

Testimony of

The Honorable Orrin Hatch

February 27, 2002

Thank you, Mr. Chairman. First, let me thank you for holding this important hearing today. On the day the Supreme Court issued its decision in the Florida Prepaid and College Savings Bank cases in 1999, you and I both pledged to work together to find an appropriate response to the court that would fairly protect the rights of American innovators and creators. Continuing that process, today we will have a discussion of the issues and of your proposed legislation, S. 1611. I also want to commend your enthusiastic leadership on this important and complex property rights issue.

You will recall that as part of the fact-finding process the Court suggested we undertake in fashioning future legislation, I requested that the General Accounting Office make a study of the factual background and options available to us. They issued a report on their findings in September of last year. I would ask that their report, Intellectual Property: State Immunity in Infringement Actions, be included in the Record of this hearing so as to be included formally in the Congressional fact-finding process.

In brief, Mr. Chairman, while their process relied largely on self-reporting, and was therefore not probably exhaustive, what the GAO found includes the following: First, States very often own intellectual property and benefit from the federal protection of such intellectual property. Second, that for most of the 15 years reviewed, most commentators believed States were liable for infringing intellectual property rights. Third, that despite this widespread belief, at least 58 active cases were brought against States for infringement and perhaps hundreds of matters dealt with short of litigation. Fourth, very few, and perhaps no remedies now exist for redress against a State or state entity that is violating someone's intellectual property rights.

Mr. Chairman, this state of affairs is unfair. I applaud you for seeking to address this imbalance in our intellectual property system and for holding this hearing today. I understand your legislation seeks to be clearly within the bounds the Supreme Court has set for such legislation. I hope, Mr. Chairman, that we might continue to work together so that we can be sure that, while we can be comfortable with any final legislation's constitutionality, we can also be certain that it will be effective in protecting these important property rights and in restoring a substantial amount of the fairness that has been lost since 1999. We must ensure that our creators and innovators are provided adequate and effective protection for their works. That is what our Constitution empowers this body to do and we have not hesitated in recognizing the need to do so.

In sum, Mr. Chairman, I hope that we will be able to continue to work together to make the federal intellectual property system as fair and as successful as it has been previous to these decisions, and I look forward to the testimony the Committee receives today.

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