



**Statement for the Record
of
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**Before the
U.S. Senate Committee on Commerce, Science & Transportation**

**Hearing on:
“Broadcast and Audio Flag”**

**Washington, DC
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Chairman Stevens, Co-Chairman Inouye and other members of the Committee, my name is Gigi B. Sohn. I am the President of Public Knowledge, a nonprofit public interest organization that addresses the public's stake in the convergence of communications policy and intellectual property law. I want to thank the Committee for permitting me to submit this statement for the record on the broadcast flag and radio content protection. I specifically want to focus on the impact of these technological mandates on consumers.

As some of you know, I served as counsel to the nine public interest and library groups that successfully challenged the Federal Communications Commission's (FCC) broadcast flag rules in the United States Court of Appeals for the District of Columbia Circuit. My organization financed and coordinated the case, which is titled *American Library Association v. FCC*, 406 F.3d 689 (D.C. Cir. 2005). I have attached a copy of the court's decision and a copy of petitioners' opening brief in the case, and I respectfully request that they be placed into the record of this hearing.

Introduction

This hearing could not be more timely. Many of you and your staff members just returned from the International Consumer Electronics Show, an event that featured an amazing display of new innovative technologies and newly forged partnerships between technology companies and content companies. Here are just a few examples:

- Microsoft demonstrated new versions of its software that enables the playback of a consumer's favorite media, whether on the individual's home office monitor, living room television, or PDA. The company has also developed a new music service in conjunction with MTV, VH1, and CMT music channels.
- Innovators like DigitalDeck, NewSoft, SlingMedia, and Sony each have developed competing technologies that allow consumers to remotely watch the television playing in their living rooms on a laptop, mobile phone, or portable gaming console.
- Yahoo! announced the development of software and services that enable consumers to view, create, and share content between their mobile phones, computers and living rooms, all using the Internet.
- Google developed a distribution system to allow anyone to provide videos for free or for sale, and allow others to download that content to a computer, Apple iPod, or Sony Play Station Portable (PSP). Google has already announced content distribution agreements with large content providers like CBS and the NBA. This follows the recent success of NBC, ABC, and ESPN, which is distributing programming in partnership with Apple's iTunes.

- TiVo displayed a soon-to-be-released software update that makes it simple for consumers to watch their favorite television shows on popular players like the iPod and PSP. And soon, the next generation TiVo recorder will help consumers record over-the-air high-definition television.
- Together, XM Radio and Pioneer developed an innovative portable satellite radio player that allows consumers to automatically record their favorite songs or shows while they are being broadcast. A consumer's preferences are stored on the radio, and when connected to a computer, XM's software helps the consumer to find more information about the artists, purchase music through the new Napster, and discover other songs and shows by similar artists.

The message of the Consumer Electronics Show is clear. The market for delivering content digitally over new technologies is working. Consumers can watch and listen to the content they purchase anytime and anywhere they want. Some of that content will be protected, and consumers can decide whether that protection is flexible enough. All of these great developments happened without government intervention.

The public appetite for buying individual TV shows and songs online is growing by leaps and bounds. There are more ways than ever to watch TV and movies and listen to the radio. Sales of HDTV sets are skyrocketing.

Yet even as innovators in the content industry promote these alternative distribution technologies, the very same content industry wants Congress to step in and give it protection from the vague threat of massive copyright infringement the industry says these new technologies could facilitate. Let us be clear. The content industry has not shown that any infringement has resulted from these technologies. And they certainly have not shown that government technology mandates will work to stop actual copyright pirates rather than prevent ordinary consumers from engaging in lawful activities.

The content industry is asking Congress to impose three technology mandates: the broadcast flag, radio content protection and an end to the analog hole. Each mandate 1) injects government into technological design; 2) places limits on lawful consumer activities; and 3) increases consumer costs by making obsolete millions of digital devices. Once consumers start to purchase devices that are compliant with these technology mandates, the costs will be enormous. For example:

- A consumer would not be able to record over-the-air local news on her broadcast-flag compliant digital video recorder in her living room and play it back on a non-compliant player in her bedroom (broadcast flag).
- A member of Congress could not email a clip of his appearance on the national news to his home office (broadcast flag).

