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**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF
REPRESENTATIVES**

**"THE AUDIO AND VIDEO FLAGS: CAN
CONTENT PROTECTION AND
TECHNOLOGICAL INNOVATION COEXIST?"**

JUNE 27, 2006

Chairman Upton, Ranking Member Markey, members of the Subcommittee, thank you for giving me this opportunity to speak to you today about the Broadcast Flag and whether content protection and technological innovation can coexist.

The short answer is that content protection and technological innovation CAN coexist, and ARE coexisting. American consumers, and indeed consumers around the world, have entered a golden age of access to audiovisual content. Never before have consumers had so much choice in terms of the movies available to them and the means by which they are delivered – theaters, VHS, DVD, cable, satellite, broadcast TV, Internet, advertiser supported, subscription, pay-per-view, video-on-demand – the list is long and growing. And television programming is being made available to consumers in even more ways (e.g., via mobile phones).

The engine that is driving us into this golden age of consumer choice is technology. The motion picture industry has enthusiastically embraced innovative technology to create new markets and bring new choices to consumers. Here are a few of the recent announcements:

- Warner Bros. partners with Free Record Shop using P2P distribution
- Universal partners with LoveFilm in UK, offering downloads

- CBS and Verizon FiOS TV partner to carry select programs
- Disney offers feature length film on iTunes
- CBS delivers college basketball “March Madness” online
- ABC offers free streaming of shows at ABC.com
- Disney re-launches MovieBeam as a new digital VOD distribution channel
- NBC Universal launches Aeon Digital set top box
- MTV Networks partners with Microsoft to offer digital music and video downloads via URGE.
- MTV Networks offers thousands of free on-demand videos via its broadband channels, including MTV Overdrive, Nick Turbo, V-Spot and Motherload
- CBS offers select programs on demand
- Warner Bros. launches P2P service In2Movies in Germany
- Fox announces VOD and DVD windows collapsed
- NBC Universal announces Peer Impact deal
- Disney announces download-to-own deal for full-length feature films with CinemaNow
- Google Video beta launched – essentially going with a wholesale reseller model – creating an iTunes-like store.

However, technology brings challenges as well as opportunities. The greatest challenge is to maintain control over the distribution of movies and TV shows in order to recoup the cost of production and spur investment in new projects.

Fortunately, technology itself is a big part of the solution to illegal distribution. Digital rights management (DRM) technology enables secure delivery of movies and TV shows to consumers, exponentially expanding consumer choice. The high-tech industry is our partner in this endeavor. Contrary to the perception of some, the high-tech and movie industries are not enemies. To the contrary, we share a common interest in providing consumers new viewing opportunities, which will create vast new markets for both consumer technology and content.

The greatest challenge facing the motion picture industry today is the widespread trafficking of movies and television shows on the Internet, mostly through so-called peer-to-peer “file sharing.” The term “file sharing” is a popular euphemism for copying, which in the case of copyrighted motion pictures and TV programming is stealing.

DRM technology is being employed by movie distributors to prevent unauthorized reproduction and redistribution of

digital works. However when movies and TV shows leak out of a protected environment, whether through hacking of DRM measures, copying through the "analog hole," illegally camcording off theater screens, or other means, they can be made available to literally tens of millions of people over the Internet, instantaneously and with little or no degradation of quality.

Movie studios are actively engaged in finding ways to stem this leakage, such as through use of more sophisticated DRM measures. They are also heavily involved in encouraging awareness of and respect for their rights under copyright laws around the world, not only through infringement actions, but through consumer education and working with colleges and universities to develop codes of conduct for students using digital networks.

One source of leakage that only can be addressed by the Congress is digital broadcast television. Because it is transmitted without encryption or other technological protections (*i.e.*, "in the clear"), there is no technological protection against anyone redistributing digital broadcast television content over the Internet and other digital networks. By contrast, cable and satellite, and even authorized Internet, distribution can include protections against such redistribution. The likelihood of wide-scale redistribution of

content distributed over digital broadcast television creates a disincentive for program owners to license high value content through that distribution channel.

