

EDITING HOLLYWOOD'S EDITORS: CLEANING FLICKS FOR FAMILIES

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION
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COMMERCE
HOUSE OF REPRESENTATIVES

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TUESDAY, SEPTEMBER 26, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,

Washington, DC.

The subcommittee met, pursuant to call, at 2:06 p.m., in Room 2322 of the Rayburn House Office Building, Hon. Cliff Stearns (Chairman) presiding.

Members present: Representatives Radanovich, Bass, Murphy, Blackburn, Barton (ex officio), Schakowsky and Green.

Staff present: Chris Leahy, Policy Coordinator; Will Carty, Professional Staff Member; Shannon Weinberg, Counsel; Brian McCullough, Professional Staff Member; Jonathon Cordone, Minority Counsel; Jonathan Brater, Minority Staff Assistant; and Billy Harvard, Legislative Clerk.

MR. STEARNS. Good afternoon. The subcommittee will come to order.

Our hearing today, in very simple terms, is about control--the control of an artist, in this case, a filmmaker, over artistic expression and the control of parents over the content of that artistic impression for home viewing by their children and their families.

I believe there is no greater job than being a parent caring for your children and families as best you can. In a society that is absolutely saturated with media content on television, on the Internet, on the radio, the movies, empowering parents and giving them more control over what their children hear, see and read is becoming increasingly difficult, challenging, but again is exceedingly important. Year after year parental controls have become more and more complicated. Although I think the MPAA ratings system has done a pretty good job over the years, other industry ratings systems seem to get more and more confusing and a lot less rigorous at examining the content the consumer actually will be exposed to.

There is no better way to empower parents and provide them the control they deserve than by allowing them access to the technology and products that filter out sex, violence and other objectionable material they believe their kids can do without. In fact, I doubt there is a parent

out there who wouldn't welcome a little extra help protecting their children from this pervasive violence and sex in the media that touches their children almost every day. It is about time we provide parents a bit more involvement in the decision-making about what their children see in movies rather than surrendering that extremely important responsibility exclusively to others with different priorities.

I think the steps made in the Family Entertainment Copyright Act of 2005 were in the right direction and gave parents more power and control to protect their children from objectionable content by, for example, allowing ClearPlay's filtering technology. Today I would like to understand better why and how CleanFlick's approach of editing a legally-purchased copy of a movie for violent and sexual content and selling it as a clearly labeled edited copy at a higher price would hurt or hinder Hollywood's bottom line and artistic expression. These edited copies are viewed privately and they are purchased legally. It seems that these products simply allow parents to protect their children from inappropriate content without having to wear out the fast forward button on the DVD player or buy more-expensive filtering technology.

My focus today is also to address how and why these innovative approaches and technologies that help better protect children from violent and sexual content can hurt content producers' bottom line and creativity other than giving American parents more control over their bottom-line responsibility when it comes to reviewing what is present in the movies they view with their children in their own home. The fact is that the released films are all available to view in their entirety without edit if one simply chooses to do so.

As I have said many times during a number of our hearings on fair use and content regulation, I believe technology can provide a solution that will satisfy the rights both financial and artistic of content producers like the filmmakers and studios as well as provide parents with the control they deserve over the content they purchase for family viewing in their own homes. In fact, by providing this control of content to family consumers, some have argued that you are opening up a whole new potential market for artistic work rather than waiting for something to start appearing in the wild of the Internet or on the black market. So I think pushing the market to find more novel ways to provide parents more control over what their children watch in movies is essential as media content, both the best and the worst, slowly finds its way into every facet of our lives and into the lives of our children.

I would like to say that we did invite the head of the Motion Picture Association, Mr. Dan Glickman, to be here and the Directors Guild of America to be with us today but unfortunately they declined, and I called Mr. Glickman personally. Therefore, I would like to especially thank all

of you for joining us today and particularly the person representing the Motion Picture Association, Mr. Feehery, for his kindness in coming and standing in for Mr. Glickman.

So this is an important issue and I appreciate all of you being here and I look forward to the testimony of our distinguished panel.

With that, I recognize the Ranking Member, Ms. Schakowsky.

[The prepared statement of Hon. Cliff Stearns follows:]

PREPARED STATEMENT OF THE HON. CLIFF STEARNS, CHAIRMAN, SUBCOMMITTEE ON
COMMERCE, TRADE, AND CONSUMER PROTECTION

Good afternoon. Our hearing today, in very simple terms, is about control – the control of an artist, in this case a filmmaker, over artistic expression, and the control of parents over the content of that artistic expression for home viewing by their children and families. I believe there is no greater job than being a parent and caring for your children and families as best as you can. In a society that is absolutely saturated with media content – on television, on the Internet, on the radio, and in the movies – empowering parents and giving them more control over what their children hear, see, and read is becoming increasingly challenging but exceedingly important. Year after year, parental controls have become more and more complicated. Although I think the MPAA ratings system has done a pretty good job over the years, other industry content ratings systems seem to get more and more confusing and a lot less rigorous at examining the content the consumer actually will be exposed to. There is no better way to empower parents and providing them the control they deserve than by allowing them access to the technology and products that filter out sex, violence, and other objectionable material they believe their kids can do without. In fact, I doubt there is a parent out there who wouldn't welcome a little extra of help protecting their children from the pervasive violence and sex in the media that touches their children every day. And let's be honest, it's about time we provide parents a bit more involvement in the decision making about what their children see in movies rather than surrendering that extremely important responsibility exclusively to others with different priorities.

I think the steps made in the Family Entertainment Copyright Act of 2005 were in the right direction and give parents more power and control to protect their children from objectionable content by, for example, allowing ClearPlay's filtering technology. Today, I'd like to understand better why and how Clean Flick's approach of editing a legally-purchased copy of a movie for violent and sexual content and selling it as a clearly-labeled edited copy at a higher price hurts Hollywood's bottom line and artistic expression. These edited copies are viewed privately and purchased legally. It seems that these products simply allow parents to protect their children from inappropriate content without having to wear out the fast forward button on the DVD player or buy more expensive filtering technology.

My focus today is also to address how and why these innovative approaches and technologies that help better protect children from violent and sexual content can hurt content producers' bottom line and creativity, other than giving America's parents more control over their *bottom-line* responsibility when it comes to reviewing what is presented in the movies they view with their children at home. The fact is that the released films are all available to view in their entirety without edits, if one chooses. As I have said many times during a number of our hearings on fair-use and content regulation, I believe technology can provide a solution that will satisfy the rights, both financial and artistic, of content producers -- like the filmmakers and studios, as well as provide parents with the control they deserve over the content they purchase for family viewing in their

homes. In fact, by providing this control of content to family consumers, some have argued that you are opening up a whole new potential market for artistic work, rather than waiting for something similar to start appearing in the wild of the Internet or on the black market. I think pushing the market to find more novel ways to provide parents more control over what their children watch in movies is essential as media content, both the best and the worst, slowly finds its way into every facet of our lives and into the lives of our children.

I would like to say that we did invite the head of the Motion Picture Association of America, Mr. Dan Glickman, and the Directors Guild of America to be with us today, but unfortunately each declined our invitation. Therefore, I would like to especially thank all of you for joining us today, including Mr. Feehery – who is standing in for Mr. Glickman. This is a very important issue and I look forward to the testimony of this distinguished panel.

Thank you.

MS. SCHAKOWSKY. Thank you, Mr. Chairman. By exploring movie-editing technology, our subcommittee is once again grappling with digital content and fair use. I must say I am a bit perplexed as to why we are holding today's hearing. Many of the issues that we will be discussing have already been addressed by the courts and Congress last year. We have given families tools to help filter out inappropriate movie content and the courts have ruled on what they felt fell outside the bounds of fair use. I certainly hope that today's hearing is not just election-year politics.

With that said, the ever-expanding flow of artistic material through a variety of media, from hand-held DVD players to iPods, has been a mixed blessing. While those developments have meant that families have more opportunities to enjoy movies, there are also increased risks that children may be seeing and hearing more than we think they should.

I think we can all agree that parents should be the first line of defense and are the best equipped to decide what movies their children should be allowed to watch. I am sure that many parents and grandparents think long and hard about what is appropriate content to which their children and grandchildren should be exposed. I know that I do.

Many families, in their fight to protect their children from what they deem inappropriate, have been using advances in technology to limit the content that comes across their television screens. While I am a strong proponent of consumers' right to fair use of products that they have purchased, I believe that some companies have been trying to stretch the application of fair-use principle too far.

For instance, it cannot be argued, in my view, that re-editing and reselling a copyrighted movie, creating a derivative work without the express permission of the copyright holder, is within the boundaries of fair use. The U.S. District Court of Colorado, in its decision against

CleanFlicks on July 6, 2006, said that this is a clear case of copyright infringement. I agree.

The passage last April of Public Law 109-9, the Family Entertainment and Copyright Act, provided a safe harbor for ClearPlay, legislatively determining that its technology fell within fair-use rights at a time when the issue was being litigated. While I think it would have been better for Congress to let the courts decide, it does now seem that ClearPlay comes closer to striking a better balance than CleanFlicks does. ClearPlay devices do not create a fixed or derivative copy of a protected work. Its filtering technology functions like advanced fast forward and mute buttons while leaving the original material intact. It gives consumers a greater amount of control by allowing families to set their own preferences as to which parts of a movie are shown. If they don't want sex and violence, they can program that request into ClearPlay's control. If they choose not to hear certain words, they can request that as well, and as children age if families decide to allow more of the content to be played, since the movie is still in its original form, they can change their settings. ClearPlay's technology is not perfect. While it may catch some material a family objects to, some may slip through the filter. That is why family involvement is still needed. And, in the attempt to shelter children from objectionable material, the storyline, the mood and the artistic vision of the original product may be lost.

Although it is easy to get caught up in what technology can do for families, I think it is also important to remember that movies are rated for generally accepted age-appropriateness. When movies are made, the director decides whether he wants to appeal to all and make a G-rated movie or if he wants to make a movie that receives a more restricted rating. More than technology and a for-profit company, if parents are concerned about what children are seeing, they can start by checking out the rating.

I look forward to hearing from witnesses today. Perhaps you can help me understand the need for today's hearing. Thank you.

[The prepared statement of Hon. Jan Schakowsky follows:]

PREPARED STATEMENT OF THE HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Thank you, Mr. Chairman. By exploring movie-editing technology, our subcommittee is once again grappling with digital content and fair use. I must say that I am a bit perplexed as to why we are holding today's hearing. Many of the issues that we will be discussing have already been addressed by the courts and Congress last year. We have given families tools to help filter out inappropriate movie content and the courts have ruled on what they felt fell outside the bounds of fair use. I certainly hope that today's hearing is not just election year politics.

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I think we can all agree that parents should be the first line of defense and are the best equipped to decide what movies their children should be allowed to watch. I am sure that many parents and grandparents think long and hard about what is appropriate content to which their children and grandchildren should be exposed.

Many families, in their fight to protect their children from what they deem inappropriate, have been using advances in technology to limit the content that comes across their television screens. While I am a strong proponent of consumers' right to fair use of products they have purchased, I believe that some companies have been trying to stretch the application of the fair use principle too far.

For instance, it cannot be argued that re-editing and reselling a copyrighted movie, creating a derivative work without the express permission of the copyright holder, is within the boundaries of fair use. The U.S. District Court of Colorado, in its decision against Clean Flicks on July 6, 2006, said that this is a clear case of copyright infringement. I agree.

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ClearPlay's technology is not perfect. While it may catch some material a family objects to, some may slip through the filter. That's why family involvement is still needed. And, in the attempt to shelter children from objectionable material, the storyline, the mood, and the artistic vision of the original product may be lost.

Although it is easy to get caught up in what technology can do for families, I think it is also important to remember that movies are rated for generally-accepted age-appropriateness. When movies are made, the director decides whether he wants to appeal to all and make a G-rated movie – or if he wants to make a movie that receives a more restrictive rating. More than technology and a for-profit company, if parents are concerned about what children are seeing, they can start by checking out the rating.

I look forward to hearing from today's witnesses. Perhaps you can help me understand the need for today's hearing. Thank you.

MR. STEARNS. I thank the gentlelady. The distinguished chairman of the full committee, Mr. Barton from Texas.

CHAIRMAN BARTON. Thank you, Mr. Chairman.

The debate about consumers' and copyright holders' rights has been an important one for at least the last 200 years since the Constitutional Convention adopted the U.S. Constitution. The decision to grant

exclusive rights of creative works to their creators has been a great strength of our economy and of our country. The discussion about those rights and their limits started many years ago and continues today in this Congress and this subcommittee.

