



**Before the Senate Commerce, Science
and Transportation Committee**

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News Corporation**

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Good morning Mr. Chairman and Members of the Committee. My name is Peter Chernin and I am the President and Chief Operating Officer of the News Corporation. Thank you, Mr. Chairman, for inviting me to participate in today's hearing. I would like to take this opportunity to applaud you for your leadership on seeking to ensure copyright protection for content producers in the digital broadband age.

News Corporation began fifty years ago as the owner and operator of a single newspaper. Today we are one of the world's largest media companies. News Corporation operates newspapers, a publishing house, a film company, a television network, television stations, cable program networks, and the largest TV production studios in the world. Yet in all that time, and in all those businesses, the company's basic function has not changed. Whether we're delivering the New York Post in Harlem, New York, broadcasting our FOX television programs to viewers across South Carolina, or preparing our novels from Harper Collins to be downloaded onto e-books for students in Alaska, News Corporation is essentially a producer and distributor of content. Our job is to create and select the most valuable information and entertainment, to package it as attractively as possible, and to distribute it as widely and as efficiently as technology will allow.

As an industry, we are in a very exciting but challenging time. The rise of broadband Internet and other digital technologies is providing us with tools of unprecedented flexibility that we are only beginning to fathom. We are already

harnessing these new technologies and distribution methods in a big way: over fifty percent of the United States television households are able to receive FOX broadcast in DTV (through 27 of our owned and operated and affiliate stations), including the first-ever all-digital, widescreen Super Bowl earlier this month; our BSkyB business is the leading digital satellite broadcaster in Europe; and we have released hundreds of FOX movies in digital form on hundreds of millions of DVDs sold all over the globe. And there is much more to come. We hope soon to be rolling out Movies.com and other interactive products, and be releasing FOX movies in the high-definition digital D-VHS pre-recorded format. However, we strongly believe that the great potential and promise of broadband Internet and other digital technologies can be fully achieved only if protections are in place to safeguard our investment in the development and distribution of that content. Thus, the single most important issue for all entertainment companies, and certainly for every content producer, is that of copyright protection, a constitutional right that has increasingly come under attack in this digital age.

The right to hold a copyright can be traced back to Article One of the United States Constitution. However, the constitutional protections of copyrighted works are being threatened by the ease with which people can copy and distribute materials in cyberspace. There is no better example of the content community's potential, as well as its vulnerability, than the rollout of broadband Internet access. Without the adequate technological and legal protections for intellectual property, content producers and legitimate content distributors will find themselves vulnerable to theft by anyone who owns or has access to a computer with a broadband connection to the Internet.

The Internet is more than an economic medium; it is a supremely democratic one in providing equality of access to information, and this deserves to be celebrated. But its ability to empower the general public must not be taken as a license for consumers to essentially shoplift online. What the general public has to realize is that many businesses that rely on the creation, distribution and sale of content will be put in jeopardy by massive copyright infringement. This, in turn, will impact the quality of content that makes the broadband Internet so exciting for so many people.

Recently, we have seen more and more programs like DivX, Gnutella, Morpheus, Bear Share and LimeWire that streamline the downloading of motion pictures and television programming without compensation to the copyright holder. With the advent of broadband, it is only a matter of time before these file-sharing technologies and other emerging mechanisms have a serious impact on the economic viability of the motion picture and television broadcast industry. Films and television shows are like any other products in search of investors. However, if investors believe that the products they are investing in cannot be protected, thus losing their economic value, those investors will look for other products to fund, or at least other distribution means for those products. That alone will have a dramatic impact on the millions of jobs that are created by the entertainment industry. Why would one invest millions of dollars in a motion picture or a TV show only to have it stolen and placed on the Internet where anyone can access it for

Lack of protection of intellectual property is not just a threat to the entertainment industry; it is a threat to American business as a whole. Protection of intellectual property has been crucial to this country's prosperity over the past several decades, and is as critical to the success of the Information Revolution as it was to the Industrial Revolution. U.S. media industries dependent on copyright employ nearly four million workers and produce more than \$65 billion in exports. American books, movies, television and music are among our most successful products overseas; but if they cannot be protected from unlawful copying, their export value would shrink to nothing. The potential of the wholesale disregard of copyrights would be devastating to employment and job creation in the U.S., and to any chance of making the Internet a boon to us all.