- A consumer would not be able to record analog home movies using a digital camcorder and transfer them to a computer in order to make a DVD (analog hole).
- A student would be prohibited from recording excerpts from a DVD for a college Powerpoint presentation (analog hole).
- A consumer would be unable to record individual songs off digital broadcast and satellite radio (radio content protection).
- Current versions of TiVos (and other digital video recorders), iPods (and other MP3 players), cellphones and play station portables would not work with analog hole closing compliant devices, rendering them virtually obsolete (analog hole).
- A university could not use digital TV video clips for distance learning classes (broadcast flag).

I urge the Committee to think very long and hard about trying to fix what is not broken. Ask yourselves, in light of recent marketplace developments, is it good policy to turn the Federal Communications Commission into the Federal Computer Commission or the Federal Copyright Commission? Is it good policy to impose limits on a new technology like HD Radio (that unlike digital television, consumers need not adopt) that may well kill it? Is it good policy to impose a technological mandate (like the broadcast flag and closing the analog hole) that would result in consumers having to replace most of the new devices that they just purchased?

There are better alternatives for protecting digital content than heavy-handed technology mandates. Those alternatives are a multi-pronged approach of consumer education, enforcement of copyright laws, new business models for content distribution and the use of technological tools developed in the marketplace, not mandated by government. The recent *Grokster* decision and the passage of the Family Entertainment and Copyright Act are just two of several new tools that the content industry has at its disposal to protect its content.

Technology Mandates Harm Innovation and are Costly and Inconvenient for Consumers

For Public Knowledge, its members and its public interest allies, the impact of the D.C. Circuit's decision vacating the broadcast flag rules goes far beyond the ability of citizens to make non-infringing uses of copyrighted material that they receive on free over-the-air broadcast television. Equally as important, the case limited the power of a government agency that, in the court's own words, has never exercised such "sweeping"

power over the design of a broad range of consumer electronics and computer devices. This hands-off approach has fostered a robust market place for electronic devices that has in turn made this country the leader in their development and manufacture.

For this reason, any attempt to portray legislative reinstatement of the broadcast flag rules as “narrow” should be viewed with great skepticism. The rules put the FCC in the position of deciding the ultimate fate of every single device that can demodulate a television signal. The broadcast flag rules require the FCC to pre-approve television sets, computer software, digital video recorders, cellphones, game consoles, iPods and any other device that can receive a digital television signal.¹ Thus, the broadcast flag scheme places the FCC in the position of dictating the marketplace for all kinds of electronics.

The agency has neither the resources nor the expertise to engage in this kind of determination. This type of government oversight of technology design will slow the rollout of new technologies and seriously compromise US companies’ competitiveness in the electronics marketplace.

Some argue that the initial FCC certification process worked because all thirteen technologies submitted to the agency were approved. However, that is a very superficial view of that process. First, it is widely known that several manufacturers removed legal and consumer-friendly features of their devices before submitting them to the FCC, largely at the behest of the movie studios. Second, the changing nature of the FCC and its commissioners is likely to make for widely varying results. Given the fervor of then-Commissioner Martin’s dissent to the Commission’s approval of TiVo-To-Go, it is unlikely that such technology would be certified today under Chairman Martin’s FCC.²

The certification process also exacerbates equipment incompatibility problems caused by the broadcast flag scheme. Not only will the scheme prevent consumers from making copies of a TV show on one system and play it on another, none of the 13 different technologies approved by the FCC in its interim certification process work with each other. This means that a consumer who buys one Philips brand flag-compliant device must buy *all* Philips brand flag compliant devices. This raises consumer costs, and also raises serious questions about competition among and between digital device manufacturers.³

¹ D.C. Circuit Court Judge Harry Edwards noted this reach at oral argument when he said, “You’re beyond transmission...I mean you’re out there in the whole world regulating****I mean, I suppose it will be washing machines next.” *ALA v. FCC*, Oral Argument Transcript at 31.

² For a detailed analysis of the flaws of the FCC’s certifications process, see Center for Democracy and Technology, *Lessons of the FCC Broadcast Flag Process* (2005), found at <http://cdt.org/copyright/20050919flaglessons.pdf>

³ For a detailed discussion of these issues, see <http://www.publicknowledge.org/content/presentations/bflagpff.ppt>

Proposals to mandate content protection for digital broadcast and satellite radio would similarly place the FCC in the position of mandating the design of new technologies. Draft legislation in the House gives the FCC the authority to adopt regulations governing all “digital audio receiving devices.”⁴ In the case of so-called High Definition (or HD) Radio,⁵ this could destroy this new technology at birth. Digital broadcast radio benefits consumers through improved sound quality (particularly for AM radio) and gives radio broadcasters the capacity to provide additional program streams and metadata. Unlike digital television, however, consumers need not purchase digital broadcast receivers to continue receiving free over the air broadcast radio. Certainly, if digital radio receivers have less functionality than current analog radio receivers, consumers will reject them and the market for HD radio will die.