Today we are here to talk about Hollywood, artistic expression, fair-use rights and so-called edited movie industries. This hearing comes at a good time, I believe. Last year, the Family Entertainment and Copyright Act became a public law. Earlier this past summer a court decision was handed down that dealt with that law. We are here today to learn more about those developments and what they mean for consumers, for parents and for families.

Let us say that I buy a DVD. I believe that I can take it home and make an edited version of my own to watch with my family. Now, if I don't have the technical ability to make the edited version, I believe that I should be able to ask someone to do it for me. Can I pay that someone \$5 or \$10 or a similar amount for doing so? If so, can my neighbor buy, and I emphasize the word "buy," an authorized copy and then sell me an edited version of that authorized copy? That is really what we are here to talk about.

I am very sympathetic to the movie industry's sense of creative ownership and with their fear of losing control over their work. That said, in this area of TiVo and YouTube, in which consumers increasingly produce, manipulate and consume culture on their own digitized terms, an audience no longer passively consumes culture. The audience has a mind of its own, and often ignores the creator's intentions. Fast forwarding a movie or skipping songs on a CD is the reality of the digital world and it is a reality that consumers like and have come to expect.

Many of these consumers are fed up with what they view as gratuitous sex, drug use and violence in the movies. Two of our witnesses today have set out to serve these consumers by developing creative, technologically advanced ways to clean up these movies. I believe that we need to be careful that the copyright owners and creative artists of our country are not harmed in that process but I also understand that it would serve the potential audience in a larger manner if we could find a common ground that everybody could agree upon. I am anxious to hear about what options parents and others have in this growing market. It is a puzzlement to me that the movie industry itself doesn't offer edited versions of their movies like those that are played on the television or on airlines. It would seem that that would expand their pie and give them more dollars with which to make more movies.

I am also interested to learn from the movie perspective how this niche market that CleanFlicks and ClearPlay have developed has affected the industry. Has it widened the pool of possible potential customers for

the movies that are made in America? Many who previously weren't buying or renting movies might have become customers for these edited, cleaned-up versions. Why then have many of the industry attempted and indeed succeeded as this court case last summer points out in prohibiting some of these businesses from doing what they want to do? From a business standpoint, this strategy of limiting the market to me doesn't seem to make much sense. It only limits their sales.

Having said that, a copyright is a time-honored and essential concept. We must protect creators' rights and private property rights. I understand that. I would hope that in doing that though we don't curtail those consumers particularly when the consumers who wish a cleaner version are willing to pay their hard-earned dollars if they can get the basic movie content, just get it without all the gratuitous sex, violence and drugs.

This is an important hearing, Mr. Chairman. I want to thank you for holding it. I look forward to hearing from our witnesses, and I am sure we will have a spirited discussion in the question-and-answer period.

With that, I yield back.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF THE HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY
AND COMMERCE

Good afternoon. Thank you, Chairman Stearns, for holding this hearing. The debate about consumers' and copyright holders' rights has been an important one in our country at least since 1787 when the Constitutional Convention adopted The U.S. Constitution. The decision to grant exclusive rights of creative works to their creators has been a great strength of our economy and our Nation. The discussion about those rights and their limits started those many years ago, and it continues today in this Congress and in this Committee.

Today, we're here to talk about Hollywood, artistic expression, fair use rights, and the so-called "edited movie" industry. And this hearing comes at a perfect time. Last year, the Family Entertainment and Copyright Act became a public law, and earlier this past summer a court decision was handed down that dealt with similar issues. We're here today to learn more about what these developments mean for consumers, for parents and families.

Let's say I buy a DVD. I believe I can legally take it home and make an edited version of my own to watch with my family. Now if I don't have the technical ability to do this, I believe I should be able to ask my tech-savvy neighbor to do it for me. Can I pay him \$5 or \$10 dollars for doing it? If so, can my neighbor buy an authorized copy for \$15 and then sell me an edited version for \$20? This is what is at the heart of the issue.

I am very sympathetic with the movie industry's sense of creative ownership and with their fear of losing control over their work. That said, in this era of TiVo and YouTube—in which consumers increasingly produce, manipulate and consume culture on their own terms—an audience no longer passively consumes culture. The audience has a mind of its own, and often ignores the creator's intentions. Fast forwarding a movie or skipping songs on a CD is the reality of digital entertainment and the reality consumers have come to expect.

Many of those consumers have become fed up with what they view as gratuitous sex, drug use, and violence in the movies. Two of our witnesses today set out to serve those consumers by developing ways to clean up the movies. We need to be careful that copyright owners are not harmed in this process, and I understand that different companies have taken different approaches in trying to serve their potential customers. I am anxious to hear about what options parents and others have in this growing market. For instance, why doesn't the movie industry offer edited versions of their movies, like those played on TV and on commercial airlines?

Furthermore, I am very interested to hear how this niche market has affected the wider industry. It seems to me that this would only broaden the possible pool of customers. Many who previously weren't buying or renting movies have become customers for the movie makers. Why then have many in the industry attempted—and indeed succeeded in some case—to prohibit these small businesses from doing what they do? From a business standpoint, this strategy doesn't seem to be furthering sales.

As I said, copyright is a time-honored and essential concept. We must protect creators' rights. I would hope that in doing that we don't curtail those of consumers, particularly when those consumers are parents trying to do the right thing for their children.

Thank you, Mr. Chairman. I am glad you have continued the Committee's involvement on these important issues, and I look forward to hearing from our witnesses.

I yield back the balance of my time.

MR. STEARNS. I thank the gentleman. The gentleman from Texas, Mr. Green.

MR. GREEN. Thank you, Mr. Chairman. I would like to thank you and our Ranking Member, Ms. Schakowsky, for holding the hearing.

Congress addressed this issue in 2005 when they passed the Family Entertainment and Copyright Act. That law made it clear that companies such as ClearPlay can offer devices that can take an unedited DVD and using the technology in the player provide a scalable edit of that movie to remove the violence, foul language and sexual content. However, that law failed to address whether or not making edits or DVDs for content and redistributing them is permissible. A recent court ruling said that doing so is an infringement on the copyrights held by the directors and production companies. I support the spirit of our copyright law, and it was designed to foster creativity and allow flexibility, and our judicial system determined what constitutes fair use and what doesn't. These issues are for our judiciary to decide on a case-by-case basis.

While Congress can pass legislation in contrast to such a ruling, we should approach this issue with the consumer at the top of our priority list. I have a granddaughter, and if I don't want her to watch movies that are overly violent or contain adult material, the easiest way for my family is to edit inappropriate content for my granddaughter that she might be exposed to. I buy it and I edit it for ourselves but we should not be able to market that edited version.

The issue today is whether or not we should allow a third party to acquire the original content, edit the content in that material that some may find objectionable and then resell it to consumers. Once again, the

committee finds itself exploring the issue of what constitutes fair use and how that impacts consumers. I believe the better policy is when the consumers have more choices in the marketplace. However, we must be careful not to infringe on the copyright protections offered under Federal law. In listening to our Chairman's statement, I find I agree with him that if I own a copy that had a given movie and I would market the full content version but I also want to make money from marketing maybe a family-friendly version, you know, but that still protects their content because they have that copyright.

I look forward to hearing what our witnesses have to say and I would like to thank the witnesses for being here today. Thank you, Mr. Chairman.

MR. STEARNS. I thank my colleague. We welcome the witnesses, the five of you, Mr. Bill Aho, Chief Executive Officer of ClearPlay; Mr. Allan Erb, President of CleanFlicks Media Incorporated; Mr. John Feehery, Executive Vice President, External Affairs, Motion Picture Association of America; Ms. Robin Bronk, Executive Director, The Creative Coalition; and Mr. Jason Schultz, Electronic Frontier Foundation.

I understand from staff, Mr. Aho, that you will have a small presentation before we start these opening statements. We are going to give you some extra time for this. Perhaps a compromise might be, you could read your statement and then make your presentation.

MR. AHO. That is--in the spirit of compromise, I will accept that.

MR. STEARNS. Okay. Just move the mic closer to you if you don't mind.

STATEMENTS OF BILL AHO, CHIEF EXECUTIVE OFFICER, CLEARPLAY, INC.; ALLAN L. ERB, PRESIDENT, CLEANFLICKS MEDIA, INC.; JOHN FEEHERY, EXECUTIVE VICE PRESIDENT, EXTERNAL AFFAIRS, MOTION PICTURE ASSOCIATION OF AMERICA; ROBIN BRONK, EXECUTIVE DIRECTOR, THE CREATIVE COALITION; AND JASON SCHULTZ, STAFF ATTORNEY, ELECTRONIC FRONTIER FOUNDATION

MR. AHO. Thank you, Chairman Stearns, and members of the committee. My name is Bill Aho. I am the CEO of ClearPlay. ClearPlay makes technology that can be implemented into consumer electronic devices such as DVD players, televisions, cable set top boxes to help parents control media in their homes. Our movie product has been marketed under different brand names and it lets families filter out graphic violence, explicit sex, vulgar language from most popular

Hollywood DVDs. Our technology can be licensed. It could be available not just on our brands but on multiple brands, I mean Sonys and Toshibas and whatever, in the same way you might think of being able to get Dolby or picture-in-picture.

Thank you for inviting me to testify today. I am happy to provide some perspective on the Family Movie Act of 2005 but also the state of parental controls and the media, and in my opening statement I would like to address just three things if we could, first, why the Family Movie Act was passed in its present form; second, what is the status of parental controls today; and third, what options might be available to Congress to help families protect themselves further against unwanted media.

To start with the Family Movie Act of 2005, it essentially clarified the copyright law to ensure that the right to filter content in movies in the home existed. It basically gave moms and dads a right to watch movies in their home without the bad stuff, but there were three provisions of the bill which ultimately made it palatable to Congress and to the broad range of constituencies that sometimes are needed to get things done. The first is that it does not allow for the decrypting, the creation or the copying of tangible edited works. There are no derivative works that are formed, and rather, the Act protects the right to use technology to make personal selections. It is like having a remote control with fast forward and mute in your home. Copyrighted works such as the DVD are never copied, modified or altered. The only thing affected is how you choose to view them. That was important I think to the committee. The second is, the Family Movie Act only covered home use and not public displays. The third is that it was ensuring something that already was legal, at least according to the U.S. Register of Copyrights, who testified that in her opinion, what we did was legal. Nevertheless, recognizing that technology often moves faster than our ability to clarify our laws, we felt like it was very likely there could be an endless stream of litigation as long as there was somebody in Hollywood willing to challenge the parents' right to do that.

As the legislation was being developed, broader provisions in the bill were at various times considered. One of these was protection of edited DVDs such as CleanFlicks. This approach, as you know, involves making copies or admittedly creating a derivative work and proponents of fair-use rights have argued that fair-use rights should be extended. Unlike software technology solutions, the register said in her opinion this was not currently legal. Content providers also tended to be more entrenched against this approach, and in general, congressional supporters of the Family Movie Act at that time were not interested in addressing this fair-use issue in the legislation.

Just a couple of minutes also on parental controls. The Family Movie Act has opened up a number of companies that are currently out licensing. Three companies are out actively licensing this technology. The adoption has not been rapid amongst the consumer electronics industry. There is I think sometimes a concern when they are told that sex sells and that the director's cut which is even more explicit sells more copies on DVD. I think there is some skepticism frankly that the American people, you know, families want this despite all the research and not just ours but ABC News and Fox and USA Today and all the research points to about half the households would be interested in having something like this at some point. But adoption has been slow.

I am not sure frankly what steps Congress might take to help this technology move forward. It is--I am not generally a fan of regulation and I think that what we did with the V-chip probably did not help our industry because everybody points to the V-chip and says this doesn't work, and so more parental controls aren't necessarily better. It may be that as this committee or as Congress looks at this issue, there may be ways to simulate and nudge the industry. We would support those, and certainly we would be willing to help and assist in that movement. Thank you.

[The prepared statement of Bill Aho follows:]

PREPARED STATEMENT OF BILL AHO, CHIEF EXECUTIVE OFFICER, CLEARPLAY INC.

Good afternoon Chairman Stearns, Chairman Barton, members of the committee. My name is Bill Aho and I am the CEO of ClearPlay Inc. ClearPlay makes technology that can be implemented into consumer electronic devices, such as DVD players, televisions and cable set-top boxes, to help parents control media in their homes. Our movie product has been marketed under different brand names, and lets families filter out graphic violence, explicit sex and vulgar language from most popular DVD's.

Thank you for inviting me to testify today. I am happy to provide some perspective on the Family Movie Act of 2005 and the state of parental controls and the media. In my opening statement, I would like to address three questions:

First, why was the Family Movie Act of 2005 passed in its current form?

Second, what is the status of Parental Controls for American families?

And third, what options are available to the government to help families protect themselves against unwanted content in the media?