The threat is real not just for the creators of content, but also for those businesses that make their livelihood on the redistribution and licensing of content. For example, the market for network television shows after the first network run (including the value of re-run and re-purposing rights, and syndication to local broadcast stations) in this country alone is hundreds of millions of dollars. Around the world, American-produced

television programming generates additional billions of dollars in revenues. Imagine a world where those revenues vanish because any television episode can be posted to the Internet at the time of its first network run for redistribution around the world. What would happen to the hundreds of TV production companies and distributors that employ thousands if buyers vanish because there were no incentives to purchase the rights of episodes because that are freely accessible on the Web? These are the questions we are asking ourselves.

One solution to this dilemma may be that we only distribute our content through media that are reasonably secure. For example, pay cable, direct broadcast satellite, and D-VHS are digital distribution channels to the home that provide a basic level of security for digital content. Indeed, even the Internet affords us the basis to securely transmit our content. In each of these areas we are able to protect our content, through either a negotiation process regarding protection technology (for example, "D-Theater" encryption for D-VHS), or a licensing process using a commercially available Digital Rights Management (DRM) technology for the Internet, or through contractual arrangements with cable and satellite providers. However, there is one major digital distribution method that does not currently offer adequate protection right now -- digital over-the-air broadcast TV ("DTV").

One might ask why broadcast television is worthy of protection in this time of multichannel offerings such as cable and direct broadcast satellite, each offering a vast array and variety of programming. The answer lies in the unique local nature of the service provided by broadcast television. For it is broadcasters who provide viewers with:

- high quality local news that keeps viewers abreast of the happenings in their community;
- community affairs programs that help them keep up with local politics, issues, and events in their area;

verage of local sporting events at their local high school or community college; the weather reports that help them prepare for the coming day; an emergency alert system that helps protect them from dangers of dangerous weather conditions; and, traffic reports that help them manage their local rush hour.

In addition to this local programming, local broadcasters provide viewers with what is still, overall, the most popular and high quality entertainment programming. The networks, as well as the big "event" programming that touches the entire nation, such as the Super Bowl, the Olympics, and the State of the Union address. Finally, and perhaps most importantly, broadcast television is universal, which means that for twenty-five percent of the country broadcast television is their only source of programming.

News Corporation has recently spent a tremendous amount of money investing in the future of this medium that, as stated above, is vital to this country. We know that that Members of this Committee are strong supporters of this medium and its rapid transition from analog to digital. Our investment in new broadcast technologies and commitment to the digital transition positions us to be a leader in the rollout of DTV.

Presently cable and satellite have competed advantageously over DTV due to the closed nature of cable and satellite systems that allow for encryption, and thus the protection of content. DTV is not encrypted for public policy reasons and thus does not enjoy those same protections today. However, we have identified a technological solution that works without encrypting DTV. It involves insertion of a "broadcast flag"

in DTV signals that can be detected upon receipt by DTV processing equipment. Once detected, the receiving device would protect the content from being redistributed on the Internet. We are hopeful that through negotiations with the consumer electronics (CE) and information technology (IT) industries this solution will be voluntarily agreed upon and incorporated in relevant copy protection technology licenses; in fact, FOX is leading this charge. However, even if we do reach agreement, targeted legislation will be necessary in order to ensure a level playing field for all entities involved.