In the case of digital satellite radio, mandated radio content protection has the potential to cripple this increasingly popular, but still nascent, technology. XM Radio now has more than six million subscribers, and Sirius Radio last year passed the three million subscriber mark. Consumers are buying all types of receivers for those services, based in part on the new flexibility and features the equipment offers.⁶ The type of content protection the recording industry seeks would likely slow this incredible growth.

The Content Industry Has Not Justified the Need for Technology Mandates

Hollywood’s core justification for imposition of the broadcast flag scheme can be paraphrased thusly: if the threat of indiscriminate redistribution of “high value” high definition television content is not reduced, broadcasters will not make that content available, thus slowing this country’s transition to digital TV.⁷

One of the most vocal proponents of this argument was Viacom, which told the FCC in 2002 that “if the broadcast flag is not implemented and enforced by next summer, CBS will cease providing any programming in high definition for the 2003-2004

⁴ See HD Radio Content Protection Act, found at <http://static.publicknowledge.org/pdf/20051103-hd-radio-draft.pdf>

⁵ I say “so called,” because calling a digital radio broadcast signal “High Definition” is quite misleading. Whereas in the television context, High Definition connotes a far clearer and sharper picture, an HD radio signal simply raises the quality of AM radio to FM standards, and permits the reception of broadcast radio in places where an analog signal would get cut off, such as in a tunnel or at a traffic light. Indeed, an “HD” quality signal is not even a CD quality signal. See, Ken Kessler, *Digital Radio Sucks, it’s Official*, found at <http://www.stereophile.com/newsletters/>.

⁶ For 2005, XM Radio forecasts a doubling of retail satellite radio receiver sales for both services to more than one billion dollars. See http://www.ce.org/press/CEA_pubs/861.asp.

⁷ See *In the Matter of Digital Broadcast Content Protection*, FCC 03-273, 18 FCC Rcd 23550, 23553 (November 4, 2003).

television season. And without the security afforded by a broadcast flag, Paramount will have less enthusiasm to make digital content available.”⁸

Viacom never did carry out its threat to withhold HD programming, and the argument that the broadcast flag is necessary to encourage the broadcast of high value content and the orderly transition to digital TV transmission has been repudiated in the marketplace.⁹ First, broadcasters are making “high value” content available for HDTV or, “in HD” -- 50%¹⁰ of TV shows, including 66 %¹¹ of prime time programming, is broadcast in high definition. A number of “high value” sports programming broadcasts, including Monday Night Football, the Super Bowl, the NBA Finals, the NCAA Final Four college basketball championship, Major League Baseball's All-Star Game and World Series games, all NBC NASCAR races, the U.S. Open golf tournament, and the Olympics, are broadcast in HD along with many other select sporting events throughout the year.¹² Second, the country’s transition to digital TV is accelerating, not slowing down, as sales of digital TV sets continue to increase. According to the Consumer Electronics Association, sales of digital TV sets grew 60% to \$17 billion dollars.¹³ According to Forrester Research, 16 million American homes have digital television sets. In 2006, that number is expected to rise to 26 million, or one in four households.¹⁴ Indeed, the case could be made that rather than accelerate the DTV transition, the broadcast flag could slow the transition when consumers discover that expensive new television sets have less functionality than their current sets.

The recording industry has similarly not demonstrated that radio content protection is necessary. The industry does not cite to even one instance of a digital broadcast or satellite radio transmission being copied illegally or retransmitted over the Internet. Indeed, RIAA chief Mitch Bainwol’s recent testimony and comments on the subject make clear that the real rationale for seeking radio content protection is not copyright infringement, but the recording industry’s displeasure over the licensing fees it

⁸ See Comments of Viacom *In the Matter of Digital Broadcast Content Protection*, MM Docket No. 02-230 at 12 (December 6, 2002).

⁹ D.C. Circuit Judge Edwards also rejected this argument. See *ALA v. FCC* Oral Argument Transcript at 32 (Judge Edwards: “This in no way -- what you do here or not in no way impairs the ability to . . . stay on the digital deadline. . . . In no way.”).