Let's start with the Family Movie Act of 2005, which in effect clarified the copyright law to ensure the right to filter unwanted audio and video content from media in the home. Basically, it gives moms and dads the right to watch movies in their homes without the bad stuff. There were three provisions of this bill which ultimately made it palatable to Congress and to a broad range of constituencies:

1. It does not allow for the decrypting, creation of or copying of tangible edited works. No derivative works are formed. Rather, the Act protects the right to use technology to make your personal selections, like having a remote control that fast forwards or mutes unwanted scenes. Copyrighted works, such as DVD, are never copied, modified or altered in any way. The only thing affected is how you choose to view them.

2. The Family Movie Act only covered home use and not public broadcasting.
3. It was ensuring protection for something that was already legal, at least in the opinion of the U.S. Registrar of Copyrights. However, as is often the case, technology moves faster than the law, and the lack of clarity in the Copyright Act of 1976 opened up the likelihood of an endless stream of litigation as Hollywood fought to suppress this and similar technologies. The Family Movie Act was an effort to simply clarify the legality of mechanically controlling content delivery in the home.

As the legislation was being developed, broader provisions in the bill were at various times considered. One of these was protection of edited DVD's, such as those previously offered by Clean Flicks. This approach involves making copies of DVD's which have been edited; or admittedly, creating a derivative work. Proponents have argued that Fair Use rights should be extended to include this type of action. Unlike software technology solutions, the Registrar of Copyrights specifically noted that, in her opinion, this was not currently legal. Content providers, including studios and directors, were also more entrenched against this approach, which they viewed as a more egregious violation of their copyrights. And in general, Congressional supporters of The Family Movie Act were not interested in addressing this fair-use issue in the legislation, which could have a substantial ripple effect in copyright law.

Perhaps it would be useful to look at the status of Parental Controls in the world of Consumer Electronics and media. With the Family Movie Act, the movie filtering business is beginning to get traction, and both ClearPlay and at least two other companies have been actively marketing filtering technologies to the Consumer Electronics (CE) industry. Specifically, these companies are lobbying to get effective parental controls incorporated into DVD players, televisions, Digital Video Recorders (like TiVo) and cable or satellite set-top boxes.

Unfortunately, Parental Control adoption has moved slowly in the CE industry. The V-Chip, despite the advertising package negotiated by the cable industry, is not likely to ever be broadly accepted by consumers. It's simply not a very useful product, and the low usage rates have spooked many in the industry.

But let me paint a picture of what is possible for families, using available technology on existing consumer electronics.

- Families watch a movie on DVD and can choose to skip or mute over unwanted sex, violence and profanity.
- The same capability can be easily downloaded to any of the estimated 60 million installed base of DVD's in home PC's and laptops at no initial cost.
- Televisions are sold with the ability to mute profanity on command.
- Cable companies offer set-top boxes with the capability to filter movies from Video on Demand and filter language on TV shows.
- Every family can use the Electronic Programming Guide through their cable provider to quickly and easily block television shows they don't want in their home—not based on obscure TV ratings, but actually choosing which shows to block.
- Parents will be able to go online and actually see what TV and movie content their kids have been watching at home—and even on their iPods—including a description of the show. If parents are uncomfortable with the content, they can discuss it with their children.

All of these and more are well within reach of the consumer electronics industry at this time, and at surprisingly little cost. In fact, any of these features could be added to CE devices for less than a cost of one dollar per unit. The ability for parents to filter,

control and monitor what their children are seeing on cable, satellite, TV, DVD and handheld devices is extraordinary.

So finally, my third point, what options are available to the government to help make this vision a reality, to help get these tools into the hands of families. Because frankly, the benefits are substantial, not just to families, but to multiple industries. For instance, if tools are broadly available, there is less pressure on Congress to monitor and censor content providers. If it was easy to block unwanted programming, there would be less uproar over inappropriate content on adult-oriented shows. If filtering movies was broadly available, there would be less concern over issues such as the MPAA ratings creep.

I must admit that I have never been a fan of increased regulation—telling the CE industry how to make their products. While it would be very good for my industry to have Parental Controls mandated, like the V-chip has been, I don't think that's generally the best approach for consumers or for industry.

However, at a time when TV and DVD manufacturers are living on tight margins, when Hollywood and broadcasters (who are generally one and the same now) are preaching the gospel that more graphic violence and more explicit sex will sell better, it may be that Congress can give the industry a nudge in the right direction. Maybe there are ways to work with the FCC to encourage the industry to provide effective and responsible Parental Controls. Maybe through tax credits, which I think could be quite modest to be effective. Or maybe it's with the Congressional language that industry has always understood best—police yourselves or we'll regulate for you. As representatives of the Parental Control industry, we would be glad to help find solutions that are palatable for all constituents.

In conclusion, I want to applaud the passage of The Family Movie Act. It didn't create any additional burdens on content providers or consumer electronics manufacturers. Rather, it just cleared the way for companies to provide these benefits, which are starting to come to market in 2007. I also congratulate this committee on taking an interest in this issue. I believe it is a fruitful area of interest for Congress, with the potential to solve multiple problems and provide important societal benefits. And finally, I want to reinforce my belief that the tools to help parents and families really control media in their homes are out there. The technology has been created. It is a classic win-win for families and the industry. And if this committee can find ways to overcome the present inertia and push industry along the road to that vision, the benefits to society, to families, and to industry would be significant.

MR. STEARNS. We will take a look at your demonstration.

MR. AHO. In the spirit of--

MR. STEARNS. You can drop the lights if you want.

MR. AHO. I am going to show a clip from "The Patriot."

[Video]

MR. AHO. Okay. Some argue and some suggest that can you still do a war movie, can you do battle scenes. You certainly can. Take a movie like "The Patriot" and with just a couple of minutes of skips throughout the entire movie, turn an R-rated movie into something that I feel comfortable sharing with my 11-year-old son.

MR. STEARNS. So that was already edited?

MR. AHO. The way this works is, you control this edit, so for instance, you may say, you know, do I want to edit strong violence, disturbing images, am I concerned about--maybe you are okay with

essential content for older kids or you are okay with crude language and humor but you don't like the F word. You can decide how you want to watch the movie based upon who watches it. You can also turn it on and off. So let us watch that same scene with ClearPlay on.

MR. STEARNS. So now, this is the edited version?

MR. AHO. This is not edited.

[Video]

MR. STEARNS. So the first version was the edited version?

MR. AHO. The one where the head was taken off was the one--

MR. STEARNS. That was the first clue. You can put the lights back on. Mr. Aho, thank you.

Mr. Erb, welcome.

MR. ERB. Chairman Stearns and members of the subcommittee, my name is Allan Erb. I am the President of CleanFlicks. Thank you very much for the opportunity to testify here today.

I would like to address two main issues. One is the current state of affairs of the media industry as I see it in our country, and secondly, the inadequacy of the Family Movie Act.

First, the current state of affairs. Public entertainment in America has increased its usage of sexual content, graphic violence, nudity and profanity. Unquestionably there are those who will argue this point but that really is not the reason we are here. The issue is whether families should have a choice in the content they wish to have in their homes, and if so, how to provide it. One argument is that those who do not want to view offensive content should simply not look, but that is not really a choice. Even for those who are not offended by this content, we are a country premised on freedom of choice among a wide variety of options in virtually every area of life where nearly every item comes in multiple colors, tastes, shapes and sizes. Why isn't that true here?

Hollywood produces extraordinary movies with exceptional subject matter. Sadly, many of those productions are also laced with needless, often gratuitous content which is not important to the storyline, subject matter, content or impact of the movie. Its removal does no harm to the movie. This seems to be acceptably true even for the studios and directors since movies are regularly edited for content for television, airlines, cruise ships and some foreign countries. Why the Hollywood studios and directors have chosen not to make these edited movies available to the public at large is a question which simply seems unanswerable.

Why is the editor's cut readily available to those who want it while the edited cut is hardly available to the millions of parents and families who want it? The demand is there. Why isn't the supply? Why are the

voices of millions of Americans who live value-centered lives go unheard?

While the hold that Hollywood has on the production and distribution of movies in America may not rise to the legal definition of an antitrust violation, in practicality, the vast majority of public entertainment comes from a narrow sector of our society. The values of that sector may not always reflect the values of other potentially large segments of society. Whether these other segments are large or small is certainly open to debate but surveys conducted show ranges from 40 to 60 percent of the general public would prefer to see movies with some or all of the offensive content edited out. This group feels like the media industry, movie and television, have simply left them behind.

Who is to make the determination of what constitutes offensive materials? Should that be extended to only those who have produced the offensive content in the first place? Should it be allowed only to the individual family even though the technical expertise simply does not exist at this level, or should it be extended to others who are responsive to the requests of that segment of society which they seek to serve?

Secondly, the inadequacy of the Family Movie Act. In 2005, Congress passed the Intellectual Property Protection Act. The bill taken in its entirety was largely an accession to Hollywood's effort to solidify its protection of intellectual property in an ever-changing electronic environment. Understandably, the digitization of intellectual property threatens to test the current copyright laws in a variety of ways. Many have suggested that this area of the law now requires complete overhaul in order to maintain applicability to advancing technology.

One small portion of the bill was the Family Entertainment and Copyright Act purported to provide families with access to movies edited to a more family-oriented standard. Public statements about this bill suggested that Congress by its passage had taken major strides in the effort to give those who desired it the ability to control the content of movies brought into their home.

In actuality, these characterizations are a dramatic overstatement as to the practical usability of the provisions of the Act. The Act allows for only a narrow exception that the ability to deliver the promised result to a wide variety of families is simply not possible. Furthermore, patents on the process of delivery that is simultaneous editing as allowed by the Family Movie Act limit its distribution to a single company, ClearPlay, although another company, Nissim, has challenged the patents, and although ClearPlay is willing to license, they are still the only potential provider of this product. By disallowing any production of a fixed copy of an edited movie, the Act arguably precludes virtually any delivery system other than the one patented. As currently drafted, the Act

arguably does not even allow an individual in their own home to produce a fixed copy of an edited version of a movie.

As a result of this, the United States District Court in Colorado recently issued a decision putting a number of edited movie providers to include us out of business with the following language: “During the pendency of this case, Congress enacted the Family Movie Act. Thus, the appropriate branch of government had the opportunity to make the policy choice now urged and rejected it.”

Issues like terrorism and immigration will not command public and congressional attention forever. I sincerely hope that Congress can wrestle with this problem and broaden the accessibility of edited movies to the general public while safeguarding the fundamental protections to intellectual rights.

Thank you.

[The prepared statement of Allan L. Erb follows:]

PREPARED STATEMENT OF ALLAN L. ERB, PRESIDENT, CLEANFLICKS MEDIA, INC.

TO: The House Subcommittee on Commerce, Trade, and Consumer Protection
The Honorable Cliff Stearns, Chairman

FROM: Allan L. Erb
CleanFlicks Media, Inc., President

RE: Committee Hearing “Editing Hollywood’s Editors: Cleaning Flicks for Families” scheduled for 2:00 PM, September 26, 2006

It is my intent to address two main issues:

1. The current state of affairs
2. The inadequacy of the Family Movie Act

I. The current state of affairs

Public entertainment in America has increased its usage of sexual content, graphic violence, nudity and profanity. Unquestionably, there are those who will argue this point even though a recent Harvard study empirically demonstrates the change in movie ratings vs. content, and we all know by our own experience that movie content has changed. Yet, there will still be those in our society today who will loudly disagree with even the obvious. But, that is not the debate.

The issue is whether families should have a choice in the content they wish to have in their homes, and, if so, how to provide it. One argument is that those who do not want to view offensive content should simply not look. But, that is not really a choice. Even for those not offended by this content, we are a country premised on freedom of choice among a wide variety of options in virtually every area of life, where nearly every item comes in multiple colors, tastes, shapes and sizes. Why isn’t that true here?

Hollywood produces extraordinary movies with exceptional subject matter. Sadly, many of those productions are also laced with needless, often gratuitous, content which is not important to the storyline, subject matter content, or impact of the movie. Its removal does no harm to the movie. This seems to be acceptably true, even for the Studios and Directors, since movies are regularly edited for content for television, airlines, cruise

ships, and some foreign countries. Why the Hollywood Studios and Directors have chosen not to make these edited movies available to the public at large is a question that seems unanswerable. Why?

Why is the editor's cut readily available to those who want it, while the edited cut is hardly available to the millions of parents and families who want it? The demand is there, why isn't the supply. Why are the voices of millions of Americans who live value-centered lives going unheard? Why?

While the hold that Hollywood has on the production and distribution of movies in America may not rise to the legal definition of an anti-Trust violation, in practicality, the vast majority of public entertainment comes from a narrow sector of society. The values of that sector may not always reflect the values of other, potentially large, segments of society. Whether these other segments are large or small is certainly open to debate. But surveys conducted show ranges from 40-60% of the general public would prefer to see movies with some, or all, of the offensive material edited out. This group feels like the media industry, both movie and television, has simply left them behind.

