

Testimony of
Mr. Jonathan Taplin

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Mr. Chairman, Senator Hatch, members of the committee, I welcome the opportunity to come before you this morning to discuss the protection of copyrighted works in a world of digital media. I have been fortunate enough in my career to work with many great artists and so I take seriously the responsibility of making sure that the artist profits from his efforts. I started out in 1969 after graduating from Princeton as the tour manager for Bob Dylan and The Band. I produced George Harrison's Concert For Bangladesh. I've produced films with Martin Scorsese, Gus Van Sant, Wim Wenders and The Coen Brothers and as an investment advisor I was involved in the two biggest media transactions of the 1980's: Disney and Viacom.

The company that I lead today, Intertainer, was started in 1996 with the notion that digital broadband networks would be the conduit for on demand delivery of the best of American culture into the home. My vision is to enable Americans to have instant access to the immense library of film, television and music content that this country's artists have been producing for decades. The early films of Charlie Chaplin; the gospel performances of Aretha Franklin; all the wonderful artistic work that formed my real education was waiting in dusty vaults to be digitized and experienced by a new generation. Over the last five years, we at Intertainer have in fact earned the trust of and licensed content from many of Hollywood's leading media companies. Today, the Intertainer service features content from 65 different media companies including major movie studios such as Warner Bros., DreamWorks and MGM, and television networks such as NBC, ESPN, The Discovery Channel, PBS, The BBC, and A&E. In addition, we also feature concerts and music videos from all of the affiliate labels under the Warner Music Group and EMI banners. As you know, over the past several years these and other record companies have experienced indoctrination by fire in terms of digital piracy. But with Intertainer, Americans who have sufficient broadband connection speeds can watch recent theatrical releases, classic films, concerts, television shows and much more with a completely legitimate, secure service that offers an excellent user experience, as well as a new revenue stream for content owners. This unprecedented digital delivery of premiere Hollywood content would only be possible if the content owners felt that their product was being rigorously secured and that the end-user was getting a high quality viewing experience. As you can see from this demonstration of the service, Intertainer represents the convergence of secure digital delivery and broadband connectivity to give American consumers a new way to control and enjoy their entertainment.

This content is all digitally encrypted and protected by a commercially available digital rights management system that is bundled into Microsoft's popular Windows Media Player. A similar DRM system built by Intertrust is offered with another leading digital media player from Real Networks. It is my belief that these and other DRM systems that are available and in use today are continually improving their encryption scheme and that they already provide artists and copyright holders with a powerful tool to sell their content in a digital world with a high degree of security. I don't believe that either Microsoft or Intertrust would argue that the DRM systems

are absolutely uncrackable, but I do know that both organizations have been able to respond very quickly to attacks and change the encryption, thus rendering the hack unusable. In addition, my company is continuously exposed to a steady stream of entrepreneurs showing us new DRM products in development, which I believe is a strong indication that the traditional innovation that has come out of the US software industry will continue to develop more mature digital rights management products. The genius of the Digital Millennium Copyright Act is that it encourages this innovation while providing legal protection for the copyright holders.

I realize that there is considerable discussion going on in Congress about the need to legislate an open-standards digital rights management solution, but it is my strong belief that Congressional intervention is not necessary. As I've outlined, the marketplace is already working aggressively to meet the need for effective DRM solutions. A government-mandated solution would take considerable time to develop and implement, and in the meantime, content owners may seize the opportunity to withhold content from legitimate services such as mine until the new standard is adopted. Certain media CEO's will tell you that unless you mandate a foolproof copy protection system, they will never put their content on digital broadband networks. I have another point of view on this. Historically, open standards solutions are behind the curve in terms of attracting the capital and talent to keep them bullet proof. Private companies, in the interest of competition and innovation, are more incented to constantly refine and improve their products in order to maintain market share. With an open-standards solution, the inability to formulate a rapid response to inevitable security breaches is a fatal flaw. The system is working right now. Premiere Hollywood content is being digitally distributed and secured right now. A federally mandated open-standards solution would put a halt to DRM innovations and possibly cripple services like Intertainer.

