

***If You Cannot Protect What You Own,
You Don't Own Anything!***

A brief report concerning
the dark underside of Internet piracy
as well as the possibility of a
cleansing redemption to benefit
the American consumer

*presented to the
Senate Committee on Commerce, Science and Transportation*

On behalf of the member companies of
THE MOTION PICTURE ASSOCIATION OF
AMERICA

by

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February 28, 2002
Washington D. C.

This document sets forth the goals that the American movie industry urges the Congress to seriously examine. The future of these unique creative story-telling works is in danger of being shrunk and squandered by an increasing thievery on the Internet. We cannot stand mute and observe the slow undoing of a formidable American economic and creative asset.

The Economic Worth of the Copyright Industries

What kind of asset is at stake here and what does it mean to this country? The facts are these: The Copyright Industries (movies, TV programs, home video music, books and computer software) are America's greatest trade export prize. They are responsible for some five percent of the GDP of the nation. They gather in more international revenues than automobiles and auto parts, more than aircraft, more than agriculture. They are creating NEW jobs at three times the rate of the rest of the national economy. The movie industry alone has a SURPLUS balance of trade with every single country in the world. No other American enterprise can make that statement. And all this at a time when the country is bleeding from a \$400 Billion trade DEFICIT.

Which is why we come to you with a clear statement of what is needed to preserve this extraordinary economic/creative engine of growth in a broadband world.

Broadband (high speed, large pipe entry to the Internet)

is an OPPORTUNITY to make available to consumers another delivery system for transporting visual entertainment to their homes. This means more freedom of choices for consumers.

As you may surmise, producers of visual entertainment are enthusiastic, ready and eager to offer their creative works on the Net. And to dispatch those works LEGALLY, at a fair and reasonable price to those American homes who choose to view them. It should be noted that 'fair and reasonable' will be defined by the consumer and no one else.

But there is an obstacle. Consider this: The cost of making and marketing movies, for example, has risen to nerve-shattering heights. In 2000, the total cost to the major studios for making and marketing their films was, on the average, an astounding \$82 Million! Only two in ten films ever retrieve their total investment from U.S. theatrical exhibition. Those films must journey through various marketplace sequences: airlines, home video, satellite delivery, premium and basic cable, over the air TV stations and internationally. They must make that journey to try to break-even or ever make a profit.

Today as that movie travels its distribution compass course, it is exposed to great peril, especially in the digital environment. If that movie is ambushed early on in its travels, and then with a click of a mouse, and without authorization, sent hurtling at the speed of light to every nook and cranny of this planet, its value will be seriously

demeaned. Who on earth would continue to invest huge sums of private risk capital when the chances of redeeming that investment become remote, if not impossible?

Broadband entices and allows piracy of films and TV programs on a massive, unprecedented scale. And at this precise moment, movies and other visual entertainment works are in ever-multiplying numbers swarming illegally throughout so-called file-sharing sites (a more accurate description would be “file-stealing” sites). And this is in an environment where most people's broadband connections are not fast enough to enable speedy downloads of these illegally copied files (funny how people will wait a long time for something when it is free!).

Thus, the problem will only get worse as the speed of broadband increases. University-based piracy provides especially troubling evidence of this phenomenon, because university ethernet systems are state-of-the-art, large pipe, highest speed broadband connections. These university systems are over-run and heavily burdened by student downloading of pirated movies and TV shows. It's easy. It's fast, and it's free. It is also illegal.

Gresham's Law works its will in such a landscape. Just as cheap money drives out good money, so we are afraid that pirated movies will spoil the market for broadband delivery of high-quality films with superior fidelity to sight, sound and color once these high-speed connections proliferate. A consulting firm has estimated that more than 350,000 movies

are being illegitimately brought down EVERY DAY. Who would choose to pay for movies when you can have them delivered to you FREE? It is this infection which corrodes the future of creative works.

But if through technological measures, producers of visual entertainment could defeat the spread of pirated movies populating 'outlaw' Net sites, the Net would be cleared of illegal debris and able to hospitably welcome legitimate, superior quality entertainment in a user-friendly format. The Consumer Electronics and Information Technology industries have been working cooperatively with us to find methods to deliver our legitimate content in a more secure digital environment. The largest beneficiary of such an environment would be American consumers.

The THREE GOALS I outline below are designed to protect valuable creative works in visual entertainment, and at the same time expand the reach and attraction of broadband in the consumer society.

How to achieve these GOALS? First and foremost both the Senate Commerce Committee and the Senate Judiciary Committee must be involved because these goals are umbilically connected to the oversight jurisdiction of both Committees.

**Our Three Goals, whose Objective it is
to Protect movies, TV programs
and other visual entertainment on the Net.**

Goal One: to create a “broadcast flag” which would prevent broadcast programs exhibited on over the air TV stations from being re-distributed on the Net, which is a form of thievery.

Because just about all such TV creative material is in “deficit,” (that is, its production costs are higher than the license fees it receives from the network) TV series and other high value broadcast material must go to ‘syndication’ when they leave the network. Syndication means those programs must be licensed to local and international TV stations in order to recoup their total investments, and hopefully make a profit. If such programs are re-distributed on the Net while they are still on the network, it shrinks and decays the earning power of that program in the syndication market.

Discussions are now going on which could result in a mutually-agreed upon accord to construct a ‘broadcast flag.’ Praise is due all those Information Technology, Consumer Electronics, and Movie industry companies for these good faith discussions which I pray will end in a unanimous accord.

Action: To achieve this important goal will require congressional or agency action to implement the accord. In the absence of such an agreement, a narrow mandate

may be necessary.

Goal Two: To “plug” the “analog hole.”

This is technical jargon. Let me sort this out in plain English. All digital protection designs can only work in a digital environment, which is the environment of the Internet. When a digital signal comes down to a TV set in the consumer home, that TV set in 95% or more of American homes is an “analog” set. This means the digital signal is immediately transformed into an analog signal in order for the consumer to watch it. If the analog signal is then converted back to digital, it cannot be protected by any known protection device. This is called “the analog hole.” One way to ‘plug the hole’ could be through a ‘watermark detector.’ The ‘watermark’ is an ingenious design, which commands the signal converter in the TV set to respond to the instructions on the movie. This can be accomplished through a concord agreed to by the Information Technology, Consumer Electronics and Movie industries.

Action: To reach this goal, Congressional assistance will be necessary.

Goal Three: To stop the avalanche of movie theft on so-called ‘file-sharing’ Web sites, such as Morpheus, Gnutella, etc. (the more accurate name would be ‘file-

stealing' sites).

Unhappily, neither the 'broadcast flag' nor 'plugging the analog' hole will stop this relentless thievery that is endemic.

We have not hesitated to spend considerable resources to fight these sites and services in the courts. But litigation alone cannot possibly provide an adequate solution, particularly as these services become increasingly decentralized, fragmented and anonymous. Constructive discussions need to take place with the Information Technology and Consumer Electronics industries to determine how best to develop effective technical solutions to crush online theft of our valuable creative works.

Action: Continuous negotiations must take place to develop technical solutions, which may require legislative enforcement.

There is one truth that sums up the urgency of this request to the Congress to enlist in the battle to preserve and protect an American economic and artistic asset which attracts the enjoyment, the patronage and a most hospitable reception by every creed, culture and country throughout the world.

That truth is: **If you cannot protect what you own, you don't own anything.**