Who is to make the determination of what constitutes offensive materials? Should that right be extended to only those who have produced the offensive content in the first place? Should it be allowed only to the individual family even though the technical expertise simply does not exist at this level? Or, should it be extended to others who are responsive to the requests of that segment of society which they seek to serve?

II. The inadequacy of the Family Movie Act.

In 2005, Congress passed The Intellectual Property Protection Act (HR 2391). The Bill, taken in its entirety, was largely an accession to Hollywood's efforts to solidify its protection of intellectual property in an ever-changing electronic environment. Understandably, the digitization of intellectual property threatens to test the current Copyright Laws in a variety of ways. Many have suggested that this area of the law now requires complete overhaul in order to maintain applicability to advancing technology.

One small portion of the Bill (Section 212, entitled The Family Movie Act of 2005) purported to provide families with access to movies edited to a more family-oriented standard. Public statements about this Bill suggested that Congress, by its passage, had taken major strides in the effort to give those who desired it, the ability to control the content of movies that would be brought into their homes.

In actuality, these characterizations are a dramatic overstatement as to the practical usability of the provisions of the Family Movie Act. The Act allows for only such a narrow exception, that the ability to deliver the promised result to a wide range of families is simply not possible. Furthermore, patents on the process of delivery (simultaneous editing) as allowed by the Family Movie Act limit its distribution to a single company, Clear Play (although another company, Nissim, Inc., challenges the patents). By disallowing any production of a "fixed copy" of an edited movie, the Act arguably precludes virtually any delivery system other than the one patented.

As a result of this, the United States District Court for the District of Colorado in its July 6, 2006, decision in the case involving a number of edited movie providers, put those providers out of business with the following language: "During the pendency of this case Congress enacted the Family Movie Act. . . . Thus, the appropriate branch of government had the opportunity to make the policy choice now urged and rejected it."

Copyright laws are fundamentally rooted in economics. Clearly, the challenge to Congress in passing some type of legislation that would truly allow families across America to access edited movie content while protecting intellectual property rights is an enormous challenge. But, the current result, while a valiant effort, does not meet that challenge.

By way of a rather extreme analogy, let us hypothesize that Congress, many years ago, had tried to balance the interests of bicycle manufacturers and horse breeders against

the interests of new motorized vehicle manufacturers by passing a Bill which allowed for the introduction of motorized vehicles -- but only so long as they were 16 wheel semi-trucks. Obviously, some people would have availed themselves of the new opportunity, but the cumbersome and costly nature of what was made available would make the usage narrow, at best.

To extend the hypothetical, let us assume that a company named Peterbilt, at the time, had a patent on the production of 16 wheel semi-trucks. The effect of the Bill would not only have been a poor first step in allowing the majority of Americans access to motorized vehicles, but would also have provided a single business entity with a monopoly in the market place. That, in my judgment, is exactly where we are today with respect to making edited movies available to the majority of Americans.

The only alternative allowed is cumbersome, costly, and patented. It will simply not meet the demand. It requires the purchase of a new type of DVD player, when most Americans have already incurred that expense, and, in most cases, it requires sufficient technological expertise to download editing commands to a computer for copying to a CD for use in the DVD player. And yet, remarkably, it still seems to draw fire from Hollywood.

The ultimate introduction of automobiles in every size and shape put two cars in nearly every garage, enhanced the lifestyle of Americans, and is at least one factor in the incredible power of the U.S. economy. Similarly, broadening the availability of edited movies to other "sizes and shapes" will widen usage, enrich family lifestyles and add to the moral fiber of our society.

Sadly, one of the factors in negative attitudes about American culture across the globe, and some of the problems that result, emanates in part from a belief that our exported media depicts the moral values of our country. However untrue that may be, this media is the only basis for some of those beliefs.

Technology continues to advance. Recently, movies have been made available through computer download. This would open new opportunities to develop simplified edited movie delivery systems to that sector of society that has this technology available, except for the narrow language in the Family Movie Act. As currently drafted, the Act arguably does not even allow an individual in their own home to produce a "fixed copy" of an edited version of a movie!

Issues like terrorism and immigration will not command public and Congressional attention forever. I sincerely hope that Congress can wrestle with this problem and broaden the accessibility of edited movies to the general public while safeguarding the fundamental protections to intellectual property.

MR. STEARNS. Thank you. Mr. Feehery.

MR. FEEHERY. Thank you, Mr. Chairman. Chairman Stearns, members of the subcommittee, thank you for giving me this opportunity to express the views of the Motion Picture Association on the subject. Our president, Mr. Glickman, really wanted to be here today but he had an event that he could not get away from so he apologizes for not appearing and he sent me instead.

At the outset, let me say that the movie industry like most industries is driven by consumer demand. Each of the MPAA member studios is actively competing in the marketplace to serve the intense demand for family movies. The Walt Disney Company long has been associated with films that appeal to the entire family. Twentieth Century Fox announced last week that it has initiated a program to distribute family-

friendly movies under the FoxFaith banner. Paramount will release the family film "Charlotte's Web" in December. Sony will release the animated children's film "Open Season" later this week. Warner Brothers will release a PG-rated "Happy Feet" next month, and Universal released G-rated "Curious George" earlier this year. So far this year the film industry has released 82 films rated G or PG with 21 films rated G and 61 films rated PG. Our industry is providing consumers with family-friendly films because the market has demanded it. Of course, not all films are appropriate for the entire family and not all movies should be geared to an audience of five-year-olds.

But parents do not want government to regulate the content of our movies and television programming. In a recent survey done by TV Watch, 91 percent of parents stated that more parental involvement rather than government regulation was the best way to control what their children watch.

Congress last year amended the Copyright Act to permit the marketing of programs that automatically skip or mute content based on individualized user preferences during playback of DVD movies. That legislation was not without controversy. There are very legitimate concerns about the impact of these tools on the artistic integrity of filmmakers who may invest millions of dollars and years of their lives putting their very personal expressive vision of a story on film only to have it changed by commercial editors with whom they have no relationship. Ask Steven Spielberg how he feels about a stranger creating and marketing their own versions of "Saving Private Ryan" and "Schindler's List," and I believe you will get some flavor for their concern that exists on this issue.

We don't have to relive that debate here. The law now clearly allows for technology that enables consumers to automatically skip and mute material they find objectionable in the privacy of their own homes. That legislation was carefully drafted to draw a clear line between an automated program that skips or mutes certain material at the direction of the user when a DVD is played and the commercial distribution of unauthorized copies of movies that have been physically edited without the permission of the creators. The former does not result in an actual altered copy of the movie.

This is decidedly not the case with the latter category where the films are cut and spliced, changing the film to reflect the vision of an editor rather than the producer or the director. Copyright is violated as unauthorized copies are made and distributed, which constitutes the unauthorized making and distribution of derivative works. U.S. and international law long have established that the making of a derivative work is the exclusive rights of the copyright owner of the original work.

These considerations are important ones to creators and content owners. Whatever one might think of the Family Movie Act, these distinctions important to Congress a year ago were main important dividing lines between exempted conduct and commercial-scale copyright infringement.

Let me conclude by saying that the movie industry is responding to marketplace demand for family-friendly films. The free market works best without government regulations that dictate content.

Thank you for giving me the chance to appear today
[The prepared statement of John Feehery follows:]

PREPARED STATEMENT OF JOHN FEEHERY, EXECUTIVE VICE PRESIDENT, EXTERNAL
AFFAIRS, MOTION PICTURE ASSOCIATION OF AMERICA

Chairman Stearns, members of the Subcommittee, thank you for giving me this opportunity to express the views of the motion picture industry.

At the outset, let me say that the movie industry, like most industries, is driven by consumer demand. There is a market for "family friendly" movies and each of the MPAA member studios is actively in the market competing to serve that demand. The Walt Disney Company long has been associated with films that appeal to the entire family. As recently as this week, Twentieth Century Fox announced that it has initiated a program to distribute family friendly movies under the FoxFaith banner. Paramount will release the family film, "Charolette's Web" in December; Sony will release the animated children's film "Open Season" later this week; Warner Bros will release PG-rated "Happy Feet" next month; Universal released G-rated "Curious George" earlier this year. So far this year the film industry has released 82 films rated G or PG, with 21 films rated G and 61 films rated PG.

My point here is that our industry is providing consumers with family friendly films. But not all films are appropriate for the entire family, and I trust you would agree that all movies should not be geared to an audience of 5-year-olds. However, there are many, many movies being made that are appropriate for viewing by the entire family.

It is also worth noting that parents do not want government to regulate content. In a recent survey done by TV Watch, 91 percent of parents stated that more parental involvement, rather than government regulation, was the best way to control what their children watch.

As you know, Congress last year amended the Copyright Act to permit the marketing of programs that automatically skip or mute "objectionable" content based on individualized user preferences during playback of DVD movies. That legislation was not without controversy. There are very legitimate concerns about the impact of these tools on the artistic integrity of filmmakers, who may invest millions of dollars and years of their lives putting their very personal and expressive vision of a story on film, only to have it changed by commercial editors with whom they have no relationship. Ask Mel Gibson how he feels about someone he's never met creating their own, "family friendly," non-violent version of the Passion of the Christ, or Steven Spielberg how he feels about a stranger creating and marketing their own versions of Saving Private Ryan and Schindler's List, and I believe you will get some flavor for the concern that exists on this issue.

But the point is not to re-live that debate. The point is that the law now clearly allows for technology that enables consumers to automatically skip and mute material they find objectionable in the privacy of their homes. That legislation was also carefully crafted to draw a clear line between an automated program that skips or mutes certain

material at the direction of the user when a DVD is played, and the commercial distribution of unauthorized copies of movies that have been physically edited without the permission of the creators. The former does not result in an actual altered copy of the movie. As the Report accompanying the legislation noted,

“If you look at a DVD ... before and after [the] technology has been used to mute or fast-forward over the offensive material, there would be absolutely no difference in the product. It has not been sliced, diced, mutilated, or altered. The director’s work is still intact. No unauthorized copies have been distributed, no copyright violated.” H.Rep. 108-670, at 19.

This is decidedly not the case with the latter category, where the films are cut and spliced, changing the film to reflect the vision of the editor, rather than the producer or the director. And copyright is violated as unauthorized copies are made and distributed, which constitute the unauthorized making and distribution of "derivative works." U.S. and international law long have established that the making of a derivative work is the exclusive right of the copyright owner of the original work. It is for this reason that the legislative history accompanying the Family Movie Act also notes that

“the Act does not create an exemption for actions that result in fixed copies of altered works. The committee is aware of services and companies that create fixed derivative copies of motion pictures and believes that such practices are illegal under the Copyright act.” Id. at 7.

The user-directed nature of the technologies exempted by the Family Movie Act was a key consideration. Both the House and Senate sponsors made clear that

“There is a basic distinction between a viewer choosing to alter what is visible or audible when viewing a film, the focus of this legislation, and a separate entity choosing to create and distribute a single, altered version to members of the public. It is the sponsor’s intent that only viewer directed changes to the viewing experience be immunized, and not the making or distribution of actual altered copies of the motion picture.”

The sponsors further explained that the skipping of scenes must not be a one-size fits all determination by a commercial editing service, but “must be done by or at the direction of a member of a private household.” They noted that “While this limitation does not require that the individual member of the private household exercise ultimate decision-making over each and every scene or element of dialog in the motion picture that is to be made imperceptible, it does require that the making imperceptible be made at the direction of that individual in response to the individualized preferences expressed by that individual.” Thus:

“This limitation would not allow a program distributor, such as a provider of video-on-demand services, a cable or satellite channel, or a broadcaster, to make imperceptible limited portions of a movie in order to provide an altered version of that movie to all of its customers, which would likely violate a number of the copyright owner’s exclusive rights, or to make a determination of scenes to be skipped or dialog to be muted and to offer to its viewers no more of a choice than to view an original or an altered version of that film. Some element of individualized preferences and control must be present such that the viewer exercises substantial choice over the types of content they choose to skip or mute.”

These considerations are important ones to creators and content owners. Whatever one might think of the Family Movie Act, these distinctions – important to Congress a year ago -- remain important dividing lines between exempted conduct and commercial scale copyright infringement.

Finally, the suggestion that anyone should be able to market copies of edited versions of movies to the public is a very dangerous concept, especially if that editing consists of additions as well as deletions. While you may think that the making of certain edits to a movie would be in the public interest, there can be a very great divide between your concept of what is in the public interest and what someone else thinks is in the public interest. The movie “Titanic” provides an example. In the sketch scene with Kate Winslet and Leonardo DiCaprio, certain editing technologies allow companies to cover up the unclothed actress while others would allow companies to feature her unclothed in other parts of the movie. However, both acts violate copyright law, regardless of the difference of opinion regarding which scenario (clothed or unclothed) is preferable.