Unfortunately, we have not yet reached the agreement with the CE and IT industries. Mr. Chairman, as you are undoubtedly aware, there has been an on-going effort for the last several years to negotiate the protection of all digital audio-visual content delivered to the "home network", including but not limited to DTV. These negotiations are often referred to as the "5C" negotiations. Those negotiations have made substantial progress with regard to the protection of pre-recorded and conditional-access-delivered content (e.g., pay-per-view, video-on-demand, pay and basic cable), and FOX applauds that progress. But as a representative of one of the largest broadcasters in the country, I regret to report to you today that, although some hopeful developments have occurred with regard to protection of over-the-air broadcast content, those negotiations are presently at an impasse over 5C's refusal to include the obligation of protecting DTV via the "broadcast flag" in its license. They say there are antitrust problems with extending their license to cover broadcast; they also say that potential licensees will be so turned off by a broadcast protection obligation that they won't sign up for a 5C license at all. We think these objections are unfounded. We don't believe that a serious antitrust objection can be raised to such a narrowly targeted and pro-competitive technology as the broadcast flag; nor do we think it right, or even logical, that non-complying competitors would use the fact that their devices do not contain protection of DTV as a selling point. Regardless, we are currently at an impasse with 5C.

Needless to say, this impasse is much to the broadcast industry's collective frustration. I have always believed that an agreement should first be brokered through voluntary, industry-led negotiations, and then blessed by Congress to ensure a level

playing field against "rogue" companies who will not sign up for the voluntary obligations. But time is growing short for digital TV copyright protection. Lengthy negotiations have resulted in some progress in airing the issues but have not produced tangible results. The parties to the negotiations ALL know that the broadcast flag provides a workable, low-cost technological solution to this problem. Yet, the 5C companies have been unwilling to embrace this "license-first, then legislation" approach. Other voices in the CE and IT industries have likewise refused to support this two-step approach. I would hope that the 5C companies and their CE and IT brethren would rethink the position they are presently taking. If we cannot arrive at a voluntary industry consensus very soon, broadcasters will be forced to come to Congress to ask that a DTV solution be imposed on the CE and IT industries.

Just as we are striving to protect our content when distributed by DTV, we are addressing two other mechanisms that threaten content. Into the foreseeable future we will still need to deliver content to consumers in an analog form; after all, hundreds of millions of TV sets can only accept content in that form. Unfortunately, analog content (including protected digital content converted to analog for viewing purposes) can easily be converted into an unprotected digital form that can in turn be copied or redistributed without authorization. This is called the "analog hole" in digital content protection schemes. We are developing a plan to plug the "analog hole" that includes harnessing watermark technology that would prevent such conversions from being used to avoid content protection obligations. We hope to secure inter-industry consensus on such a proposal, and we welcome your assistance in encouraging all relevant parties to make this happen. Once it does, we would have that solution ratified by Congress.

Finally, we are working furiously on a plan to frustrate the unauthorized viewing of content delivered via the Internet. It is a difficult problem to address because there are so many ways unauthorized content can be distributed on the Internet. We are also mindful of not over-correcting the problem by burdening Internet appliances any more than necessary. But we are confident that the problem can be solved; we know it must be. It is reported that every day, hundreds of thousands of copies of movies are being

downloaded, without compensation to the copyright holders, and this number is growing rapidly and with the increasing speed and proliferation of Internet-enabled broadband. The competition from free but illegal copies of our movies and TV shows is the single biggest obstacle to developing a viable business model to offer consumers authorized versions of these same movies and TV shows. Again, I am optimistic that we will develop a technological solution to address this phenomenon as cost-effective as we have with DTV and we will be doing with the analog home

However, I believe that Congress plays an active role in ensuring that the parties reach consensus on how to solve this problem as quickly as technologically possible. This is an Internet problem that needs to be solved at Internet speed; we need Congress to help make that happen. As with the broadcast flag and analog hole solutions, we will need Congress to codify the solution to the illegal download problem. We at News Corporation are working to build the necessary support in the private sector through our electronic and computer manufacturers and Internet service providers and other coalition partners to this incredibly complex problem that we all face, especially the threat of piracy. With combined technological expertise, we have a chance to stop the theft which everyone agrees must be stopped if copyrighted works are to provide the economic opportunities that drive the development of new and innovative products and services.

At the end of the day Mr. Chairman and Members of the Committee, if we do not find a creative solution to this real and growing problem, we will be the ultimate losers. While we may gain short-term gains from free unauthorized material from the Internet, the long-term consequences are less consumption and stunted American technological growth and development.

Thank you for providing me this opportunity to present the views of News Corporation on this important topic. I will be happy to answer questions.