The effects of this disparity will become yet more pronounced as more and more consumers access their content from digital broadcasts, in preparation for the mandated switch-over from analog to digital broadcasting in 2009. Program owners may determine that the value of their programming is diminished so significantly by redistribution over the Internet that they choose to distribute their programming only through distribution channels that can offer some protection. Without this high-value programming, local stations would lose viewership and, correspondingly, revenue. Loss of this revenue would threaten their continued existence, jeopardizing the source of local news and public affairs programming for millions of Americans.

In order to provide a level playing field for off-air broadcasters, and protect the millions of consumers who rely on free TV, the Federal Communications Commission initiated a proceeding aimed at adopting narrowly targeted regulations prohibiting the indiscriminate redistribution of digital broadcast television programming. In November 2003, with the purpose of speeding consumer transition to digital

television, the FCC issued a regulation requiring implementation of the “Broadcast Flag” as of July 1, 2005.

The basic outline of the Broadcast Flag was developed and approved in principle by a large and diverse group of consumer electronics, computer technology and video content companies participating in the Broadcast Protection Discussion Group, an informal, open forum created for the purpose of finding a solution to the broadcast redistribution problem. The BPDG proposed implementation of a Broadcast Flag as the most appropriate and efficient solution for the protection of digital broadcast television. Use of the Flag allows broadcasters to offer content creators the same protection against Internet redistribution that conditional access systems like cable and satellite can provide. Nothing in the Broadcast Flag regulation requires broadcasters to embed the Flag in content; the Broadcast Flag regime merely allows a content provider to choose whether to include protection against Internet redistribution.

Subsequent to its adoption of its Broadcast Flag regulation, the FCC certified 13 separate technologies for implementing the Flag, including one that provides for remote access of recorded TV programs. It is important to note that the Broadcast Flag would have no effect on the copying of TV programs. The Broadcast Flag solution will not prevent

consumers from making an unlimited number of physical recordings of DTV programs, or from distributing protected digital broadcast content within the personal digital network environment. Furthermore, implementation of the Broadcast Flag solution will have no impact on existing consumer equipment. The cost impact on affected equipment going forward will be insignificant.

Despite the broad consensus in favor of the Broadcast Flag, the FCC's authority to adopt Broadcast Flag regulations was challenged before the D.C. Circuit Court of Appeals, which invalidated the FCC's regulations on purely jurisdictional grounds. Significantly, no consumer electronics or computer technology company required to implement the Broadcast Flag challenged the FCC regulation.

It is imperative that Congress act quickly to enact narrowly crafted legislation to reinstate the FCC's Broadcast Flag ruling. The marketplace has already anticipated that the Broadcast Flag will be required and many manufacturers of digital television devices are now producing equipment in compliance with the FCC Broadcast Flag regulations. Moreover, consumer equipment that includes one or more of the same 13 content protection technologies approved for use under the Flag regime is already being deployed, so most manufacturers will be building equipment that will work

seamlessly under the Broadcast Flag regime in any event. It is worthy of note that there has been no discernable consumer resistance to these broadcast flag compliant devices and no surge of consumer complaints.

Let me add one cautionary note. While we strongly support legislation that will reinstate the Broadcast Flag, we cannot support legislation that will do that at the expense of the anti-circumvention provisions of the DMCA. It has been suggested that HR 1201 be attached to Broadcast Flag legislation. However, that type of legislation would as a practical matter repeal Section 1201 of the DMCA, would compromise efforts to fight piracy and inflict devastating harm on an important American industry.

Chairman Upton, Ranking Member Markey, members of the Committee, I appreciate this opportunity to discuss these matters of concern to our industry and I look forward to answering any questions you may have regarding what I have just discussed.