The Constitution prohibits Congress from enacting laws that discriminate against certain speech. Thus, even if one could write a law that permitted "good" edits, but not "bad" edits of a movie, such a law would be immediately struck down by the courts.

Congress has already done all that it reasonably can and should do to encourage the availability of family friendly films. More importantly, the movie industry is responding to marketplace demand for family friendly films. Any attempt by Congress to permit unauthorized editing of movies to produce "family friendly" versions will either encourage family UNfriendly versions as well, or run afoul of Constitutional protections of free speech.

Thank you for giving me the opportunity to appear here today.

MR. STEARNS. Thank you. Ms. Bronk.

MS. BRONK. Good afternoon, Chairman Barton, Chairman Stearns, Ranking Member Schakowsky and members of the subcommittee. My name is Robin Bronk and I am Executive Director of The Creative Coalition. I am honored and proud to be called upon to testify at this hearing, and as a working mother, I thank you for your time and efforts on behalf of American families.

The Creative Coalition is a nonprofit, nonpartisan public advocacy organization of the entertainment industry. We were founded in 1989 by prominent figures in the creative community and we work to educate and mobilize leaders in the arts community on issues of public importance. Our members are actors, actresses, writers, producers, directors, community leaders, educators and others involved in America’s creative arts. I thank you for having me here today to address this issue that is so important to so many members of my organization.

Article I of the U.S. Constitution gave Congress the authority to protect intellectual property in order to promote the arts and sciences. This construct has been spectacularly successful and time tested, I might add, in protecting and nourishing the arts which are essential to a flourishing American culture. Nowhere perhaps is America’s contribution to the arts more pronounced than in the cinema.

Movies are an American art form. It is not just another business. It is not just about money and it is not about any payday. Yet too often

there is a tendency to view filmmaking that way. We don't have the same problem when discussing literature or when we discuss sculpture. Just think how different this discussion today would be if we were talking about for-profit companies censoring America's great novels to omit material that someone found objectionable. Moviemakers are artists and the creative choices that they make are at the heart of their artistic expression, and artistic expression is one of the very cornerstones of our Nation.

I would like to talk for just a moment about my personal experience dealing with the artists involved in making motion pictures. While the media seem obsessed with big-budget movies and blockbuster releases, the truth of the matter is that moviemaking is the antithesis of a guaranteed get-rich-quick scheme. My members dedicate years of their lives to getting films completed and a message, a lesson, a moment in history in front of the public. In many instances, actors, even the most lauded in the business, work for scale wages just to ensure that pictures get made and messages are heard. Directors pour themselves into projects that if they ever looked at the statistics, they would never know to expect to make much if any money at all.

I mention this because discussion of these new technologies often turns quickly to how movie studios and artists don't necessarily lose money due to the release of these unauthorized edits. If this were just about money, however, we wouldn't even be having this discussion. Absent any involvement from Capitol Hill, there are already tremendous economic pressures in Hollywood to make movies that can get a G or PG rating because those movies have the broadest possible paying audiences.

Why then are these artists making movies with content that some find objectionable knowing they will get ratings that will limit their potential audience? They do it because they are artists. They are working to tell a unique story, to convey a specific feeling to the audience, to reflect an image of our reality back to us, and for many artists, including material that some may find objectionable to telling a story or making a story believable to an audience so that the movie screen doesn't act as a barrier between the filmmaker and the viewer.

The old axiom is true: art imitates life. Walk the halls of this building or the sidewalks of Washington and you will hear language that finds its way into films. If you read the morning newspaper or if you watch the evening news, you will see violence that some would object to in films. And love stories are universal.

Subjectively editing movies can change effect and meaning. Filmmakers have historically gotten into enormous fights about edits with studios which are paying for production because edits can change the essence of art. That is why it is so important to all of us as

consumers, as citizens and as creators ourselves that art not be subjected to unauthorized altering and then marketed under the artist's name without permission.

At the same time, members of The Creative Coalition would be the first to tell you that all content may not be appropriate for all audiences. Writers, directors and actors, they all have kids of their own. In fact, my members routinely make movies they don't allow their own children to watch. It is not rocket science. It is parenting 101 that teaches us that not everything that is appropriate for an adult is appropriate for a child. The creative community has supported the ratings system, and last year's Family Entertainment and Copyright Act gave parents additional choices for controlling what their families watch. Ultimately, people don't have to watch a movie. The same idea holds true for film like sculpture and like any other art. I firmly believe that we can achieve the objectives that all here seek without interfering with the artistic vision that our freedom of expression and our copyright laws exist to foster, and frankly, giving a darn just doesn't hold up when you just have to give something else.

I thank you all for your time and look forward to your questions.

[The prepared statement of Robin Bronk follows:]

PREPARED STATEMENT OF ROBIN BRONK, EXECUTIVE DIRECTOR, THE CREATIVE
COALITION

Good afternoon Chairman Stearns, Ranking Member Schakowsky and members of the Subcommittee. My name is Robin Bronk, and I am the Executive Director of The Creative Coalition.

The Creative Coalition is a nonprofit, nonpartisan advocacy organization of the entertainment industry. Founded in 1989 by prominent figures in the creative community, The Creative Coalition works to educate and mobilize leaders in the arts community on issues of public importance. Our members are actors, actresses, writers, producers, directors, and others involved in America's creative arts. I thank you for having me here today to address this issue that is so important to so many members of my organization.

Article I of the U.S. Constitution gave Congress the authority to protect intellectual property in order to promote the sciences and the arts. The system has been spectacularly successful in promoting arts in America. Nowhere, perhaps, is America's contribution to the arts more pronounced than in cinema.

Movies are an American art form. It's not just another business. It's not just about money. Yet, too often, there's a tendency to view filmmaking that way. We don't seem to have this same problem when discussing literature or sculpture. Just think how different this discussion today would be if we were talking about for-profit companies censoring America's great novels to take out material that they found objectionable. Moviemakers are artists, and the creative choices that they make are at the heart of their artistic expression.

I'd like to talk for just a moment about my personal experience dealing with the artists involved in making motion pictures. While the media seem obsessed with big budget movies and blockbuster releases, the truth of the matter is that moviemaking is a labor of love more than some get-rich-quick scheme. My members dedicate years of their lives to getting projects done. In many instances, actors -- even famous names --

work for scale wages just to ensure that pictures get made. Directors pour themselves into projects that they never expect will make them much, if any, money at all.

I mention this because discussion of these new technologies often turns quickly to how movie studios and artists don't necessarily lose money due to the release of these unauthorized edits. If this were just about money, however, we wouldn't even be having this discussion. Absent any involvement from Washington, there are already tremendous economic pressures in Hollywood to make movies that can get G or PG ratings because those movies have the broadest possible paying audience.

Why then are these artists making movies with content that some find objectionable, knowing they'll get ratings that will limit their potential audience? They do it because – as artists – they're working to tell their unique story, to convey a specific feeling to the audience, to reflect their image of our reality back to us. And for many artists, including material that some may find objectionable is essential to telling their story or making a story believable to an audience so that the movie screen doesn't act as a barrier between the filmmaker and the viewer.

The old axiom is true: art imitates life. Walk the halls of this building or the sidewalks of Washington, and you'll hear language that finds its way into films. If you read the morning newspaper or watch the evening news, you'll see violence that some would object to in films. And love stories are universal. The fact that all of us here were conceived and born is testament to that.

To edit movies can change their effect or their meaning. Filmmakers even get in enormous fights about edits with the studios, which are paying for production, because edits change the artwork. That's why it is so important to my members that their art not be altered without their permission and then marketed under their names.

At the same time, the members of The Creative Coalition would be the first to tell you that all content may not be appropriate for all audiences. Writers, directors, and actors, they have kids of their own. In fact, my members routinely make movies they don't allow their own children to watch. The creative community has supported the ratings system. A few years ago, the ratings system was expanded to give parents more specific information about why a movie received the rating it did, all in an effort to give parents information they can use to make decisions for their own families. And last year's Family Entertainment and Copyright Act gave parents additional choices for controlling what their families watch. Ultimately, people don't have to watch a movie if they don't want to see what's in it. If you don't want to see statues with nudity, just don't go to the classical art museum.

The same idea holds true for film, which – like sculpture – is art. I firmly believe that we can achieve the objectives that all here seek without interfering with the artistic vision that our freedom of expression and our copyright laws exist to foster.

I thank you all for your time and look forward to your questions.

MR. STEARNS. Mr. Schultz.

MR. SCHULTZ. Thank you. On behalf of the Electronic Frontier Foundation, I appreciate the subcommittee's invitation to appear today.

As the subcommittee is well aware, the shift to digital media has created new tensions between ordinary Americans and copyright holders. We saw this come to a head in a recent lawsuit of *Huntsman v. Soderbergh*. At issue in that case was a longstanding American tradition of parents exercising control over the way their children watch movies versus the power of copyright owners to control their viewing experience. In the past parents had exercised this control either by

making wholesale choices about what to buy or by spending the time and energy to watch every single program they could with their children. But today companies such as CleanFlicks and ClearPlay are offering parents products and services to help them more efficiently protect their children from content of which they are concerned. The question is though, how does and should the law treat these companies?

Many copyright owners have a very limited concept of the rights of parents and consumers to customize their viewing experience. They believe that the law should allow the copyright owner strict control over the home movie watching experience. Yet copyright law has never provided such broad control. In fact, consumers have always been able to customize their purchases whether copyrighted or not. For example, when you buy a car, you can decide what kind of tires you want to put on it or what color you want to paint it. In the home, when you buy a bed, you can decide what kind of sheets or pillows you want to put on it. If a family wants to play a game of Monopoly or Trivial Pursuit, they can change the rules and they don't have to ask the game maker even though the game is copyrighted. And when you put your kids to sleep at night, you can choose what part of their favorite story to read and what part to emphasize without having to ask the story's author. In fact, some of you will remember that this was exactly the plotline of the popular film, "The Princess Bride" where the grandfather entertains his sick grandson by reading a book aloud and skips the boring parts, a sort of pre-digital ClearPlay, if you will.

The digital era though has complicated this matter. Every computer, every iPod, every cell phone is a copy machine of sorts and when copies are made, copyright law controls much of what you can and can't do with those devices. But consumers shouldn't lose their freedom to customize their experience just because they have decided to take a step into the digital world. We can and should respect the copyrights of the media makers and at the same time preserve the rights of parents to make judgments about what is appropriate within their homes and for their families.

Consider the example of searching and viewing Internet websites. Today parents have a wide variety of options for customizing their children's Internet experience. There are filtering tools such as Google's SafeSearch which limit what information is available when children go online. While we at EFF have some very serious concerns when these tools are made mandatory and some concerns about overblocking, it is a very different matter when parents voluntarily use them in the home to provide viewing options for children.

Imagine, however, if the rules that the MPAA wanted in the Huntsman case applied to online content. Web pages are just as

copyrightable as movies or music. Applying the studios' legal theory to the Internet, this might prohibit parents from customizing or filtering their children's Internet experiences just as the MPAA wanted to prohibit them from customizing or filtering the movie watching experience. It might also prohibit companies from offering customizing technologies for Web browsing just as the MPAA wanted to prohibit CleanFlicks and ClearPlay from offering such technologies for home movie viewing.

Thankfully, Congress has repeatedly endorsed market-based mechanisms as a proper way for parents to avoid content they don't like without intruding on the preferences of others. This has also fostered a healthy market for tools for parents to use. Without such devices, parents are almost powerless to provide supervision for their families in a digital world. Yet copyright law threatens the development of many such tools for home movie viewing. For example, in the *Huntsman* case, the MPAA did raise the specter of section 1201 of the Digital Millennium Copyright Act, implying that any tool that is used to copy or modify the contents of a DVD is per se illegal, even if those actions are legal under the test for fair use or serve lawful purposes, such as backing up one's DVD collection or, in this case, providing lawfully purchased edited versions of a movie for home viewing.

Fortunately, a strong and practical solution to part of this problem is pending in H.R. 1201, the Digital Media Consumer Rights Act of 2005, which allows both individuals and companies to modify and access the contents of a DVD for lawful or fair uses only. There can certainly be no more lawful or fair use in my opinion than to help parents customize their children's home movie viewing experience. H.R. 1201 would not only allow parents to do this but would also allow companies to make the products and services that parents depend on to accomplish this technologically.

Thank you.