¹⁰ <http://www.ati.com/products/hdtwonder/>

¹¹ For the week of Jan. 19 to Jan. 25, ABC will broadcast 13 of 32 prime-time shows in HD. During the same week, CBS will broadcast 31 of 34 prime-time shows in HD; NBC will broadcast 32 of 50 prime-time shows in HD during the same period. For all 3 networks combined, 76 of 116 (66%) prime-time shows will be broadcast in HD for one week in January 2006.

¹² http://www.cnet.com/4520-7874_1-5119938-1.html

¹³ http://www.ce.org/Press/CurrentNews/press_relae_detail.asp?id=10913

¹⁴ See, <http://biz.yahoo.com/prnews/051220/nytu017.html?.v=36>

receives from broadcast and satellite radio broadcasters.¹⁵

Broadcast Flag and Radio Content Protection Schemes Will Transform the Federal Communications Commission into the Federal Copyright Commission

Despite the FCC's protestations to the contrary, the broadcast flag scheme and any radio copy protection scheme will necessarily involve the agency in shaping copyright law and the rights of content owners and consumers there under. Making copyright law and policy is not the FCC's job. It is Congress' job. Petitioners brief in *ALA v. FCC*, at 43-50, lays out this argument in great detail.

While it is true that the TV broadcast flag scheme does not completely bar a consumer from recording her favorite TV show, it does prevent consumers from engaging in other lawful activities under copyright law. For example, as the D.C. Circuit noted in *ALA v. FCC*, the broadcast flag would limit the ability of libraries and other educators to use broadcast clips for distance learning via the Internet that is permitted pursuant to the TEACH Act, Pub. L. No. 107-273, 116 Stat. 1758, Title III, Subtitle C, §13301, amending 17 U.S.C. §§ 110, 112 & 882 (2002). *See ALA v. FCC*, 406 F.2d at 697.

This and other examples highlight that while proponents of the flag may justify it as prohibiting only "indiscriminate" redistribution of content over the Internet, flag-compliant technologies actually prohibit any and all distribution, no matter how limited or legal. For example, if a member of this Committee wants to email a snippet of his appearance on the national TV news to his home office, the broadcast flag scheme would prohibit him from doing so. Video bloggers and other TV watchdogs would similarly be unable to post broadcast TV clips on their blogs. For example, the Parents Television Council, which rates television programs according to how child friendly they are, would be prevented from posting clips from those programs for parents to see.¹⁶

The fact that the broadcast flag will limit lawful uses of copyrighted content was detailed in the Congressional Research Service Report entitled *Copy Protection of Digital Television: The Broadcast Flag (May 11, 2005)*. CRS concluded there that

While the broadcast flag is intended to "prevent the indiscriminate redistribution of [digital broadcast] content over the Internet or through similar means," the goal of the flag was not to impede a consumer's ability to

¹⁵ See testimony of Mitch Bainwol before House Committee on the Judiciary, Subcommittee on Courts, the Internet, and Intellectual Property for the hearing on "Content Protection in the Digital Age: The Broadcast Flag, High-Definition Radio, and the Analog Hole," November 3, 2005 at 4, found at <http://judiciary.house.gov/media/pdfs/bainwol110305.pdf>; and Mitch Bainwol, Out P2P Paranoia, In: Platform Parity, Billboard Magazine, January 7, 2006 at 4.

¹⁶ See www.parentstv.org.

copy or use content lawfully in the home, nor was the policy intended to “foreclose use of the Internet to send digital broadcast content where it can be adequately protected from indiscriminate redistribution.” However, current technological limitations have the potential to hinder some activities which might normally be considered “fair use” under existing copyright law. For example, a consumer who wished to record a program to watch at a later time, or at a different location (time-shifting, and space-shifting, respectively), might be prevented when otherwise approved technologies do not allow for such activities, or do not integrate well with one another, or with older, “legacy” devices. In addition, future fair or reasonable uses may be precluded by these limitations. For example, a student would be unable to email herself a copy of a project with digital video content because no current secure system exists for email transmission.

CRS Report at 5.

Proposals for digital radio content protection similarly, and perhaps even more directly, place the FCC in the position of determining consumers’ rights under copyright law. For example, the draft House bill gives the FCC the authority to

control the unauthorized copying and redistribution of digital audio content by or over digital reception devices, related equipment, and digital networks, including regulations governing permissible copying and redistribution of such audio content.

