate redistribution of copyrighted video content is certainly real. As we have learned from past experiences - such as the unfettered illegal sharing of content over peer-to-peer networks that cost the copyright industries millions of dollars - there are many reasons to work hard to end the infringement of copyrighted goods. The theft of copyrighted works harms consumer, threatens business, and enriches illegal enterprises.

Congress has an obligation to help ensure that copyrights are respected and copyrighted materials are protected; nonetheless, we should be cautious about government-sanctioned technology mandates, which, at best, may be a temporary solution to a complex problem.

Technology invariably moves faster than legislation, and for that reason, industry participants are often better equipped to determine what will work and what consumers will buy. The inexperienced hand of government is not as effective as the relevant markets in moving assets, and interests, to their best uses.

I am committed to finding the best solution to this problem, and am hopeful that our discussion today is the next important step to moving us forward to the answer. I look forward to hearing from our witnesses and thank them in advance for their participation.

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