[The prepared statement of Jason Schultz follows:]

PREPARED STATEMENT OF JASON SCHULTZ, STAFF ATTORNEY, ELECTRONIC FRONTIER
FOUNDATION

On behalf of the Electronic Frontier Foundation, I appreciate the Subcommittee's invitation to appear today. As the Subcommittee is well aware, the shift to digital media has created new tensions between ordinary Americans and copyright holders. We saw this come to a head in the recent lawsuit of *Huntsman v. Soderbergh*. At issue in that case was a long-standing American tradition of parents exercising control over the way their children watch movies versus the power of copyright owners to control our viewing experience. In the past, parents had exercised this control either by making wholesale choices about what they buy or spending the time and energy to sit and watch every program with their child. Today, however, companies like CleanFlicks and ClearPlay are offering parents products and services to help them more efficiently protect their children. The question is, how does and should the law treat these companies?

Many copyright owners have a very limited concept of the rights of parents and consumers to customize their viewing experience. They believe that the law should allow them strict control over home movie watching. Yet copyright law has never provided such broad control. In fact, consumers have always been able to customize their purchases. For example, when you buy a car, you can put whatever tires you like on it or paint it any color you wish. In your home, you can put whatever sheets or pillows you'd like on the bed. If your family wants to play a game of Monopoly or Trivial Pursuit by a different set of rules, they can do so without the game maker's permission. And when you put your kids to sleep at night, you can choose to read whatever part of their favorite story you wish, again without having to ask permission of the story's author. In fact, some of you will remember that this was exactly the plotline in the popular film, *The Princess Bride*, where the grandfather entertains his sick grandson by reading a book aloud and skipping the boring parts. Sort of a pre-digital Clearplay, if you will.

The digital era has complicated this matter. Every computer, every iPod, every cell phone is a copy machine of sorts. When copies are made, copyright law controls much of what you can and can't do with those devices. But consumers should not lose their freedom to customize their experience just because they have decided to step forward into the digital world. We can and should respect the copyrights of the media makers and, at the same time, preserve the rights of parents to make judgments about what is appropriate within their homes and for their families.

Consider the example of searching and viewing Internet websites. Today, parents have a wide variety of options for customizing their children's Internet experience. There are filtering tools such as Google's SafeSearch that limit what information is available when children go online. While we at EFF have serious objections when these tools are made mandatory, it's a very different matter when parents use them at home to provide customized viewing options for children.

Imagine, however, if the rule that the MPAA wanted in the *Huntsman* case applied to online content. Webpages are just as copyrightable as movies or music. Applying the studios' legal theory in *Huntsman* to the Internet, this might prohibit parents from customizing or filtering their children's Internet experience, just as the MPAA wanted to prohibit them from customizing or filtering their children's movie viewing experience. It might also prohibit companies from offering customizing technologies for web browsing, just as the MPAA wanted to prohibit CleanFlicks and ClearPlay from offering such technologies for movie watching.

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Fortunately, a strong and practical solution to part of this problem is pending before Congress. H.R. 1201, the Digital Media Consumer's Rights Act of 2005 (DMCRA), allows both individuals and companies to access and modify the contents of a DVD for lawful or fair uses only. There can certainly be no more lawful or fair use than to help parents customize their children's home movie viewing experience. H.R. 1201 would not only allow parents to do this but would also allow companies to make the products and services that parents depend on to accomplish this technologically.

Again, thank you, Mr. Chairman, for the opportunity to appear before the Subcommittee to address these important issues. We appreciate being asked to be here and look forward to working with you and your staff as you examine these issues further.

MR. STEARNS. Thank you. I will start off with my questions. Ms. Bronk, let me ask you something. When you go in high school and you read "Pride and Prejudice" by Jane Austin, a lot of high school students have a very difficult time with it, so then what they do is, they go and get the *Cliff Notes* of "Pride and Prejudice" and they read that, and perhaps they might go home and find on their mother's shelf a *Reader's Digest* version of "Pride and Prejudice." You could go the same way with "The Iliad." Recently "The Iliad" as translated has been synopsized and summarized. These are classic works and yet there doesn't seem to be any hew and cry against these people. In fact, there are business books that are summarized all the time that I can subscribe to and it will take the latest business book from maybe the CEO of IBM and then summarize and it give a very short version of it. In fact, there is one website that actually takes it and brings it down to one or two sentences. So there are all kinds of creativity that have been done. Why is that different than what either ClearPlay or CleanFlicks Media is doing?

MS. BRONK. Well, I beg to differ in that I don't think that you will find an educator that will say that *Cliff Notes* does take the place of a work of literature. In fact, I think that while there are summaries available, while there are shortcuts available, while there are executive summaries, it is to not be in lieu of the work of art.

MR. STEARNS. But if the person wants to make the decision that they don't want to read the work of art and they want to be able to go, as Mr. Schultz said, to the market and maybe get a summary or a synopsis from one of these fellows, why couldn't they do that?

MS. BRONK. I think they could but I think at the end of the day, will your child get more out of "Beowulf" or the executive summary out of Beowulf?

MR. STEARNS. Well, if he won't read "Beowulf," then he will get more out of it if he reads the summarized version of it.

MS. BRONK. I don't know. I think I would still prefer to have my--

MR. STEARNS. I am not saying it is exact analogy but I am just saying that you have something dealing with books, even current books that come out. "The Da Vinci Code," any of these books sometimes are summarized and sometimes people will pick up these books because they don't have the time to read them and maybe in some cases they would like to get these movies but they don't necessary want to go through all the sex scenes, the violent scenes and the profanity scenes, they just want to get the spiritual side of the movie.

Let me ask Mr. Aho, do you--maybe both you and Mr. Erb, if the Movie Act of 2005 had not passed, do you believe ClearPlay would have been found to be infringing?

MR. AHO. No, I think we would have won. I am encouraged by the fact that again the U.S. Register of Copyrights gave her--testified before Congress and her opinion was that we did not infringe. However, I believe that even if we would have won that summary judgment, we would have been sued again by Hollywood and again and again and again because there are enough constituencies there that don't want us to exist.

MR. STEARNS. Mr. Feehery, what is your answer to if the movie act had not passed, do you believe ClearPlay would have been found to be infringing? What does the Motion Picture Association say?

MR. FEEHERY. I don't know the answer to that question. You know, I--

MR. STEARNS. Mr. Aho is indicating that you would think they were infringing.

MR. FEEHERY. Well, I think that right now Congress has passed a law on this very subject and I think that they have had--you had in the Congress a lot of very talented people coming through and creating that law and I think that they tried to find a way to create that law that was not going to in their minds abuse the copyright law.

MR. STEARNS. But doesn't the film industry take edited--make edited movies--because I am on the airplane lots of times and I see movies that have been edited, particularly if you go on cruise lines or to foreign countries. I guess the question is, what is the percentage of total revenue of these edited movies? If not, if you can't tell me specifically the amount of money, why doesn't the industry sell these edited versions if I saw it going to California or going to Singapore? I mean, if you have an edited version and you are doing it yourself and you are complaining these folks are doing it, why can't I buy that?

MR. FEEHERY. Mr. Chairman, I will get the answer to your question about how much revenue that brings. I don't have that answer readily available. I don't--we don't really get into the commercial decisions of the studios. That is not what we do. Each studio makes their own commercial decisions on how to best market the movies. My experience with them is they all want to make money but that has been my experience with them.

MR. STEARNS. If you could just give us a little bit what you think that the movie sales are in the edited version it would be helpful.

MR. FEEHERY. I will get that for you, Mr. Chairman.

MR. STEARNS. And what percentage of the total revenue is probably the better if you don't want to reveal the percentages, and I guess the real

question is, can I buy an edited version that the movie industry does? Can I buy that edited version I see on the airlines, Mr. Erb?

MR. ERB. No, sir, you can't.

MR. STEARNS. Okay.

MR. ERB. Those movies are edited by a company called Swank which has a contractual relationship with the studios, and part of that contractual relationship is that those movies may not be sold to the public.

MR. STEARNS. So Ms. Bronk, it looks like the movie industry is doing exactly what you are saying that these folks should not be doing and they are selling it to the cruise ship, the airlines and foreign countries yet you are complaining that these people want to do the same thing and so I just find an inconsistency. Does that make any sense?

MS. BRONK. Well, there is a difference between authorized editing, and I would assume, and I don't know, but I would assume that Swank does have the permission of the producer, the director, whoever owns the copyright on that film. They have decided to give Swank artistic license. You know, and I go back to--I was thinking about what you were saying about the *Cliff Notes* version because as a parent, I am constantly in that "Beowulf" struggle, if you will, but I think that there is a reason why in literature, you know, since the beginning of time, we have focused on the classics for children and we have tried everything that we can to make sure that the children get the why's, the wherefore's and the tenets of the classics in their unedited versions.

MR. STEARNS. Mr. Erb, it doesn't appear to me that they are saying they are willing to do this editing and give the authorization to this company to do it. They are sort of saying we want to control everything here, and I don't know if monopoly is the word but at least the appearance is, they want to control but they don't want you to have that control because for some reason they don't trust you.

MR. ERB. Well, the best solution here, clearly, Mr. Chairman, would be if the studios would edit their own movies, and that would solve all of the debate. The issue would be over, and frankly, it was always our hope that our effort would have that result and we would have walked away at the end of the day feeling as though we had been successful if we could just get Hollywood to offer edited--

MR. STEARNS. You had a very high purpose in mind.

MR. ERB. We did, and in fact, when the VHS format was the only format available, it would have been much more difficult to deliver edited movies but they did announce at the time that DVDs came out that they would start to provide on a DVD because of the larger scale that the DVD format provides an R or PG-13, a PG and a G-rated version of every movie, and there actually were four or five movies produced in

that format. They are incidentally historical items now that will probably appear in the Smithsonian at some point in time. If you find one, I suggest you hold onto it. It will be worth a lot of money one day. Those--but they stopped after those four or five movies for no reason, with no explanation and have never provided them since, and if they would just do that, this debate would be over.

MR. STEARNS. Mr. Barton.

CHAIRMAN BARTON. Thank you. Well, I think we all are in agreement that America is America because we protect individual property and property rights and creativity, freedom of speech and the First Amendment. That is what makes us a great society. But there are lots of nuances within that about how different Americans have different values and that is what we are trying to figure out here. You know, in 1939 when "Gone with the Wind" was made, when Clark Gable walked out at the end of the movie and turned around to Scarlett O'Hara, or Vivian Leigh, and said, "Frankly, Madam, I don't give a damn," it had an impact because that was a word that you didn't hear on the radio or you didn't hear in the movies. I mean, that was creative and it did have dramatic effect because it was so, almost in the movie context, unique. It also took major, major negotiation to get that in the movie but it was in the movie. Today there are many, many movies that in every sentence there is a profanity, you know, and I am going to change the verb but, you know, when some of the dialog is "what the flip is going on, it has been a flipping day, I am so flipped up, I don't know what the flip I am going to do" and the other character says, "I agree with you" you know, and it just goes on and on and on. I don't see a whole lot creative about that. I mean, it just kind of loses context. So I understand that the creative community has got the right to be creative and I understand in America that means you have the right to be vulgar and you have the right to be gross and you have the right to be profane but I don't think that sells if it is just repetitive.

So my first question to you, Mr. Feehery--and it is good to see you on that side of the podium. I am used to seeing you back here or calling me from the Speaker's office and telling me I have to do something. It is good to have you over there for a change. Do you off the top of your head know what the movies that are actually nationally distributed, what percentage have the different ratings like G, PG, MA and R? I mean--

MR. FEEHERY. Yeah. The MPAA-rated films, about 4 percent are rated G, about 11 percent are rated PG, about 24 percent are rated PG-13, 62 percent are rated R and 0.17 percent are rated NC-17.

CHAIRMAN BARTON. Sixty-two are rated R. Now, do you know what the sales percentages are? Do the sales percentages track that?

MR. FEEHERRY. You know what, I don't have those percentages in front of me. I know that last year a lot of family movies did very, very well at the box office. I don't have the percentages in front of me.

CHAIRMAN BARTON. Okay. But in general, I am not tying you down to specifics but you said 4 percent are G and 4 percent are PG. Is that--

MR. FEEHERRY. About 11 percent are PG.

CHAIRMAN BARTON. Eleven percent.

MR. FEEHERRY. And then 23 percent are PG-13.

CHAIRMAN BARTON. But 62 percent are R but the PG and the G have a higher percent of actual viewing. Is that--11 percent are PG but it has got 20 percent of the market?

MR. FEEHERRY. I don't have that breakdown for you, sir.

CHAIRMAN BARTON. Mr. Erb, do you know?

MR. ERB. I don't have the breakdown, the actual numbers, but I am assured that what you say is absolutely true.

CHAIRMAN BARTON. I mean, is it fair to say that while 62 percent of the movies that are made in America are rated R, they have considerably less than 62 percent of the market?

MR. ERB. And conversely, while only 4 percent are G, they have a much higher percentage.