Under this proposal, the FCC is placed in charge both of 1) determining the extent to which unauthorized copying (which is legal in some circumstances) of digital broadcast and satellite radio content is permitted; and 2) determining what kind of copying and redistribution of audio content is permissible.

Not only does this language give the FCC power to set copyright law, it also directly conflicts with copyright law, specifically the Audio Home Recording Act – which explicitly gives consumers the right to record digital radio transmissions for noncommercial use.¹⁷

A Technology Mandate to Close the Analog Hole is Premature, Unnecessary and Would Cause Great Consumer Confusion, Cost and Inconvenience

While this hearing does not specifically address the content industry’s efforts to close the so-called analog hole through legislative means, those efforts are closely related to the broadcast flag and radio content protection initiatives, and are therefore worthy of mention.

¹⁷ 17 U.S.C. §§1000-1010.

As many of you know, a bill was introduced in the House of Representatives last year¹⁸ that would mandate that all digital devices read and obey two specific technologies – an encryption technology called CGMS-A and a watermarking technology called VEIL. The content industry claims that both of these technologies are necessary to ensure that analog content cannot be captured and digitized for possible indiscriminate distribution over the Internet.

Preliminarily, I would note that while the CGMS-A + VEIL technology was discussed at the Analog Hole Reconversion Discussion Group, a standards group with both industry and public interest participation, it was quickly dismissed as not worthy of further consideration. Thus, this technology has not been fully vetted by industry and public interest groups. If Congress feels it must do something about the analog hole, it should refer the technology back to industry and public interest groups so CGMS-A +VEIL can be thoroughly analyzed for its impact on consumers and the cost to technology companies. In the complete absence of any such review, the one-sided imposition of such a detailed technology mandated would be unprecedented.

More importantly, the proposed analog hole fix suffers from a number of important substantive flaws. Here are just a few:

- *The analog hole technology mandate would be more intrusive than the broadcast flag:* The content industry's proposal mandates that each and every device with an analog connection obey not one, but two copy protection schemes. Thus, while the broadcast flag would put the FCC in charge of design control just for technologies that demodulate a broadcast signal, the proposal would mandate design for *every* device with an analog connector, including printers, cellphones, camcorders, etc. Like the broadcast flag, it sets in stone a copy protection technology for technologies that are always changing.
- *The analog hole mandate would obsolete millions of digital devices.* Popular portable video-playback devices like iPods, PSPs, laptops, and cell phones are all analog hole non-compliant. Using these kinds of devices in conjunction with analog video inputs is critical to the many innovative plans introduced at the CES 2006. An analog hole mandate could effectively obsolete newly purchased devices and the systems with which they work, and would require redesign of these devices.
- *The analog hole mandate would impose a detailed set of encoding rules*

¹⁸ H.R. 4569: The Digital Transition Content Security Act of 2005, 109th Cong. 2005. Found at: <<http://www.publicknowledge.org/issues/hr4569>>

that would restrict certain lawful uses of content. The House bill includes tiered levels of restriction based on the type of programming (e.g., pay-per-view, video on demand) that limit lawful uses in a manner that ignores the four fair use factors of 17 U.S.C. §107. This upsets the balance established in copyright law between the needs of copyright holders and the rights of the public by placing far too much control over lawful uses in the hands of the content producers.

- *The mandate would eliminate the DMCA's safety valve.* This Committee has been the leader in ensuring that the anti-circumvention provisions of the Digital Millennium Copyright Act do not unintentionally impinge on fair use. One of the common justifications for limitations on fair use imposed by the DMCA is that the analog hole is available for individuals who, for example want to make a snippet of a DVD using a video camera held up to a video screen or connected to analog outputs on a TV set.¹⁹ An analog hole mandate would eliminate this safety valve.