Mr. Chairman and members of the committee, I would argue that a standard for digital rights management is not the source of our digital piracy problems. It is my steadfast belief that the private sector already has developed DRM solutions that are more than adequate, and that technology companies will bring DRM innovation to a fever pitch once a more fundamental, underlying issue is addressed. That issue is the standardization of the broadband industry. What we have here is a classic chicken and egg scenario multiplied several times over: content owners will not allow their content to be legitimately digitally distributed until the digital rights management issue is sufficiently addressed; the technology companies in the DRM space are not maximizing their resources to further innovate because there is a dearth of legitimate content being made available for digital distribution over the Internet; digital content, particularly long-form streaming video content, can only be enjoyed with a high-speed, broadband Internet connection; consumers need an incentive, such as compelling content, to switch from their current dial-up modems to high-speed broadband services offered by DSL and cable modem providers; consumers who do decide to move up from a 56k modem to a broadband service are often frustrated because there is no guaranteed minimum connection speed for broadband subscribers, therefore many of today's broadband customers can't even take advantage of so-called broadband services.

To further illustrate this point, imagine picking up your telephone and not getting a dial tone on random occasions. Imagine still that you perceived that as normal. That's the experience of today's broadband Internet user, who has no guaranteed minimum connection speed and often

finds that their high-priced, high-speed service is scarcely crawling above dial-up. Is this the fulfillment of the broadband promise? Many broadband providers are out in the marketplace today advertising the revolutionary benefits consumers will realize with these fast connections. Benefits such as distance learning, video conferencing, and access to enormous libraries of entertainment instantly available with the click of a mouse. But content providers looking to stonewall digital distribution until they find a way to become the digital gatekeepers will say that those vast entertainment libraries accessible via broadband services will never be made available to the citizens of this country until the digital rights management issue is addressed. Some studios that licensed to us in the past using our existing DRM system have indeed withdrawn their licenses in the last year and created a classic supply demand squeeze. My contention is that the DRM issue is being addressed; it's the distribution network for this wealth of digital content that needs attention.

The fact that less than 6% of the optical fiber that was laid down in the tech boom of the last four years is in use should concern not only investors in Cisco, Nortel and Lucent, but also educators, medical professionals and every artist interested in reaching an audience with a film, a song or a game. With the right regulatory guidance we could offer interactive DVD quality video on demand service to most every home and classroom in the country by the end of 2003. This service could retrain workers in their homes, provide inexpensive video conferencing, allow doctors to have access to specialists for consultation and provide an open platform for the filmmakers and musicians of the country to reach their audience without having to pay most of their income to gatekeepers.

To achieve this transformation the FCC would simply have to mandate a truth in advertising policy in regards to broadband. Today if you buy broadband service from your local telephone company, cable company or ISP you are offered "up to 1.5 MBPS". You are not told what the minimum level of service is. Broadband providers are "oversubscribing" their networks in order to maximize profits on broadband service. But to deliver advanced video services a minimum of 750 KBPS is required to the home for VHS video quality. For DVD quality a minimum of 1 MBPS is required.

I have to confess that I have a great deal of optimism for what a world of on demand media might look like. A few years ago, Bruce Springsteen wrote a song that typifies many Americans' view of television... "57 Channels and Nothing On". Going forward our country has a choice of two visions of what our media culture might look like. One might be 500 channels (owned by 6 corporations) and nothing on. The other might allow consumers easy on-demand access to a world of unique artistry of such power and grace as would melt the heart. I believe that the same innovative spirit that allowed me to show you "Shrek" running over a telephone line this morning will continue to improve the current protection of all forms of digital intellectual property. While I believe that Congress can play a major role in moving us towards the world of digital abundance, trying to set a national encryption policy is surely not the way to get there.