CHAIRMAN BARTON. Is that a--Mr. Feehery and Miss Bronk, do you agree that generically that is a fair statement?

MR. FEEHERRY. I think that kind of confirms what Miss Bronk was saying. Miss Bronk was saying, you know, the artistic impulse is alive and well and they--

CHAIRMAN BARTON. We are not here to constrain artistic impulse, okay? If you want to make a movie and every word is a cuss word spoken naked in front of a camera pouring chocolate over you, go to it.

MS. BRONK. I think that is being released at Sundance this year.

CHAIRMAN BARTON. I don't think it is going to sell but if you want to do it, God bless you. That is what America is all about. Now, my point is, why doesn't the industry do what Mr. Erb encouraged you, edit different versions for the PG market and the G market so that if you put all this--I was in Hollywood last summer and I went around to every major studio head and had a very nice chat in their offices with all their Oscars arranged around them on shelves and stuff, and they all to a person from the Disney to the Warner, you know, right on down the line, how expensive it is to make a movie. If you want a general distribution movie, it is going to cost you \$100 million minimum just to scratch, just to scratch. If you invest that kind of money, why in the world wouldn't you all have an R version that is totally as creative and then take that same print but edit it a little bit so that the PG and the general admission

market might buy it too? I would think that would be good business. Why don't you do that? Either one of you.

MR. FEEHERY. Mr. Chairman, I would say that at the MPAA, we don't get into the commercial decisions of the studios. They all make decisions based on their business models. My experience with them is that they want to the best thing they can for their stockholders. So they probably look at the business models--they have not explained those business models to me so I don't have a complete answer for you.

CHAIRMAN BARTON. Mr. Aho.

MR. AHO. I don't think it is a business-model decision. I have had probably 30-some meetings with studios discussing this issue. I think it stems back to the directors. Directors simply don't want--directors simply do not want--you know, they don't want people to see versions of their movie without that stuff in them. I have heard directors say to me, say that we all loathe the fact that we have been forced contractually through our directors' agreements to offer up TV versions and airline versions; we hate them. So I don't think it is--it is not a business decision. I am quite certain of that. It would be very easy, especially with, you know, high-def and Blu-ray and some of the capacity on DVDs to offer another version, to offer alternate scenes and things. That is not the problem. The problem--

CHAIRMAN BARTON. My time has expired. I have got one final question.

MR. STEARNS. Mr. Chairman, why don't you take your full--we are going to have a second round. If you would like to take your second round right now, feel free to.

CHAIRMAN BARTON. I want to ask--your company was buying a hard copy, editing that copy, making a dub of it but an edited dub and then selling it. Is that correct?

MR. ERB. And renting.

CHAIRMAN BARTON. But you--

MR. ERB. We bought an original copy for every edited version that was produced, so there was no economic loss whatever to Hollywood.

CHAIRMAN BARTON. So if Mr. Stearns wanted to buy an edited version of a movie and Mr. Murphy did and I did, you would buy three copies?

MR. ERB. That is correct. Originally our business format was that you had to buy the original, send it to us or bring it to us and we would edit it. That just became too cumbersome as we got larger and so we ultimately got to the point where we purchased the movie for the customer or the customer verified to us in writing that they already owned the movie, because we didn't want to--

CHAIRMAN BARTON. But you physically, you made a copy that was physically different than the copy that was provided to you?

MR. ERB. That is correct, and--

CHAIRMAN BARTON. And you edited out the violence or the sex or the profanity?

MR. ERB. That is correct.

CHAIRMAN BARTON. And what the court ruled, they said Mr. Aho's technology doesn't change--it takes the DVD and just basically he programs so it skips over certain things but it doesn't change the hard copy. You actually create a copy that is physically different, so he is legal and you are not.

MR. ERB. That is fundamentally--the issue surrounds the definition of the phrased "fixed copy" and I wish that Congressman Green had not left because he said he is editing movies at home, and the reality is, he is probably in violation of the law if he is doing that.

CHAIRMAN BARTON. I doubt that he is going to be arrested though. Now, Mr. Aho, your business is still functional?

MR. AHO. Yes.

CHAIRMAN BARTON. You are in business and--

MR. AHO. That is correct.

CHAIRMAN BARTON. --Mr. Erb, you have gone out of business?

MR. ERB. That is correct.

CHAIRMAN BARTON. What were your sales the last year just kind of generally? I don't need--if you are privately held, I don't need to know the exact number but were you--millions of sales or hundreds of thousands or--

MR. ERB. No, we were--again, we both rented and sold and just to clarify, if we had 10 movies in rental circulation, for example, we owned 10 copies of the original and kept them in a separate closet, and yes, our revenues were in the millions.

CHAIRMAN BARTON. In the millions. So Mr. Feehery, your people because of artistic value are just going to use profanity away with that. You are just going to throw all that away? You are not interested in a broader market?

MR. FEEHERY. Well, Mr. Chairman, actually we had some very real problems with CleanFlicks. For example, I have an example here where you could just check off a box and say yeah, I already own this DVD and just send me the edited version, so--

CHAIRMAN BARTON. Well, forget that. They are out of business.

MR. FEEHERY. Well, I know, but that was--

CHAIRMAN BARTON. That is not my question. My question is, to protect the director's artistic creativity, you are going to accept a smaller market?

MR. FEEHRY. Well, I think that like any business, the motion picture business is a complicated business and there is a--

CHAIRMAN BARTON. Are there any plans right now for any of the major studios to put out edited versions of their films, yes or no?

MR. FEEHRY. I don't know. I don't know the answer to that question because that would be a commercial decision of the different studios.

CHAIRMAN BARTON. Can you get the answer to that?

MR. FEEHRY. I will try to get the answer for that, yes, I will.

MR. ERB. And Mr. Chairman, if I could just make one quick comment. Not all movies--and we are talking in generalities I know here--but not all movies are susceptible to editing and so the movie that you described where every single sentence, for example, it probably has a subject matter content and probably is not one that is really realistically editable. But I am glad Mr. Aho used the film "The Patriot." This is a perfect example of a movie in my judgment which should be--everybody in America should see this movie, and it should be in the public school systems, and but for a couple of scenes, one of which we saw and then another one that occurs later in the film that are quite gory and quite bloody, the removal of those does not in any way change the impact of the film or its validity or its value and yet that film is probably for my parents going to be one that they couldn't put their children in front of because of these gory scenes, and there is just no reason for that.

CHAIRMAN BARTON. Well, I just think it is unfortunate, Mr. Chairman, that, you know, we passed this law and it allows Mr. Aho's technology, which is a good thing, but yet it doesn't allow what Mr. Erb was doing, although it looks like he bent over backward, bought the copies and all that and there may be a disagreement whether it was self-enforcing or what, but we obviously have a market in America for family-value entertainment and we have got artists that can provide it and they for their own reasons like to spice it up a little bit and that is preventing a large segment of the market from developing, and I think that is too bad.

MR. STEARNS. Will the gentleman yield?

CHAIRMAN BARTON. Yes.

MR. STEARNS. Maybe one area that we could explore on the questions that the Chairman is talking about, is this a question of money? I mean, we keep talking about artistic creativity that you don't want to sacrifice. Is it possible that the Motion Picture Association doesn't want to do this because the original film then won't be bought and the price margin is such--in other words, I guess the question is to the group off of Mr. Barton's time, is there--Mr. Erb, do you think there is a question of money here involved besides artistic protection?

MR. ERB. Mr. Chairman, I think that different directors fall in different categories and certainly I think Mr. Aho has identified a certain group of directors that simply produce material that they do not want changed in any way for whatever reason, and there may be a variety of movies behind that. I don't think that it is an economic issue. While I understand Ms. Bronk's statement that there are some actors and directors that may produce movies for next to nothing, I don't find any of the directors with whom I am familiar down in the soup kitchens. Most of these people are multi-billionaires, if not millionaires, and so it is not an economic decision.

CHAIRMAN BARTON. We are okay with them being multi-millionaires. That is a good thing.

MR. ERB. And I am not--

CHAIRMAN BARTON. It is more money to tax and--

MR. ERB. I am not--

CHAIRMAN BARTON. --more homes to have events in. I mean, that is not all bad.

MR. ERB. And I am not denigrating the point. I am just pointing out--

MR. STEARNS. Use more energy.

MR. ERB. I am not denigrating the point. I am just pointing out that it is not an economic or a business decision.

CHAIRMAN BARTON. My final question: Do we need to go back and revisit the law and modify it so that under--I don't want an unlicensed editing process. I think that the creators ought to be able to oversee or sign off on the edited versions but I for the life of me can't figure out why the industry itself doesn't want to work with the Mr. Erbs of the world to come up with PG and G-rated versions of their R material that make them more money.

MR. ERB. And we would agree to having oversight on the editing process.

CHAIRMAN BARTON. Because if it is okay for Mr. Aho to do it, it ought to be okay in some way under a royalty or licensing agreement for Mr. Erb to make a physical copy that is a little bit different, and with that, I yield back, Mr. Stearns.

MR. STEARNS. The gentleman yields back. Mr. Murphy.

MR. MURPHY. Thank you, Mr. Chairman. I appreciate the comments here on this issue. I wanted to ask a couple clarifications of some of these things, and that is, when the companies do make edits, let us say the way things stood, who makes the decision? Who has the final word in the decision and where do you get the information to gather in terms of what is left in and what is not? Does this include overdubbing some things too?

MR. AHO. Well, we don't overdub. We are purely subtracting. We skip and mute. We don't add content.

MR. MURPHY. So not like what might be on broadcast TV where someone impersonates a person's voice--

MR. AHO. Someone would say like "bull spit." No, we don't do that. We--our policy is to get as descriptive as possible with what is--what events are in each one of our categories, we have 14 categories, and then to let the consumer decide what in fact will be filtered in their experience. So in some cases it is very easy. We know what an F word is, and when you get to that category and it says, you know, F words, then we know what that is. Some of them are a little bit more subtle such as what is action violence versus intense violence but we try to get as descriptive as possible and let the consumer decide.

MR. MURPHY. Is that--are those things then that the studios complain about in terms of what is left, either is skipped over or--I mean, do those come through as complaints from the directors and others that you have hurt their artistic license?

MR. AHO. I think the issue--and I have spent some time with the DGA as well in discussing these director issues, and I think it is just a matter in general of anyone else besides the director having any impact on how that--on that movie. I think it is a lack of trust. I think they are concerned with what we could do.

MR. MURPHY. Have there been specific complaints then from the movie industry about some of the ways these have been provided as an option?

MR. AHO. None to us, no.

MR. MURPHY. Mr. Erb, the same thing.

MR. ERB. Yes, there has been no specific complaints. It is just a general complaint.

MR. MURPHY. But from the movie industry, are there specific complaints that have come up, examples of concerns?

MR. AHO. Well, I think when it comes to CleanFlicks, which wasn't our complaint, it was also the complaint of the court when they found their business was illegitimate. ClearPlay is settled law and we don't have any complaints that I know of about the settled law.

MR. MURPHY. Well, but I thought the point that you were making before, sir, was that you were saying that some of the directors don't want anybody touching their films of any kind. They didn't even like the versions that were on airplanes. Is that--

MR. FEEHERRY. I didn't say that.

MR. MURPHY. I thought--

MR. AHO. I made that point.

MR. MURPHY. You made that point?

MR. AHO. Yes.

MR. MURPHY. What is that based upon? So you have heard some complaints or--

MR. AHO. Yeah, I have had directors tell me that, and in fact in public forums.

MR. MURPHY. I would like to explore that though. What kind of things have they said about that?

MR. AHO. Well, they have said that in discussing the standard directors' agreements that they have sort of been forced into authorizing--unless they are a very powerful director, they are forced in authorizing airline and television versions and they don't like it. They feel like it is not their work, it is not what they wanted to portray to the public and they wish they could turn back the hands of time and never have to agree to that again. So when we take it a step further, we say now that a third party is in fact managing that process, I think that is just all the more egregious to that community.

MR. MURPHY. And Ms. Bronk and Mr. Feehery, these are not concerns you have heard from directors or from people in the studios?

MS. BRONK. It is a very amazing thing that we are talking about not money but the artistry of it, and I do find it amazing in this day and age that there are still artists that care about the integrity of their art and I think they should be commended.

MR. MURPHY. But that is stretching it. I mean, there are some films that what they have in terms of violence and nudity or words are really not an art form but they are--

MS. BRONK. Well--

MR. MURPHY. I am not clear what content--

MS. BRONK. --I mean, is Shakespeare an art form? It is all--what is wonderful in my living room where there probably isn't a more conservative television viewer than me, you know, I am offended by Cinderella's cleavage, so--

MR. MURPHY. That is a cartoon, you know.