The Proper Balance Between Content Protection and Consumer Rights Should Be Set by Copyright Law and Marketplace Initiatives

I am often asked the following question: if Public Knowledge opposes the broadcast flag, radio content protection and closing the analog hole, what are better alternatives to protect digital television and radio content from infringing uses? The best approach to protecting rights holders' interests is a multi-pronged approach: by better educating the public, using the legal tools that the content industry already has at its disposal, and the technological tools that are being developed and tested in the marketplace every day. In the past year alone, the content industry has used and won several important new tools to protect content, including:

- *The Supreme Court's decision in MGM v. Grokster and its aftermath.* The Supreme Court gave content owners a powerful tool against infringement when it held that manufacturers and distributors of technologies that are used to infringe could be held liable for that infringement if they actively encourage

¹⁹ See Testimony of Dean Marks, Senior Counsel Intellectual Property, Time Warner, Inc., and Steve Metalitz, Representing Content Industry Joint Commenters, before the Copyright Office in Rulemaking Hearing: Exemptions From Prohibitions On Circumvention Of Technological Measures That Control Access To Copyrighted Works, May 13, 2003 at 60-61: "I think the best example I can give is the demonstration that Mr. Attaway [MPAA Executive Vice President for Government Relations and Washington General Counsel] gave for you [Marybeth Peters, Registrar of Copyrights] earlier this month in Washington in which he demonstrated that he used a digital camcorder viewing the screen on which a DVD was playing to make an excerpt from a DVD film and have a digital copy that could then be used for all the fair use purposes...." (Mr. Metalitz at 60.) "I agree with everything Steve has just said about fair use copying or taking clips ... with digital camcorders and analog camcorders being widely available ..." (Mr. Marks at 61).

illegal activity. The result has been that a number of commercial P2P distributors have gone out of business, moved out of the U.S., or sold their assets to copyright holders.

- *Lawsuits against mass infringers using P2P networks.* Both the RIAA and the MPAA continue to sue individuals who are engaged in massive infringement over peer-to-peer (P2P) networks. By their own admission, these lawsuits have had both a deterrent and educative effect.
- *Passage of the Family Entertainment and Copyright Act.* The FECA gave copyright holders a new cause of action to help limit leaks of pre-release works and made explicit the illegality of bringing a camcorder into a movie theatre. It also provided for the appointment of an intellectual property “czar” to better enforce copyright laws.
- *Agreements by ISPs to pass on warning notices.* The war between Internet Service Providers and content companies has begun to cool. Last month, Verizon and Disney entered into an agreement by which Verizon will warn alleged copyright infringers using its networks, but will not give up their personal information to Disney.
- *Increased use of copy protection and other digital rights management tools in the marketplace.* There are numerous instances of the use of digital rights management tools in the marketplace. iTunes Fairplay DRM is perhaps the most well known, but other services that use DRM include MSN music and video, Napster, Yahoo Music, Wal-mart, Movielink, CinemaNow and MovieFlix. The success of some of these business models are a testament to the fact that if content companies make their catalogues available in an easily accessible manner, with flexibility and at a reasonable price, those models will succeed in the marketplace, without government intervention.

These tools are in addition to the strict penalties of current copyright law, including the DMCA. To the extent that the content industries are looking for a “speed bump” to keep “honest people honest,” I would contend that many such speed bumps already exist, while more are being developed every day without government technology mandates.

Finally, by far the most effective means of preventing massive copyright infringement involves the content industry doing what it took the music industry far too

long to do²⁰ – satisfy market demand by allowing consumers to enjoy fair and flexible access to content at reasonable prices (inevitably produced in a free market). DVDs are the best example of the market working. There, a government mandate –the Digital Video Recording Act – was rejected and an industry-agreed upon fairly weak “keep honest people honest” protection system was adopted. Despite the fact that the protection system was defeated long ago, the DVD market has grown at an astounding rate – from zero in 1997 to \$25,000,000,000 in sales and rentals last year. Moreover as I noted above, many other new digital music and video distribution models, developed with content industry support and industry-agreed upon content protection, are emerging in the market. We believe that these efforts make government intervention in the free market unnecessary.

Conclusion

The Consumer Electronics Show demonstrated that the content and technology industries are moving forward, together, to provide the digital content and the digital machinery that consumers are buying and enjoying. Technology mandates like the broadcast flag and radio content protection are a step backward from this progress, limiting both innovation and consumer choice while increasing costs to innovators and consumers. I urge the Committee to look at recent marketplace developments and consider whether government action here would do far more harm than good. Thank you.

²⁰ See Keynote Address of Edgar Bronfman, Chairman and CEO of Warner Music at <http://www.tvworldwide.com/events/pff/050821/agenda.htm>. “The Music Industry, like almost every industry faced with massive and rapid transformation first reacted too slowly and moderately, inhibited by an instinctive and reflexive reaction to protect our current business and business models.”