MS. BRONK. Well, I have three daughters. But I have an on and off button. I have a fast forward button, and--

MR. MURPHY. But I don't think the concern is when you are watching Cinderella with your daughters present. The concern is a lot of things around when parents are not present, that it is something that is encouraged by the industry. When I look at things like the top ten grossing movies of all time, I think that only one of these, "Titanic" that had any nudity in it--"Lord of the Rings," "Pirates of the Caribbean," "Harry Potter," "Star Wars," "Lord of the Rings," "Jurassic Park," "Harry Potter," "Shrek" unless there was something there I didn't catch--"Harry Potter." These are the top grossing movies. If it is a matter of

answering to stockholders, which is that part of what has to happen, it is a business. It always seemed to me that it is more difficult to make a movie that is art without using violence and foul language in it than it is to--I think some of the best movies I have ever seen have been ones that have been able to tell a story without going to that. But I still think it is a matter for parents to know that they cannot spend all day, every day, you know, when the kids are watching TV doing that but I am one that tends to support providing some options for parents to have that but I want to know how that--

MS. BRONK. I also have an oven in my house that, you know, when I am not there I hope my children are not using it. I have potato chips in my cabinet that I hope they are not eating for dinner, and there has to be some--as a parent, I am obligated to educate my children about what they should ingest both physically and in their minds. So--

MR. MURPHY. I wish life was that simple but it is not and I think it is gratuitous to make a comment like that because it becomes a matter that there are--despite what people continue to deny to us, there are influences that happen when you are dealing with other messages there and it is a concern. I mean, but the issue that goes with that is, yes, parents need to be very careful because it is sometimes not just an individual word or scene but it can be the whole theme of a movie, and if they are not even watching what their kids bring home, that is a problem, and I am with you on that. That is a grave concern. Parents ought to know the themes in the movies, what are the lessons that are taught. That has nothing to do with the words and you can't edit it out, just say don't buy it or don't let the kids rent it, but there are--whenever we have had hearings about other issues in terms of what can be done, it has continually come up to us, we can't--Congress and the government, they have been very good at legislating morality or mandating intelligence or litigating compassion but it has been a matter that somehow at least provides people with options so parents can be parents and that is the dilemma we have.

MR. ERB. Congressman Murphy, if I could just refer--make one comment about your reference to specificity of complaint. Our--we have been in public debate with many members of the DGA at one point or another and our experience is that none of them have ever seen one of our edited movies, so it is not about specific complaints. It is about a general concept. I doubt that any of the others on the panel besides Mr. Aho and I have ever seen one of our edited movies either. It is a conceptual problem. It not a specific problem.

MR. MURPHY. Thank you.

MR. STEARNS. I thank the gentleman. The gentlelady from Tennessee, Mrs. Blackburn.

MRS. BLACKBURN. Thank you, Mr. Chairman, and I thank all of you for your time and for being here, and I apologize that I have been kind of the up and down member back and forth. It seems like this is appointment day and they all decided to show up at the same time, so thank you all very, very much for being here and working with us on this.

Mr. Schultz, I wanted to ask you a question. The video cards for computers that have the video capture devices on them that would essentially copy the content of a movie from a DVD or from a TV cable and feed it through the computer, do any of the current video cards, any of these video cards have the ability to copy that content and feed that through the computer from your movies? They are used for games.

MR. SCHULTZ. Well, I am not familiar with all the different specifications but generally when you have video cards, in order for a computer to work at all to display video, a copy has to be made. I mean, this is the way copyright law is now. It ended being sort of a regulatory scheme for all the computers in some ways.

MRS. BLACKBURN. Okay. So you have got a video card and it has a video capture device and you can capture that content and feed it through the computer and then are consumers able to edit that copy from their computer, that captured copy from their computer?

MR. SCHULTZ. Many of them are in fact. It depends--I mean, you are describing a general system so I am trying to extrapolate a little but there are many options where consumers can take screen shots where they take a picture of what is on their screen at a given time or take a little snippet of something, and in fact Mr. Barton earlier referred to YouTube, and often you will see on these kind of video websites scenes from when someone is playing a video game or doing something else on their computer, you will see a small snippet that they want to show their friends.

MRS. BLACKBURN. Are there any lawsuits against any of those capture devices? Do you know?

MR. SCHULTZ. There have been some threats against some people who try to capture--to sell cards that allowed you to capture and save things but there are none currently going on that I am aware of although there is intense pressure on those manufacturers to not expand those capabilities.

MRS. BLACKBURN. Is that practice of taking that video--is that basically the same process that Mr. Erb was describing?

MR. SCHULTZ. Well, I don't know that Mr. Erb went through all the details, but as I understand it, there are actually two different parts of the process that need to be addressed. One is, how do you get the content out of the DVD in the first place, and this is when I mentioned H.R. 1201

because there is an argument that has been made by the motion picture studios and other content owners that even getting any of the content out of the DVD to begin with to make the editing is a violation of the law, so that needs to be addressed. Now, if it has been gotten out in an authorized way through sort of a DVD player on a computer, usually it is then locked down so that it is hard to capture for various reasons. But if you are able to get it, you know, then the actual capturing of the content, if the end result of what you do is considered a fair use, then many courts have held that the intermediate copies that you have to make, the editing copies, are also fair use.

MRS. BLACKBURN. Okay. Mr. Feehery, I wanted to come to you because I think in large part much of the discussion that has been generated about this comes about because of what we see as the ratings creep going on and the Harvard study of course alluded to that and, you know, Ms. Bronk, I would take issue with some of the things that she has said. While I am a fierce advocate of intellectual property, I think that there are--I would take issue with what you said, and people expect some discretion and decency and some wise choices made and many times that is the problem that they have with how movies are rated and parents feel as if they are caught unknowing, and I had a question from just having gone to a theater lately, where do you display an explanation of how a movie is rated, and if a parent is taking their child to a theater to see a film and they walk in there, where can they get that information for what the MPAA's reason was for rating a film a certain way?

MR. FEEHERY. They can go to MPAA.org.

MRS. BLACKBURN. No, I am talking about when they go to that theater.

MR. FEEHERY. Oh, in a theater. There should be descriptors as you walk in the theater.

MRS. BLACKBURN. Are they readily available?

MR. FEEHERY. I think they should be. In most theaters they should be readily available, yeah.

MRS. BLACKBURN. Okay. Where would a parent find those?

MR. FEEHERY. Well, there is plenty of different places--the newspapers, our websites, right outside the box office, usually they have all kind of descriptors where you can see the ratings.

MRS. BLACKBURN. Okay.

MR. FEEHERY. And the descriptors.

MRS. BLACKBURN. Okay. Well, I guess I was at a theater that just did not have those readily available and could not see them and--

MR. FEEHERY. Tell me where. I will call my friends at NATO.

MRS. BLACKBURN. Well, I would encourage you all to be certain that those are--the theater owners should be certain that that information

is there so that the parents can see that easily because much of the discussion that we have had on this issue, on the ratings issue, on the ESRB issue comes from the fact that people cannot find the information, they don't understand how or why a decision was made, and while they want to be able to--they are very frustrated with the fact that in the 1970s when they were a teen, certain things would have been rated R and now they are seeing that as a PG or a PG-13 and it gets to be very, very confusing, especially when you are trying to rear children and put some controls around there, so I would encourage you all to maybe revisit that.

MR. FEEHERY. Okay.

MRS. BLACKBURN. Thank you very much. Mr. Chairman, I yield back.

MR. STEARNS. Either one of the members on this side have additional questions? We are getting ready to close up. I was going to ask one myself but feel free of the gentlelady from Tennessee or Mr. Murphy. If not, I want to thank all of you for coming. I just have one question for Ms. Bronk. Are there some in the industry that are upset or unhappy with ClearPlay's technology? I mean, how do you feel--I mean, you saw what they are doing and they are out there in the market and they are continuing to do this. I mean, just be honest, how do you feel about--

MS. BRONK. I actually have a question about that as a parent. How--if a kid watches a sanitized or filtered version of "The Patriot" and they don't realize--my daughter goes over to her friend's house and her mother plays a sanitized version of "The Patriot" and I think that well, she has watched "The Patriot." How do we know--how does a kid know which version they have seen? Do you--are there resources for the parents to give to the kids so that the kid knows what they have seen and that they haven't seen the full version?

MR. AHO. Well, in your home, you have to have a player that has ClearPlay on it and then you have to physically turn ClearPlay on and choose to watch the movie with ClearPlay. I guess if you were in somebody else's home, there is a small safeguard in that at the beginning of the movie we agreed as part of the Family Movie Act to display a prominent--I think it is eight or nine seconds--a prominent notice that this movie has been--your viewing of this matter was revised with ClearPlay.

MS. BRONK. Have you created any resources for the children so that they know that they--I mean, as a parent, I think that would be helpful to--so that my 10-year-old knows that she hasn't seen the real version of "The Patriot" but she has seen a filtered version, so--

MR. STEARNS. Generally we ask the questions but--

MS. BRONK. I am sorry about that.

MR. STEARNS. That is okay. Mr. Murphy, go ahead.

MR. MURPHY. Just on that because I am curious, is this in reference to something like if a child goes to another parent's house and says but my mom let me see the movie? Is that what that is about? I mean--

MS. BRONK. Well, also I am thinking about my own children thinking that they have seen "The Patriot" and they are not realizing that no, you didn't see the real Patriot and it is not appropriate for you and you are not Patriot-ready.

MR. MURPHY. I am not familiar with that. Was that somewhere between R and PG?

MR. AHO. It was an R rating.

MR. MURPHY. No, but I am not--if some certain language and scenes are taken out of there, does the child still get the theme of the movie which is there? I mean, if they discuss the Revolutionary War in the second grade without all the other details, that means they didn't cover it. I just wondered. Anyway, sorry, Mr. Chairman.

MR. STEARNS. Mrs. Blackburn? Okay. Let me just close by saying the point of this hearing was not censorship. The whole point is to give the option, choice to the parents, give the parents the power to be able to make these choices, so this is what the hearing is about and we see through this discussion that there is available now--I guess Mr. Aho, through your company, a parent can go out and buy your device and today take it home and they--it will be preprogrammed, right, for certain movies?

MR. AHO. Yes.

MR. STEARNS. So you would tell them--I am just looking at how it actually works, so if a parent wants to do this, they go out and buy your player, they bring it home. They go to Blockbuster, they bring home a DVD and the player is already preprogrammed with codes, flags on the player to delete these scenes?

MR. AHO. Filters for some of the movies come loaded. You go to our website when you sign up and you get filters for 2,000 movies that are--

MR. STEARNS. So you download those--

MR. AHO. And then as more come out every week as the DVDs are released, we will provide filters for them.

MR. STEARNS. So your device is hooked up to the computer and so you download--if you have a movie, you just download those codes that go into your device and then it automatically edits it?

MR. AHO. It actually can work any way that you move data. I mean, we have a couple of products, one that you just take a little USB stick, a little jump drive, a flash drive, stick it in your computer, and that is what this one is. We have got another one with a modem, and the vision is, is

that virtually any way you watch movies, whether it is cable, satellite, set top, video on demand, any way that you watch movies, you could have this option in the same way that you have the option of pressing a mute option on virtually any device. That is absolutely feasible technologically, and then people could decide, you know, do I want to pay for this, how do I want to watch the movie.

MR. STEARNS. Well, just to take their side for a moment, they could argue that your people would be deleting maybe sex and profanity and violence but you might also be deleting some things that go to the heart of the story where you have to have that exclamation of emotion to do it. You are making that decision, and from their standpoint, they are saying whoa, we don't want you making that decision.

MR. AHO. And I understand that. I mean, if we take out the heart of a movie, we will go out of business because you don't want to watch a movie with the heart removed, and we cannot succeed. I think Mr. Erb's comments were right. The comments are always--the concern is always that the sky is falling but we have never really looked out the window.

MR. STEARNS. But no one is even regulating or determining what decisions you are making. You make them pretty much on your own.

MR. AHO. In the same way that when a television version is released, someone has made those decisions. When an airline version is released, someone has made those decisions, and we trust that the end product will be something that we will find satisfactory. If it is not, we move on and we find another way to be entertained.

MR. STEARNS. Are you progressing? I mean, are your revenues increasing pretty dramatically every year?

MR. AHO. They have been, yes.

MR. STEARNS. How many players are out there in America today?

MR. AHO. We have--there is about 100,000-plus players out. We hope to have a lot more. Obviously some litigation slowed us down.

MR. STEARNS. So you have 100,000-plus players and you have over 2,000 films that you have developed the flags for?

MR. AHO. Yes.

MR. STEARNS. Well, I think we have covered this, and I appreciate again the patience and I am glad we didn't get interrupted with votes, and with that, the subcommittee is adjourned.

[Whereupon, at 3:40 p.m., the subcommittee was adjourned.]

